

The Private Investor *Issue 169 · March 2014*

Board Report

In preparation for the AGM to report the performance of UKSA through 2013, we have concentrated on where we have improved over the last year and how to overcome obstacles that present themselves. We have a stable and capable Board and activity remains strong in regions where volunteer Chairs and Secretaries (and their many supporters) hold regular meetings and company visits; the hallmark of UKSA is being at the forefront of shareholder engagement with companies and members.

Support is needed for regions that need to find such volunteers to arrange meetings and company visits. Recruitment in terms of members and officers has been our biggest challenge and remains so into 2014, but with a more robust financial position and plans to improve this further, we at least have a steady foundation on which we can develop the membership.

UKSA Policy Committee continues to make great steps towards representation in its own right with individual companies and also as a coherent group of investors to bodies such as the FRC. This is a tremendous coup for UKSA and shows that our (your) views are being taken seriously by the policymakers and regulators. Taking this further afield into Europe, UKSA is closer than ever before to making its (your) views known on matters of importance in the UK.

We thank John Hunter and Liz Baxter for their recent work and direction in freshening up the website to bring a cleaner more reader-friendly site and again when skills and funds provide we can take this step further to engage in more than reading news and events.

The sound footing for UKSA is pretty much *in situ*; now to grow afresh and affirm its position as the prime group representing private investors in the UK.



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Chris Hulme

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We need a 'corporate governance policy' for companies.

By Malcolm Howard, Finance Director

We have an excellent policy group, led by Eric Chalker. They put in several hours attending different influential committees on our behalf dealing the corporate governance matters. During 2013 they primarily dealt with imprudence in IFRS accounting and safeguarding investors in nominee accounts.

But I am not talking about this type of corporate governance; I am suggesting that we need a policy that ensures company executives deal fairly with employees and, most importantly as far as we are concerned, shareholders.

I am a believer that executives should be properly rewarded, but only if they do well. This month we (UKSA) visited Impax Asset Management, a company investing in resource efficiency and environmental markets. Part of their portfolio is in Impax New Energy Investors I and II, which is a closed ended private equity investment. Such closed ended investments usually run for ten years. The management team spend the first three years investing in companies, the next five years developing the companies they have invested in and the last two divesting all companies so everything must be converted to cash at the end of the ten year period. The deal is that there is a hurdle rate of 8% per annum, with 'catch up' and carried interest of 20%. What this means is that any surplus left after the investors have received their 8% return per annum is split 80-20 to investors and management team. In my view, this is good as the management team only collect if they perform.

Some members tell me they don't like share option schemes because they don't like being diluted. The problem is that there are several other ways of diluting shareholders:

- Excessive price charged to investors (compared to the price paid by the executives) on Initial Public Offerings (IPO's);
- Executives paying themselves excessive salaries;
- Executives paying themselves excessive bonuses.

In terms of private investor dilution, shares in the Enterprise Investment Scheme (EIS), subsequently traded up to the AIM market, often achieve a massive dilution from the start. These shares are often peddled by specialist brokers who tell their investors what spectacular tax relief is available, of course

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not telling them about the level of dilution. They will send their potential investors a copy of the 'Prospectus' and advise them to read it thoroughly. Such Prospectuses are usually put together by City law firms and it is extremely unlikely, if ever, that you will find an error. The risks related to the investment will be clearly shown. All the information needed to make a rational decision will be in this document somewhere, but often it takes quite a skill to piece it all together. However, the broker has done nothing wrong and is beyond reproach; it is not his fault the investor has neither read, nor understood the Prospectus.

The tricks played often fall into two categories; the 'share split' or the 'success fee'. The share split is simple; the owners buy so many shares for a £1 each and their sponsor to demonstrate belief pays £1.50 per share. The shares are then split a thousand times (or more in some cases) with a nominal value of 0.1p. The shares might be valued as follows, "We have taken the prospective year end EBITDA and applied a P/E ratio of 12, to give a share valuation of 7p. This is based on an industry average of 15, which we have discounted by 20% to take account of risk." Of course, what they haven't told you that the industry average P/E is based on earnings, which are arrived at after interest, tax, depreciation and amortisation have been taken off. The general public are then asked to pay 7p per share.

Where the directors pay the same price per share as the general public, this is where the 'success fee' comes in. In one prospectus examined, if the directors were successful they would receive a compound return of 153% over 5 years, while ordinary investors after tax relief would receive a compound return of a staggering 6.8% over the same period. For the same amount of money how many shares will I get compared with the management team and sponsor?

For several years now executive greed has gone from strength to more strength. Only twenty-five years ago the average multiple for executive pay over average pay was thirty-five times; now it is 130 times. The argument for extreme executive pay is that you have to pay the market rate; you cannot recruit any talent otherwise. Strange then, that the John Lewis Partnership who set a maximum ratio for the chief executive compared to the lowest paid full time partner does so well.

