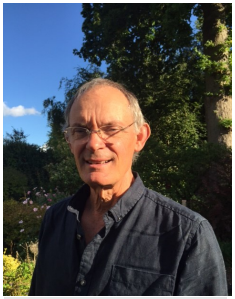
UK Shareholders' Association

The Private Investor *Issue 181 · March 2016*

Chairman's Comment



John Hunter

Thank you to those of you who have made donations. We have received some £600 so far, which has covered the deficit in 2015. The more donations we receive the more we can avoid charging for special services and keep UKSA available to a wider audience.

I recommend the reports on AIM companies being prepared by UKSA members (which you can find on the website under a new AIM_100 tab). These are ***not*** investment analyses but critiques of the companies' observance of good governance and reporting principles (naming and shaming). Nobody else is doing this, certainly not the bodies who promulgate the regulations that are supposed to be observed.

In which connection we await with interest the Persimmon Annual Report, probably published by the time you read this. UKSA pointed out at the time that the 2012 LTIP would, on termination in 2021, give 9% of the company (estimated £400million) to the participating executives under easily-achievable performance conditions. On the basis of their recent announcement of results the estimated termination date has moved forward to 2018 and the estimated value has considerably increased. We will see what the Remuneration Report (not all of which is subject to audit) has to say.

All of the above you will find on the website, which we are improving all the time under the guidance of Harry Wickens, the new webmaster, and updating more frequently. We are also dipping a toe into the twitter world as another way of getting our message across. Still learning, but one certainty is that the more followers we have and the more our tweets are re-tweeted the more likely we are to be noticed. So, members with Twitter accounts, you know what to do *@UKshareholders* .

Those of you on email will already know that there has been a small change to the time of the AGM, which is now 2.30pm with coffee at 1.45pm. I look forward to seeing you there and for wider discussion both before and after the formal meeting. Good luck!

John Hunter

UKSA - The independent voice of the private shareholder

UKSA Contacts

UK Shareholders' Association
Chislehurst Business Centre
1 Bromley Lane
Chislehurst, Kent,
BR7 6LH
Tel: 01689 856691
Reg. Office: Chislehurst Business Centre
Email: uksa@uksa.org.uk

Website: www.uksa.org.uk

National Chairman: John Hunter
chairman@uksa.org.uk

Company Secretary: Elizabeth Baxter
uksa@uksa.org.uk

Membership Secretary: Elizabeth Baxter
01689 856691 membership@uksa.org.uk

Editor: Bill Johnston 00420 415 653 169
william.johnston.k@gmail.com
Domousice 103, 439 68, Czech Republic

Policy Director: Eric Chalker 01732 835 569 policydirector@uksa.org.uk

Regional Contacts:
London & SE: Harry Braund
020 8680 5872
harrycb@gmail.com

Midlands: Peter Wilson 01453 834 486 or 07712 591 032
petertwilson@dsl.pipex.com

North East: Brian Peart 01388 488 419
brianpeart@btinternet.com

North West: Paul Waring 07754 725 493
paul@xk7.net

South West: Peter Wilson 01453 834 486 or 07712 591 032
petertwilson@dsl.pipex.com

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In this issue...

UKSA News

UKSA Brighton Branch

There are many UKSA members living around the South Coast so we would like to start an UKSA Brighton branch.

The purpose and activities will be based around the 4 strands of UKSA:

1 - POLICY: get ideas and feedback on any policy campaigning you'd like the main UKSA board to do
2 - CONTACT with COMPANIES: try and arrange local company visits or presentations
3 - EDUCATION: consider any aspects of education to make us better investors
4 - COMMUNITY: meet socially with other UKSA members.

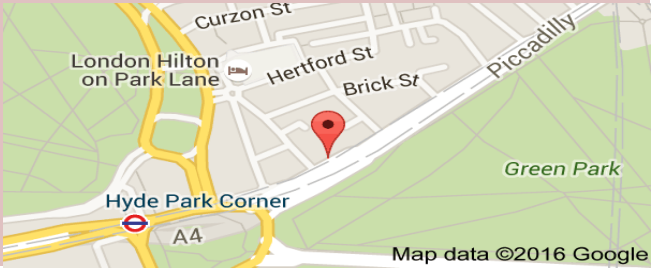
The first social was held at the Rendezvous Café Bar, 24 Duke Street, Brighton (its 7 mins walk from the station and the Churchill Car Park is 3 mins walk away). If you' re interested please contact Dee O'Hare:
http://www.rendezvous-brighton.co.uk/home

Annual General Meeting

The AGM papers will be mailed and e-mailed on March 23rd. Suggestions for matters for discussion should be received at the office by April 7th - and should be sent to Liz Baxter. It is to be held in the Millennium Suite, RAF Club, 128 Piccadilly, London W1J 7PY Monday 18 April 2016 at 2:30 pm, coffee at 1:45 pm.

