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## Shareholder Rights & Information Enfranchisement

Clearly the current proposals being formulated by the Shareholder Rights Working Group and the measures proposed in the Company Law Reform bill will go a long way to improve the information available to shareholders in nominee accounts. The beneficial owners of such shares will be able to opt-in to receive Annual Reports and other communications issued by a company to all shareholders who are on the share register (ie. they will gain the same rights as individuals who hold their shares in a personal Crest account, or in the form of "certificated" holdings - whether or not the latter are replaced by a new "dematerialised name on register" form in due course).

They will clearly receive notice of Annual General Meetings and Extraordinary General Meetings related to major "corporate events", and be able to vote, via the nominee or otherwise, on motions on the agenda of those meetings.

These proposals will clearly be beneficial to those shareholders who hold their shares in PEPs and ISAs, or in corporate nominees, or in low cost share trading accounts that are now actively promoted by stockbrokers. For example, internet share dealing accounts are almost always based on the use of nominee accounts. As a result, and because of a preference by institutions to keep their holdings in nominee accounts for reasons of confidentiality, the number of nominee shareholders is rising rapidly. In many public companies, the number of shares held by nominees of various kinds now exceeds the number held by named individuals or corporations.

### The Outstanding Problem

But there is one aspect that has not really been considered in the "enfranchising" of such shareholders. This is the issue of whether such shareholders can be communicated to by someone other than the company.

One reason why share registers were originally made public documents was because it is very important if a company is badly managed that shareholders can communicate with each other. Any individual can obtain a copy of a company's share register (at a relatively low cost as specified in the Companies Acts) and write to all the shareholders expressing their concerns. In addition of course, they can call on the shareholders to sign the required requisitions for calling an Extraordinary General Meeting, or for putting motions at an Annual General Meeting - such demands may require a considerable number of shareholders to support them who could not be obtained by any other practical means.

Any such motions can of course mean the removal of directors and the appointment of new ones. But as all directors come up for re-election on a regular basis, a letter to shareholders may simply ask for votes against such re-election, or solicit proxy votes for the writer. Alternatively they may call for opposition to other votes such as the approval of the Remuneration Report or the reappointment of Auditors.

At present it is not clear how beneficial shareholders in nominee accounts are to be informed of such matters, if at all. In reality at present they are not, so that if any contentious issues arise in a company's affairs, they often learn nothing about them - if the company is a FTSE100 stock, then there is likely to be national press coverage, but in smaller companies or AIM stocks, the chance of a shareholder seeing any publicity on the matter is quite low. So far the "enfranchisement" proposals simply mean that a company can communicate with its beneficial shareholders. This may simply make matters worse, as instead of beneficial holders getting no news, they will now get information only from one biased source - namely the company. Needless to say, I would argue that on contentious issues, that source is hardly likely to be unbiased. One is not going to get an unbiased discussion of the merits of removing the directors of a company from the directors themselves.

### **Examples of Such Recent Cases**

Note that "corporate events" such as takeovers, rights issues, placings, open offers, and major disposals, are presumably going to be communicated to beneficial owners (at least those who have "opted-in") as they require a vote. So these are not the events that are of concern. It is more the kind of event that stimulates the formation of shareholder "action groups". A few such events in the recent past are:

1. At Emess Plc where there was an allegation from a shareholder that an ordinary dividend had been paid which was illegal, to the detriment of preference shareholders.
2. At Smartlogik where it is alleged the directors disposed of the company's major assets at less than market valuation.
3. At Murray VCT, Murray VCT2 and Murray VCT3 Plc where a shareholder is attempting to have all three boards replaced in total by his own nominees due to alleged historic poor management.
4. At Singer & Friedlander AIM3 VCT where UKSA recently opposed several motions at the AGM, including reappointment of the auditors on the grounds of excessive costs.

### **Larger Companies Are Not the Problem Area**

Note that FTSE 100 companies rarely tend to be the subject of such actions for the following reasons:

- Corporate governance standards are much higher in such companies.
- The shareholders are so numerous, it would be a very expensive exercise to write to all of them.
- The national press would be likely to publicise any issues of public concern.

But in smaller companies, where problems of corporate governance failures and simple mismanagement often arise, it is very important to have these communication channels.

## **Problems of Getting Nominees to Pass on Communications**

How does one communicate to beneficial holders at present on such issues? Well you can write to the nominee account holder and ask him to forward a letter or email to the beneficial owner, but they rarely do, even if you offer to pay the cost. The reasons for this are probably two fold: a) They don't wish to be the "publisher" of what can be contentious material, or even material that is potentially libellous; b) they simply do not want to expend the effort to pass it on to the beneficial owners, or answer any queries that might result.

## **The Confidentiality Issue**

It has been suggested that people and institutions use nominee accounts because they are concerned with confidentiality. For example they do not wish to receive irrelevant advertising material, be targeted by such campaigns as SHAC, or run the risk of "identity theft". Although I don't think these are the major reasons why private individuals have taken up nominee accounts (it's more their promotion by stockbrokers), and as a personal Crest member with more than 100 holdings, I have never found the junk mail of any significance, clearly some shareholders are concerned about the public display of their name and address, even though in most cases this same information will be on the electoral register.

But there are two points to be made here:

- Only beneficial shareholders who "opt-in" will receive information.
- It should be possible to hide the recipients name and address from the sender.

## **A Suggested Solution**

Our suggested solution to the enfranchisement of beneficial shareholders for all communications (including those that come from sources other than the company), is that companies be given a legal obligation to circulate any communication to their shareholders either electronically or via post, at the expense of the producer so long as the communication is accurate (ie. does not contain false statements) and is not libellous or in breach of the criminal law.

They could then use the system envisaged by pooled nominees to obtain the names/addresses of beneficial holders and circulate the material.

In the case of "designated nominees", where the apparent intention is that these be added to the share register, the same obligation could apply.

In both cases, the names/addresses would not be passed to the producer of the communication.

## **Changes to "Name on Register" Holders**

Note that we would prefer that shareholder registers remain open to public access as at present, and so do not envisage any substantial changes on how communication to those shareholders works. But we have already suggested in our submission to the DTI that this system be reviewed. For example, provision for shareholders to opt-out of receiving advertising material, or other communications from third parties might be provided. There should also be some provision to enable companies to refuse access to the register if the company operates in areas where they may be the subject of abusive or violent

campaigns, unless they are convinced that the requester has a sound business case for such access and is likely to keep the list confidential (for example, a requirement to sign a confidentiality agreement might be imposable).

We also feel that the current law is archaic in that the legal obligation is only to provide a share register in paper form rather than an electronic copy, which means that companies can be obstructive if they so wish and impose excessive costs on the requester.

### **Conclusion**

In summary, we suggest that the Company Law Reform bill needs to incorporate legislation to impose on companies this requirement to permit third parties to communicate with "enfranchised" beneficial shareholders. Only by imposing such an obligation can shareholder democracy be maintained in the face of the rise of the use of nominee accounts.

Yours sincerely

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