When it comes to bonuses, it is quite clear that all banks have been infected by the greed virus. Even the Co-operative Society, once it had a bank, was contaminated, paying its Chief Executive £3.25m. per annum, despite incurring huge losses. Barclay's profits fell by one-third, dividends were flat, the share price went sideways, yet the bonus pool was increased so that 481 employees collected £1m. or more in 2013. Yet the star performer has to be the Royal

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Bank of Scotland (RBS) having declared losses for six consecutive years and an £8b loss in 2013, still paid bonuses of £588m. Then there is Sports Direct, reportedly wanting to offer Mike Ashley a share bonus of 8 million shares (worth approximately £65m) on the ground that he has helped the company to grow from a market value of £2b to £5b. But as Mr Ashley owns 62% of the company he has made £1.62b anyway. Why does he need more?

So I believe UKSA needs a stated policy, which once agreed, we can challenge the institutions to adopt. So I will kick off with some ideas for discussion.

Policy

- With regard to EIS/AIM Initial Public Offerings (IPO's) shares offered to the general public shall not be priced more than 4 times higher than that paid by the directors;
- Where the issue involves a success fee, the return for the directors shall not be greater than 6 times that paid to public investors (higher than the 4 times above, because these directors only get paid if successful);
- The basic salary of the highest paid director should not be more than one hundred times than the lowest paid full time employee; and bonuses should be based on performance, no bonus paid if the company does not make a realised profit. Bonuses should not be compared to dividends paid because where a dividend is paid despite a loss it can only be paid by increasing debt. This is simply spending money you have not got.

The level of bonus is obviously a matter for discussion. Personally, I am quite relaxed where huge bonuses are the result of huge realised profits, forcing the share price up. For this reason, I favour share options provided the strike price is the mid price of the share at the time of the deal, adjusted to take into account of the market as a whole. For example, the share price on 1 January 2013 of the company in question was £4 then this would be the opening strike price. At that time the FTSE 100 index stood at 5,897.8; a year later it had risen to 6,749.1. The strike price would automatically rise to £4.58. Of course, the strike price would fall if the market fell, the point being the executive would gain by his company outperforming the market. How many shares the executive should be offered, of course, is what we feel is a fair incentive.

What I find abhorrent is where retention fees and huge bonuses are paid despite a company declaring horrendous losses.

Investing Trust in Investment Trusts

by *Eric Chalker*

This is a personal article, not intended to influence anyone for or against the companies mentioned, but just to give vent to my feelings, my own personal views. As readers will gather, I'm not particularly happy with one aspect of my portfolio.

I've long been a keen investor in emerging markets. As time has passed, I've begun to buy listed GDRs in companies whose AGMs I'll never be able to attend, but this is because I have begun to think that the investment trusts through which I first ventured into far flung countries and whose AGMs I can and do attend haven't been doing a very good job. One accepts, of course, that emerging markets are risky, but one does expect those running the trusts to try hard to make money for their investors, regardless of what they encounter. Sometimes they do, but I've discovered that sometimes the effort they may have expended isn't at all apparent.



One of the slackers, albeit with a great reputation, is **Templeton Emerging Markets IT (TEM)**. We could begin by comparing it with **JPMorgan Emerging Markets IT (JMG)**. In the 12 months to end February 2013, the TEM share price rose by 4%, but JMG's shares rose by 10%. In the 24 months to end February 2014, TEM's shares fell by 20%, but JMG's only by 10%.



Being dissatisfied with TEM's performance, I went to the last AGM. I thought the manager's presentation lacklustre. Perhaps I wasn't alone in this, because unusually for an investment trust there was a significant hand vote against the buy-back resolution – significant because initially those against exceeded 25% of the vote, which

meant the special resolution was lost. The chairman, who seemed ignorant of the law, claimed that the resolution had been carried but, being challenged about this, finished up taking the vote three times until he had the requisite 75% majority.

The concept of the investment trust is that the directors are there to protect and advance the interests of the shareholders. On behalf of the shareholders the directors appoint the portfolio manager, but it has to be observed that the manager often works for the company which founded the trust. This is certainly true, for example, for a number of JPMorgan and BlackRock investment trusts. Experience tells me that, whereas directors are happy to bask in reflected glory if the trust does well (which may, of course, be simply a reflection of emerging markets doing well), there can be a reluctance to engage with shareholders who may be dissatisfied.

I encountered this at an AGM of **BlackRock Latin American IT (BRLA)** early in 2011 and in correspondence with the chairman. There was to my mind too much of the trust's money in Brazil, which my own reading showed was headed for a fall, whereas not enough effort had been applied to finding investments in other south American countries which were on the way up. I judged the board to be complacent and wasn't impressed by the manager either, but even though there was a significant vote against the chairman, I see that 3 years later he's still there, now in his 25th year as a director and 17th as chairman. The BRLA NAV has dropped by 33% in the last two years, whereas the NAV for Aberdeen Latin American Income Fund (also an IT) has dropped by only 18%.