Note the start time!

I look forward to seeing you there!



Death of Voting?

by John Hunter

The shareholder ownership model has been essential for the wealth of developed countries. This very simple concept – for a type of organisation where those who put up the money on condition that they enjoyed the fruits of their gift (investors) had influence over how that money was spent (control) - enabled the expansion of enterprise. The combination of investment and control embodied *ownership.* The creation of a transferable legal basis for ownership - shares - and places where that ownership could be exchanged at a price - stock exchanges – was the final brick in the structure.

In 2001 Lord Myners published his seminal report 'Institutional Investment in the UK'. The report had considerable impact –he drew attention to the drift away from active ownership, to the increase in intermediaries, to the increase in voting capacity belonging to institutions who were custodians but not owners, to the various pressures that caused those institutions to allocate capital inefficiently. He adopted the memorable phrase 'ownerless corporations' to describe the status of companies that didn't, in fact, appear to be owned by anybody. And he made some suggestions on the future direction of travel. So where are we today?

Well, no further forward actually. In all the reams of regulation, consultation and discussion that I have read about corporate governance and the mechanisms for trading shares there were endless concerns for the 'efficient' trading of shares but not one for the appropriate transfer of voting rights.

Take, as one example, the practice of short selling. Think how much regulatory attention has been paid to it. Yet short selling is enabled by stock lending. 'Stock-lending' is a comfortable phrase that conceals what is in fact a 'sale and repurchase' agreement – the stock is sold to the short-seller against a contract to repurchase the stock later at the same price plus a financing adjustment. The short-seller owns the stock for that period and he owns the voting rights. I'll say that again slowly. The short-seller, who is betting on a price fall and therefore has a financial interest in encouraging corporate mismanagement and stupidity, has a voting interest in the company.

Isn't that outrageous? It's only for a short time, you say. Yes, but it's at the time that matters. Observe the growth of short interest during contested takeovers. Most takeovers are conceptually misconceived and financially misjudged and cause the share price of the bidder to fall. You can join the rest of the dots for yourself.

Then there's custodial ownership. By that I mean shares controlled by institutions on behalf of others, sometimes under trust conditions, sometimes not: for example funds, pension funds, asset managers retained by those funds, pooled nominee accounts. These are not owners in the way I've defined it but they are managed by investment professionals. Perhaps they are better placed than amateur owners to assert an owner's influence?

Unfortunately not! Part 2 of UKSA's booklet 'Responsible Investing', published more than five years ago, is still as good a place as ever to see why this is so. And it's no secret – the Walker Review of corporate governance in banking spelled it out and the Kay Review spelled it out again. In a sentence, a broad-based financial institution makes more money out of companies that are active, volatile, high-risk, aggressively financed and badly run than companies that are stable, careful, conservatively financed and well run. Even more seriously, modern remuneration schemes make this true of managers as well (this for another article – it's because asymmetric awards such as options are more valuable in a volatile environment).

Is not this outrageous also?

Maybe, the argument goes, but effective corporate governance requires demanding skills. At least these people are professionals, by and large honest, and capable of making the difficult judgements required; maybe ordinary investors are not.

Well, leaving aside that this is the classic argument promoting autocracy over democracy, it just isn't true. Like many, I sold my Tesco shares three years ago after I walked into a Tesco store and later in the week into a Lidl. It wasn't rocket science – didn't even need the straightforward and damning ROCE analysis that Terry Smith published after the Tesco share price imploded. Another example: most UKSA members, when the mining companies went on their debt fuelled acquisition trip several years ago, would have been capable of asking difficult questions about the balance of risk and reward at that point in the commodity cycle and voting accordingly.

The fight for the rights of private investors can sometimes appear to be a technical skirmish of minor interest except to the participants. In reality the absence of these rights is doing economic damage as well as impeding a valuable ethical and analytical input to corporations. That is what we in UKSA, by example, must continue to promote.

There's nothing new in this. It's all there in Part 1 of 'Responsible Investing'. ***'Responsible investing' is on the website. Click on the banner in the right margin.***

In checking out the Myners report I was fascinated that he chose the following extract from Keynes to head his report. It's worth recording.