This longevity on the board, especially as chairman, can be found elsewhere and it now makes me suspicious. If it exceeds the 9 years during which a non-executive director may be



BRLA - 6-month share price graph



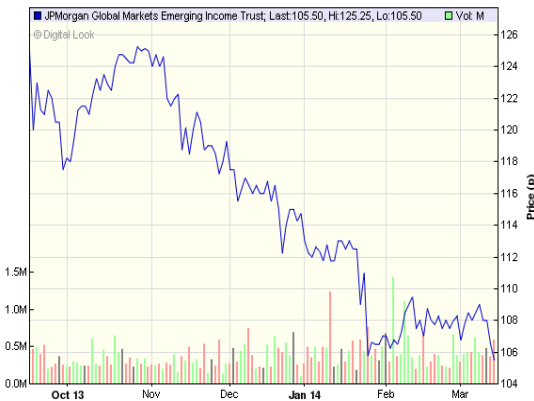
JRS - 6-month share price graph

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considered independent, surely that's a sign that too close a relationship may have developed between the board and the manager? Or perhaps, as appears to be the case with **JPMorgan Russian Securities (JRS)**, too close a relationship with a dominant shareholder which may have different interests from those ordinary shareholders who may simply want to see their wealth grow.

At the JRS AGM three years ago, shareholders were told by the manager, a Russian, why he steered clear of most of the Russian energy sector: it's heavily influenced by politicians and much of it is old, out-of-date technology, woefully inefficient. He favoured consumer-oriented companies serving the growing middle class – a feature which distinguishes Russia from the other BRICs. JRS had adopted the MSCI Russian 10/40 Equities Index as a benchmark but as it includes a preponderance of stocks in the energy sector the manager's aim was to beat the benchmark by limiting the exposure to that sector. He was successful.

However, in 2011, the manager was instructed to change tack. The principal shareholder, holding 29% (perhaps supported by another three holding a further 26%, all of them fund managers themselves), leaned on the board (so the shareholders have been told) to require the manager to follow the benchmark more closely. The board yielded to this pressure and the company's portfolio has moved progressively closer to the benchmark. Despite what the manager said 3 years ago, accompanied by a promise that turnover of stocks would be low, portfolio change has since been dramatic. Investment in consumer staples has been *reduced* by 25%, investment in consumer discretionary has been *reduced* by 36%, but investment in the energy sector, previously scorned by the fund manager, has *increased* by 212%.



JEMI - 6-month share price graph

It is apparently more important to the principal shareholder, another investment trust, to avoid any 'embarrassment' arising from one of its investments (ie JRS) missing the benchmark, than to provide its investors with the growth that was being achieved from the booming Russian consumer sector.

Shareholders' complaints about the changes have been met with the claim they were approved by a vote, but no record of any such

vote, nor even of the major change itself, can be found on the company's website, where its portfolio is still described as "High concentrated, aggressive". As *Private Eye* would say, *Some mistake, surely?* The only non-routine vote following the chairman's announcement I have referred to above was a standard continuation vote immediately after the AGM in 2011, but it cannot be said that the dramatic nature of the changes proposed was brought to investors' notice at the time. Had investors been told of what was intended, there would have been good reason to liquidate the company then, when the NAV was 40% above where the share price had fallen to at the end of last month, before Russia's conflict with Ukraine had begun.

In July 2010, **JPMorgan** launched its **Global Emerging Markets Income Trust** (JEMI), with a large amount of press publicity clearly aimed at private investors. Targeting "an initial gross dividend yield of 4%" JEMI actually achieved 4.7% at the issue price and 4.85% in year 2 (an increase of 3.2%), but there were protests at the recent AGM over what some saw as a derisory 1% increase for 2013. The board were clearly taken aback and the seemingly rather offhand presentation by the fund manager didn't help the mood. Insufficient attention appeared to have been paid to keep the dividend growing in order to justify the trust's existence.

What conclusions to draw from this miscellany of experiences? Principally, I think, that an investment trust in terms of its governance is no different from any other company. Both boards and managers need to be kept on their toes and good performance cannot be taken for granted. What needs to be stripped away, though, is the 'cover' provided by investors' choice to be in emerging markets: circumstances there are bound to affect portfolios, as now with any fund invested in Russia, but that doesn't mean that good relative performance cannot be achieved all the time.

What is UKSA's principal objective for improving corporate governance? It's the establishment of private shareholders' committees to bring representatives of private investors into a position to hold the same kind of dialogue with company directors as is accorded to institutional investors. My experience with investment trusts suggests that this balancing factor is just as important to keep them on the right tracks as it is in any other company. To his credit, one UKSA member, George Miller, took this up with Alliance Trust and pursued it as far as he could; his experience revealed the kind of objection to be expected from other trusts, but each one is answerable and if we could apply more resources to the task a precedent somewhere might be established.

Eric Chalker

UKSA members have their say on electronic reporting.

By Thomas Toomse-Smith

The Financial Reporting Lab (the Lab) and UK Shareholders association (UKSA) have been working together to understand the views of retail shareholders on electronic reporting by companies.

The Lab was set up by the Financial Reporting Council (FRC) to foster good reporting by companies that answers the needs of investors (both big and small).

The Lab has recently begun a project looking at how companies are using electronic communications to report financial information. This important project provides companies with an understanding of how investors access information and allows companies to focus reporting in the most effective and efficient way.

The survey had a great response, with over 150 UKSA members giving feedback.

So what did the Lab learn? The vast majority of UKSA members rated themselves as being comfortable with using online information sources for investment activity. UKSA respondents use multiple sources when looking for information on a company including press releases, online and offline newspaper articles, company websites, company presentations and online annual reports (79% of respondents used online annual reports). This is an interesting finding. It shows that retail investors' use sources of information in a similar way to institutional investors – for example we found that in both sectors social media and apps are not widely used.

However, it was clear from the responses that hard copy accounts are far and away the most important source of information for investors. When asked how online accounts could be improved many respondents noted the limitations of online versus paper. It is felt that online statements are less readable, impractical for adding notations and mark ups and are much less flexible than paper accounts in terms of portability. It seems then, that investors continue to value paper reporting over online, and that companies still have some hurdles to overcome when thinking about presenting information online.

The Lab also asked which tools respondents use most on investor sections of websites. It seems that company presentations, webcasts and calendars are

most valued; while little use is made of companies 'build your own accounts' function or charting tools. The result on the 'build your own function' is surprising as companies introduced them to allow users to print only the sections which are of interest to them, something which retail investors generally support. On this a number of respondents provided specific comment that they were unaware of this tool or noted that it would be useful. Again this is something that will be fed back to companies. Investors want simple tools and companies should provide better signposting on how these tools work, and the benefits they can provide.

In response to a call for general comments, a key theme from respondents was the feeling that accounts had become too long and complex. Hopefully the introduction of the strategic review – a development that should improve the understandability of a company's story - will help 'cut clutter' in reports. It was also felt that some companies are not taking full advantage of the benefits that electronic communications can offer. This is an important finding especially in the context of the fact that many retail investors hold shares via nominee accounts.

The Lab will feed the key messages that have come out of the survey to companies, with the results forming part of a Lab report on the current state of e-Enabled reporting which is expected to be published in Q3 of this year.

The Lab's upcoming projects are on Accounting Policy Disclosure and Disclosure of Dividend Policy and Capacity and the Lab is always pleased to hear views and thoughts from the investor community. You can keep up to date with the Lab's activities via the FRC's website.:

<https://frc.org.uk/Our-Work/Codes-Standards/Financial-Reporting-Lab.aspx>

In the last 18 months Mr Toomse-Smith has worked with more than 45 companies and investor groups addressing reporting in a number of areas. We thank him for his article and welcome him as a new member of UKSA.

Bill Johnston



Is this the real 'bear' market?

One thing that you can be certain of is that, in investment, there are absolutely no certainties. Just when you think that everything is settling down, that recovery is gaining traction, when even the yield on Greek 10-year sovereign bonds falls almost to 7%... some country somewhere in the world starts a new war.

As all investors know, markets hate uncertainty. Equities have fallen sharply over the past couple of weeks. At the moment, the crisis is mainly a war of words. If it stays that way, the market is likely to lose interest after a few days. But one false move risks turning into full-scale war, with many deaths and unpredictable consequences. The massing of Russian forces across Ukraine's eastern borders does not bode well. How would equity markets react to a further escalation?

At first glance, this is an impossible question to answer. But actually, a crisis very similar to this happened in fairly recent times. We saw how stock markets reacted to that. It's quite possible that they will react in a similarly even if the present war of words in Ukraine turns into a hail of bullets and bombs.

The events to which I refer occurred in 2008, and involved Georgia. There are a several striking similarity with today's crisis:

Both cases involve former Soviet Union country bordering the Black Sea.

In both cases, the crisis was precipitated by the countries in question turning towards the West, contrary to Russia's will. Georgia wanted to join NATO; Ukraine wants to align with the EU.

In both cases, Russia invaded countries in defiance of international law and various treaties. Russia has just annexed Crimea. In 2008, Russia took over the Georgian provinces of South Ossetia and Abkhazia.

In both cases, the disputed territories contained large parts of the population that were sympathetic to Russia. In the Crimea, 60% of the population are of Russian ethnicity. In South Ossetia and Abkhazia, there were active separatist movements.

In view of the condemnation of Russia's actions in Crimea, it's unlikely that

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that the rest of the world will ever recognise Crimea as an independent state, if that turns out to be the Russian intention. In 2008, Russia declared South Ossetia and Abkhazia to be independent states, but the only countries to recognize these were Nicaragua, Venezuela, Nauru, Vanuatu and Tuvalu (no, me either).

So how did the London market react during the 5-day invasion of Georgia? It didn't. but at that time was the height of the banking crisis, when big US financial institutions such as Lehman, Merrill Lynch and AIG tottered on the verge of collapse; and the US Treasury took control of the mortgage giants Freddie Mac and Fannie Mae. Yet there's still a lesson to be learnt from the way markets reacted – or rather didn't react – to the invasion of Georgia; when the markets have bigger things to worry about, events like this a just a sideshow. We may not be in the middle of a banking collapse now, but markets are much more interested in other things: the economic recovery; whether Europe can avoid another crisis; inflation; commodity prices; the dollar: economic trouble brewing in China.