Professional investment may be likened to those newspaper competitions in which the competitors have to pick out the six prettiest faces from a hundred photographs, the prize being awarded to the competitor whose choice most nearly corresponds to the average preferences of the competitors as a whole; so that each competitor has to pick, not those faces which he himself finds prettiest, but those which he thinks likeliest to catch the fancy of the other competitors, all of whom are looking at the problem from the same point of view. It is not a case of choosing those which, to the best of one's judgement, are really the prettiest, nor even those which average opinion genuinely thinks the prettiest. We have reached the third degree where we devote our intelligences to anticipating what average opinion expects the average opinion to be. And there are some, I believe, who practise the fourth, fifth and higher degrees… It is the long term investor, he who most promotes the public interest, who will in practice come in for most criticism, wherever investment funds are managed by committees or boards or banks. For it is in the essence of his behaviour that he should be eccentric, unconventional and rash in the eyes of average opinion. If he is successful, that will only confirm the general belief in his rashness; and if in the short run he is unsuccessful, which is very likely, he will not receive much mercy. Worldly wisdom teaches that it is better for reputation to fail conventionally than to succeed unconventionally.

J.M. Keynes, The General Theory of Employment, Interest and Money, 1936.

Pooled nominee accounts: a chink of light

The position of private shareholders investing via pooled nominee accounts is technically hard to explain. It has not helped that those with a commercial position to protect have been allowed to make misleading statements about such accounts without sanction from the regulator. This makes it at least defensible that UKSA in the past has found ignorance of the matter during discussions with a Secretary of State, the chair of an important regulatory authority, many representatives of online brokers and a peer with a strong City background.

However there is now no excuse for ignorance. Eric Chalker and Roy Colbran comment below on the recent BIS research paper which explains in some detail the mechanisms behind various forms of share ownership and the (lack of) rights attached. The editor of the Investors Chronicle commented that 'the department seems to be coming round to the view that the structure of UK share ownership is, quite simply, not fit for purpose'. Let's hope so.

John Hunter
Chairman

The battle over pooled nominee accounts

by Eric Chalker

This January, the Department for Business, Innovation & Skills (BIS) published a research paper on the 'Intermediated Shareholding Model'. It can be found on our website, together with UKSA's formal observations which I encourage members to read (and Roy Colbran gives his personal comments below). The government wanted information to assist it prepare for dematerialisation (the abolition of share certificates) and for potentially adding to the limited rights available under Companies Act (Part 9) for investors using pooled nominee accounts. The research paper provides a good exposure of the forces ranged against our interests.

In the course of many hours' discussion on these subjects with BIS officials over the past two years, I have persevered with the case for preserving shareholder rights when shareholdings become electronic records, for the eventual enfranchisement of pooled nominee account users and for the extension of the latter's rights in the mean time. It seemed at one point that some reform of Part 9 could be expected before the general election of last May, but time ran out. New ministers are now in place, the work that was interrupted has recently resumed and I am once again in discussions with the Department. I find the situation encouraging, but it would be a mistake to be complacent.

The research paper tells us that, *"The Government wants to encourage better and greater shareholder engagement with companies in order to facilitate good corporate governance."* The purpose of the research was to examine all aspects of the effect of intermediated holdings on this government aspiration.
I welcome the fact that the consequences of intermediation have been laid bare, especially on pages 110 to 117 of the paper. The conclusions to be found on pages 133 to138 make it clear that the Government has a series of problems to address, including what might be described as a veritable shambles when it comes to institutional voting of shares.

Our principal concern, of course, is with the effect of intermediation on individual investors. In that regard, it has been necessary to challenge some of the reported findings, many based on the obviously self-serving comments of stockbrokers. When owners' ability – individual or institutional – to exercise the rights given to shareholders by Parliament is diluted by intermediation, as is clear from this research, the effectiveness of engagement will also be diluted and even nullified. To strengthen engagement, the Government must first ensure that those who put their money into company shares are fully able to enjoy the rights the Companies Act has given to shareholders.

Eric Chalker, Policy Director

The Realities of Shareholding through Intermediaries

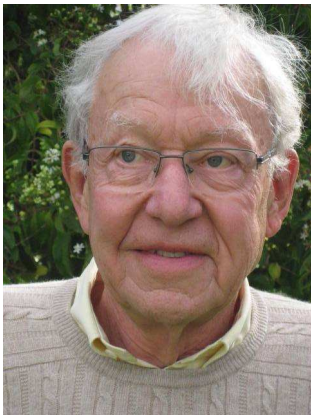
by Roy Colbran

The BIS research paper to which Eric refers on the preceding page runs to 160 pages. For those unwilling to tackle all of it I have picked out a few points that I found of particular interest. Thus we are told that its objectives include finding out why individuals hold shares in a particular way and whether they are aware of alternatives. The researchers wanted to know how investor voting worked in practice and whether investors understood the extent to which they could exercise the rights associated with the shares. They also looked at levels of fees and perceptions of value added and what was received for the fees.