Of course, the Ukraine is right on Europe's doorstep, and the Baltic countries have reacted anxiously, for when the Soviet Union was just one big happy family, many Russians came to prefer the streets of Tallin and Vilnius to Omsk (let alone Tomsk) and start a new life in the West. (What as it Tolstoy said about happy families?). The place where this article is written from is about ten miles from what is generally recognized as a border town where, in pre-war Czechoslovakia the Czech as the Sudeten Deutsch co-existed. Hitler wanted to come to the aid of Germans threatened with discrimination of course - and did. The rest is history - the worst history that ever was perhaps.

That having been said (providing you are not a Tatar) the very incorporation of the Crimea into the Ukraine (which only took place in 1954) looks to be no more than a piece of Soviet Union-type hubris, its movers never dreaming that their empire would one day disintegrate.

There's something else. I come across more than a few Ukrainians here, and Russians too for that matter. Albeit that we are all nationalists, maybe Russians a bit more than most, I can discern little hatred against historic enemies, even in the Czech Republic, a land with more reason than most to claim innocent victimhood. The good life is what's wanted now.

I think the present crisis will probably blow over but if it reminds us that investment is fundamentally a risky business, that will do little harm.

Bill Johnston

Who (else) speaks for the Private Investor?

Some of our members will have seen an article in the Daily Mail announcing a 'new voice for private investors'. This came from what was APCIMS and is now WMA (Wealth Management Association). It is an association of private client stockbrokers, but mainly those who conduct discretionary business on behalf of clients so by no means all of them (eg Hargreaves Lansdown is not a member).

John Hunter and Eric Chalker sit with WMA representatives on the FCA User Group and used this connection to ask for a copy of the full press announcement, but it appears there wasn't one. This is the reply received:

'Good to hear from you and thanks for the enquiry about the Wider Share Ownership Council. The quote in the Daily Mail followed an interview with (the) Chief Executive, Tim May, but we have nothing formalised as yet to send out. We hope to "officially launch" the initiative soon so I will make sure that you get further details as soon as they are available.'

This was our response to that:

The UK Shareholders' Association will welcome all efforts to promote the merits of share ownership, but (the WMA shouldn't) expect us to agree that nobody really champions the individual investors' cause when that's what the Association has been doing for the past twenty years plus! The key word is 'ownership' of course, which means the direct holding of company shares, not investment via funds.

It is good news for us that the WMA will swing its weight behind the campaign to resist anything coming from Brussels or HMG that threatens to penalise private investors and I hope you will keep us in the picture in that respect. First and foremost, as we have been stressing, it is necessary to ensure that HMG's implementation of the CSDR allows end investors to be the real owners of the shares into which their money has been placed.

Editor

Future Viability of Businesses

As the UK's principal organisation representing the interests of individual shareholders, we play an active role in seeking to influence government and the various regulatory bodies on matters which affect those interests. It is a feature of the strength of our membership that we are able to draw upon considerable experience, professional as well as investment, to 'punch above our weight'.

Over the past two years, this activity has included close co-operation with a 'coalition' of pension funds and other institutional long term investors whose interests are, broadly speaking, aligned with ours. This co-operation has given us a stronger voice on accounting and auditing matters, in an endeavour to ensure that the serious errors which led to the banking crisis and failure or near failure of other companies do not occur again.

A current recommendation on the table from the Sharman panel (in 2011, the Financial Reporting Council (FRC) announced the an inquiry led by Lord Sharman to identify lessons for companies and auditors addressing going concern and liquidity risks) has led the FRC to propose the removal of the necessity for directors to make a clear positive assertion that the entity for which they are responsible will continue to be viable for the foreseeable future. UKSA - and not only UKSA - believes that this is wrong-headed and more than that; that the present 'going concern' statement should be strengthened not watered down. To that end a letter has been sent to the FRC; and we are pleased to report that amongst the luminaries of the United Kingdom Investment scene who were joint signatories, was our own Roger Collinge.

This was the key passage:

"The Board should confirm in the annual report that it has carried out a robust assessment of the company's condition, including its solvency and liquidity, based on current circumstances and any related contingencies and risks. It should also confirm that based on that assessment, it considers that the company will be able to meet its liabilities as they fall due, continue in operation for the foreseeable future and that, by reference to the audited accounts and financial controls, the company is a going concern. The Board should report any supporting assumptions and material uncertainties to these confirmations, and how they are being managed"

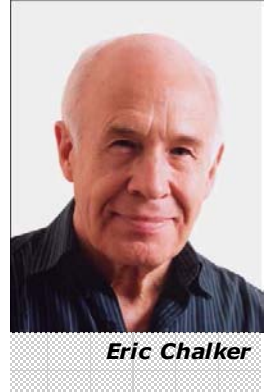
Amen to that. As copy of the letter can be viewed on UKSA's website.

Editor

Policy Activity Round Up

In the January issue, I explained how the “Direct Record Model” is intended to work. This is the principal proposal for replacing paper share certificates when the EU requires us to do so. I asked members to look for flaws and let me know if any are found. A small number of you have written to me, by email and letter – for which many thanks – but I’d really like to hear from many more. This is not an academic issue, “dematerialisation” is going to happen and UKSA should be a leader in the debate about what is to follow.

In the last month, we have assisted the Financial Reporting Lab in first devising and then activating a survey of our members’ views on methods of company reporting on-line. Roy Colbran led the UKSA side of this project and you’ll find the results reported elsewhere in this issue. We also had a meeting with the full Reporting Lab team, to explore how further assistance might be provided by UKSA for its work. We know that something on dividend policy disclosure is being planned and likely to be of interest to us.



Accounting issues have continued to receive our attention. Roger Collinge and I took part in a teleconference with representatives of the International Accounting Standards Board to assist with their “outreach” programme, which should give us more insight into its activities than previously. Roger also attended and contributed to a recent meeting organised by the Financial Reporting Council (FRC) to test reactions to emerging proposals concerning “going concern” statements in company accounts; UKSA had already joined in arguing for a widening of the past definition (see the website item posted 19 February).

John Hunter and I met senior FRC representatives to press for practical recognition of how private shareholders can contribute towards better corporate governance. A further meeting has been scheduled for May, but we do now have some prospect of being involved in a meaningful way as the FRC works towards its objectives in the next year or so. An immediate achievement was to secure FRC representation on the FCA User Group examining nominee account issues, which was previously lacking.

Having begun to think the FCA User Group was making little progress, John and I, as the UKSA representatives, were pleasingly surprised at the last meeting to observe a sharp movement forward. A good deal of the

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committee's work has been initiated by UKSA and it is evident that knowledge of the issues around the table is increasing. We have secured an agenda item for custodian issues at the next meeting.

All securities held through nominees are held by custodians, but the issues arising from this are largely unrecognised. All brokers providing nominee accounts must state in their terms and conditions how these securities are held, but have you read yours? To help me prepare a paper on the subject, I've been seeking the help of selected UKSA members who between them use a range of brokers, to ascertain how each of them describes its custodian arrangements. Interestingly, as I write this report, there is an article in the 'Your Money' supplement of The Daily Telegraph covering some of the ground.

Our European associates, *EuroFinUse*, have issued a manifesto for the European Parliament election in May. Although this is somewhat short on specific actions that MEPs might be lobbied to undertake, it will help to raise the profile of individual savers and investors and that is a good thing.

Our interests in EuroFinUse are well looked after by Harry Braund and Martin Morton, but the policy team gets involved from time to time on specific policy matters. Roger Collinge has visited Brussels some time ago to address a meeting on the importance of 'prudence' as an accounting principle. I expect to be attending, towards the end of this month, a meeting of the Shareholders and Corporate Governance working group. This appears to have been called at least partly because I have questioned why there appears to have been little or no discussion within EuroFinUse of how shareholder rights across Europe will be affected by mandatory dematerialisation of share certificates, which is worrying. Finally, in the background, John Hunter is getting ready to scrutinise the 2013 Persimmon annual report. In the autumn of 2012, Persimmon's directors secured institutional support for the introduction of a long term incentive plan (LTIP) that UKSA condemned as an unwarranted transfer of value from owners to managers, but this was only evident by detailed analysis which, for UKSA, was undertaken by John. Since then, the government has brought in new rules which ought to require disclosure of just how much value has been transferred in the past year, but John has found a significant flaw in the rules which the imminent Persimmon report is likely to highlight. Despite drawing this flaw to the attention of government, UKSA has yet to persuade it to think again, but John is not giving up, because it is not only Persimmon's shareholders who are affected: it's potentially a feature of all LTIPs, so we'll be writing about it again.

Eric Chalker, Policy Co-ordinator

Letter sent to Sir David Walker Chairman of Barclay's Bank

Dear Sir David,

The UK Shareholders' Association (UKSA) is the leading association of private shareholders in listed companies. It seeks to support the interests of such shareholders, many of whom have shares in your company. In pursuit of that objective, three of our colleagues had the pleasure of meeting you during your review of bank governance in 2009.

UKSA has noted the results statement put out by Barclays showing how it has performed for 2013. That statement shows, inter alia, that the profit before tax is down 32% from 2012 and that the return on shareholders' equity has halved from 9% to 4.5%, but you have increased the bonus pool for your investment bankers by £210 million and the compensation ratio for the investment bank has gone up from 39.6% to 43.2%.

That statement also shows that the total dividend for 2013 will be 6.5p per share. This compares with 34.0p per share paid for 2008, a reduction of 81%.

You and your board will be aware of the responsibility they have, under English law, to act in the interests of the shareholders. The Companies Act 2006 makes clear, in section 172, that the directors' prime responsibility is to "promote the success of the company for the benefit of its members as a whole." The Institute of Directors adds the comment that, "The statutory duties that replace the fiduciary or equitable duty are interpreted in accordance with the previous case law, which remains relevant."

UKSA, on behalf of all private shareholders, would like you to explain publicly, in advance of the AGM, how this legal obligation has been met, when the dividend has barely increased since its savage reduction in 2008 and yet bonuses are still being paid and even increased as though the bank had a successful 2013, which from a shareholders' perspective it clearly did not.

This is a matter of such widespread public concern, not least among many individual investors including those in pension funds who have no opportunity to raise such questions, so we propose to make this letter public on our website and will be happy to do the same with your reply.

Chris Hulme

Chairman, UK Shareholders' Association

R A Collinge FCA

Head of Corporate Governance Group

Response from Patrick Gonsalves:

Sir,

David Walker has asked me to contact you in response to your letter dated 24 February 2014. I tried to phone but you were not available but the purpose of the call was to ask if you would be willing to come to meet Sir David here at 1 Churchill Place. Sir David would very much like to have the opportunity of hearing your views first hand and being able to respond to them directly.

Watch this space!

Letter to the Editor

Dear Sir

Information rights – and wrongs

It was heartening to read Eric Chalker's report of good news in the November issue of *The Private Investor*, in particular that a committee formed by the FCA is examining the provisions of the Companies Act concerning information rights for shareholders whose investments are registered in the name of a nominee. As Mr Chalker wrote, sections 146 and 147 give nominees the right to require a company to provide for the beneficial owner of main-listed shares every right that a certificated shareholder has except legal ownership and the right to vote "(although not for shares on the AIM)"; and he made the point also that section 151 allows the Secretary of State to extend these rights to AIM shares and to extend the rights themselves.

What Mr Chalker made a parenthesis deserves instead to be in an emboldened font. What justification can there be for withholding information rights vis-à-vis an AIM-listed company? The government has decided as a matter of policy to encourage the development of and investment in smaller companies, and it has done this not least by allowing AIM shares to be included in an ISA since August 2013 and, from 28 April 2014, abolishing stamp duty on purchases of AIM shares. So for the Secretary of State not to be bringing AIM companies within the information rights regime for main-listed companies, something he could do at the stroke of a pen at the foot of a statutory instrument, is perverse.

Anthony Rentoul - UKSA Member

BP plc

An unrivalled chance for UKSA members - if you're quick enough - to hear a presentation on this great company by Carl-Henric Svanberg, its distinguished Chairman, on March 28th. Here are some recent answers to those that follow the company's fortunes.

So what about the Gulf of Mexico then?

The cumulative pre-tax charge for the Gulf of Mexico oil spill was \$42.7 billion at the end of 2013, having increased by \$0.2 billion in the fourth quarter to reflect an increase in the provision for legal costs, and ongoing Gulf Coast Restoration Organisation costs. The charge does not include any additional provision for business economic loss claims arising from the economic loss settlement with the Plaintiffs' Steering Committee (PSC) that are yet to be received, processed and paid.



BP. - 6-month share price graph

The cumulative amount estimated to be paid from the Trust Fund remained at \$19.3 billion, leaving around \$700 million unallocated headroom available in the Trust for further expenditures.

The District Court has yet to rule on the first two phases of the MDL 2179 trial which completed during 2013, and the Court could issue its decision at any time. The Court has not yet scheduled the penalty phase, in which it will hear evidence regarding the factors to be applied in assessing a penalty under the Clean Water Act.

In relation to the economic loss settlement with the PSC, after multiple hearings and appeals, the District Court has now agreed that revenues and expenses must be properly matched in assessing business economic loss claims. However, the District Court did not agree with BP's interpretation of the causation requirements of the settlement agreement. BP has appealed the District Court's ruling on causation to the Fifth Circuit Court of Appeals, requesting the panel hearing that appeal to issue a permanent injunction to prevent

awards to claimants whose losses are not traceable to the spill. In the meantime, a temporary injunction remains in place for all business economic loss claims.

On 10 January, a different panel of judges of the Fifth Circuit upheld the validity of the economic loss settlement as written, but left to the other panel of the Fifth Circuit the question of interpretation of the settlement agreement, including the meaning of the agreement's causation requirements. BP has filed a petition requesting that all the active judges of the Fifth Circuit review the decision upholding the validity of the settlement.

And the underlying business?

BP has reported a reserves replacement ratio for 2013 - on a combined basis of subsidiaries and equity accounted entities and excluding acquisitions and divestments - of 129%, compared with 77% in 2012. Including the net growth in BP's Russian portfolio as a result of the change of its holdings, the ratio was 199%.

2013 was BP's most successful year for exploration drilling for almost a decade. BP participated in 17 completed exploration wells, which made seven discoveries. Three discoveries were announced in the fourth quarter: the Gila discovery in the Paleogene trend in the Gulf of Mexico; the pre-salt Lontra discovery in Angola, operated by Cobalt International Energy; and the Petrobras-operated Pitu discovery in Brazil's Equatorial Margin. BP was awarded licence interests in 14 blocks in the UK's 27th licensing round, and was also awarded an interest in a block off north-east Greenland.

Three major upstream projects started up in 2013 and the Chirag Oil project in Azerbaijan began production on January 28. A further five projects are expected to begin production through the rest of 2014.

In December last final investment decisions were taken on two significant upstream development projects: the Khazzan tight gas project in Oman, and the Shah Deniz 2 project in Azerbaijan and associated pipelines.

The final major unit of the Whiting refinery modernisation project was brought on stream in the quarter. Following the divestment of the Texas City and Carson refineries last year, this represents a major transformation of BP's US fuels business.

Please contact Nick Steiner on 020 8874 0977.

Regional Information

These events are open to members from all regions, and their guests, unless otherwise indicated. For 'waiting list' events all places are taken but there is a waiting list for cancellations.

LONDON & SOUTH-EAST

All events must be booked in advance via the specific organiser. Future events are shown in this magazine and on the UKSA website. Members from other regions are very welcome. For more information please contact Harry Braund on 020 7731 5942 or email harrybraund@yahoo.co.uk

Within this region there is a separate Croydon and Purley Group which meets in Croydon, usually on the second Monday of each month, at the Spread Eagle pub, next to the Town Hall. Please contact Tony Birks on 01322 669 120 or by email ahbirks@btinternet.com, who will confirm actual dates. There is no charge and no booking necessary.

MIDLANDS

For general information, contact Peter Wilson 01453 834486 or 07712 591032 or petertwilson@dsl.pipex.com

At the present time no meetings are being arranged specifically for the region, but members are cordially invited to attend meetings in the North or South West regions where they will be made very welcome; or indeed London if that is more convenient.

SOUTH-WEST AND SOUTH WALES

All South-West events must be booked in advance, and are open to all members and their guests subject to availability.

Didmarton: The King's Arms, Didmarton: cost is £22.50, including coffees and lunch. Events are at 10 for 10.30am. To book, contact Peter Wilson 01453 834486 or 07712 591032 or petertwilson@dsl.pipex.com

SCOTLAND

For information on Scotland please contact Mr George Miller at g.miller1010@btinternet.com

NORTH-EAST

Advance notice is required for all company visits and lunches. Knaresborough: venue is the Public Library, The Market Place, Knaresborough. For more information (except where stated otherwise), please contact Brian Peart, 01388 488419.

NORTH-WEST & NORTH WALES

For details of events, please contact D. L. King, 01829 751 153

We badly need committed people to pick up the Regional reins and connect with local companies. UKSA is a powerful 'brand'; Diageo rolled up to be questioned in February; and you can meet the Chairman of BP later this month. But the titans apart, I have had the pleasure in the recent past of reading reports of visits by more modest companies; a pleasure heightened in more that one case by an agreeable rise in the share price in the months following. These are opportunities just waiting to be picked up and developed (or resuscitated). What hitherto rank-and-file members are going to pick them up? Contact the Chairman—he's waiting for you.

A member, Mr. R. Rankine, has asked for advice about valuation software. Well Mr. Rankine, I hope you read this, for, Mr. David Lowe suggests that you check out *InvestorEase*, offering what he finds a good pricing and transaction package.

Still on matters concerning our members, in the last issue I reprinted a letter which I thought had appeared in *'The Scotsman'*, having been submitted to that newspaper by *Mr. Roger MacCormack*. Now I am told that the letter in question did not in fact appear; and that our member had been in fact been christened Robin MacCormick.

I apologise to Mr. MacCormick and thank for the good humour he has displayed on the matter, drawing comfort from the thought that this is no doubt due in part to the fact that apart from the aforementioned sol-cisms, the news item was correct in every respect.

Bill Johnston

Management and Remuneration

'Many a time in the past, when an active operator on Wall Street, he had done things to the small investor which would have caused raised eyebrows on the fo'c'sle of a pirate sloop – and done them without a blush.' P.G. Wodehouse

The immortal 'Plum' was writing about what he called 'one of America's richest tainted millionaires'. Nowadays you can become rich – really rich – not by risking a spell in Sing-Sing or starting a business which puts bread on many a table as well as your own, but just by getting a top job. You don't even have to hold it. And when, say, a left-inclined charity (for example) excoriates the millions accumulated by individuals (much of which flows from successful entrepreneurship) your name will not be on the proscription list – if only because the charity's chief executive is riding on the same gravy train, even if not in the first-class seats – yet.

Earlier in this issue you will have seen our Finance Director, Malcolm Howard argue passionately about the absurd remuneration levels that have become commonplace, and which represent a direct transfer of cash from the owners of a business to private individuals who may not even be shareholders – all by an alleged terror of the said individuals quitting their post, the implication being that chaos and losses would follow their departure. Mr. Howard notes that it is strange that the John Lewis Partnership which sets a maximum ratio for the chief executive compared to the lowest paid full time partner, does so well. Of course he doesn't think it strange at all – like the rest of us, he sees top managers as members of an exclusive club – a club, which like the traditional professions (c.f. George Bernard Shaw) operates as a conspiracy against the public.

Sir Stelios Haji-Ioannou, who founded but does not now run *EasyJet*, is not a man to keep his opinions to himself - and whilst not actually denying that scarce skills are required properly to manage the business that he has created, has rudely hinted that the present board could be easily replaced by equally competent people for much less money. Ouch! And one must admit that one's own experience is not of the sort that would cause one violently to dissent.

But beware of falling into the trap of believing that the whole concept of 'management excellence' is a 100% con-job. Or if you do, be careful be not to share your views with a Manchester United supporter. Not this week anyway.

Bill Johnston