A variety of methods was used including surveying 400 members of the two shareholder associations UKSA and ShareSoc. Their results were set alongside those derived from a general population sample. Of 1001 people of the second group initially surveyed, 221 admitted to holding individual company shares either directly or through an ISA or SIPP and were then questioned in detail.

While one may have some doubts about the conclusions from the wider-public sample, the comparisons between them and Shareholder Association members are still interesting as are brokers' views on the services provided and nominee rights in general. For example 76% of Association members were aged 55 or more against 48% of the public group while 56% of the former had household incomes in excess of £48,000 against 24% of the wider public group. 45% of Association members still had some paper certificates and for 10% that was their only method. And 74% of Association members check prices at least once a fortnight against a mere 18% of the wider public. As you would expect Association members were well aware of their rights, and the lack of them, for voting etc compared with the public group many of whom seemed to be generally confused by the whole issue. Of those who believed they had rights one third of the public group said they voted whenever possible and nearly as many again said they would vote on things that seemed important.

The quality of proof-reading and small numbers of follow-up interviews provide evidence of the pressure of time and limited resources under which the research was carried out. There are a couple of figures that are worrying. The numbers in the population sample are grossed up to suggest that about 12 million individuals in the UK hold shares. This answer makes me think they forgot that not all of our 64 million population are adults. Also I find this number difficult to reconcile with the ONS reporting that just 12% of households (not individuals) hold UK shares. And yet they say that the three big registrars support the figure of 12 million. Whatever the truth there's lots



Roy Colbran

of scope for us all to get out and recruit more members. Another table in the report states that 14% of the wider public group have shares in a Personal Crest account. The same grossing up method would produce about 1½ million people with
Personal Crest accounts against a true figure which they quote of just 20,000 in the whole of the UK.

The brokers surveyed were remarkably sanguine about pooled nominee accounts. They consider that not only are they cost-effective and efficient but they also provide confidentiality and protect investors from unwanted information, junk mail and interference – although the latter issues were not raised by investors themselves. The brokers believed that the question of security was a moot point because of the Financial Services Compensation Scheme. One is quoted as saying: "*unless you've got an awful lot of money you are quite well protected anyway*" evidently unaware of the £50,000 limit per manager. Some shareholders, being better informed, had split their holdings among several brokers for security reasons.

The paper tells us it was not within its remit to discuss the benefits and disadvantages of nominee accounts saying these have been discussed at length elsewhere. Unfortunately the link then given is to a London Stock Exchange site which simply tells us how wonderful nominee accounts are. It even says *"Nominee accounts are ring-fenced from brokers' other activities so they are financially secure."* But then we know that the LSE has a lot to learn (e.g. from the Aussies) about constructing a website which is friendly to small shareholders.

The report contains two long sections on Institutional Investors covering both the Investment Chain and Voting with much worth reading. My overriding impression was that the institutions (especially the smaller ones) have almost as much reason as private shareholders to wish for a new and better system. To mention just one thing, the current chain of ownership means that there is never any certainty that votes have been cast as intended.

This paper deserves full reading for anyone interested in a transparent and secure system of shareholder ownership. It adds much useful material to the case for a major change in the system.

Roy Colbran

Ever Closer Union?

Our good friends in what is now "*Better Finance*" in Brussels recently alerted us to a Green Paper on creating a Single Market in Retail Financial Services across the EU. The paper's scope is very ambitious covering all forms of insurance, mortgages, savings accounts, other retail investments and money transfers. Replying to the consultation would have entailed answering 33 questions, all based on the premise that a single market must be a good thing and each asking about specific changes needed to achieve it. Nowhere did I find any serious reservations about the objective – the strongest was the sentence: "*Not all consumers want to buy their financial services products cross-border*".

My immediate reaction was to have doubts about the project in the light of all the confusion that already exists about financial matters in the public at large. . Consequently we duly informed Better Finance of our doubts and hope that this will influence their response to the paper. As the prestigious independent organisation representing financial services users in the whole of the EU their answers are likely to carry far more weight than anything we could say directly.

There has also been a further consultation recently from the European Securities and Markets Authority ("ESMA") about KIDs for PRIIPs. (For the uninitiated these are Key Information Documents for Packaged Retail and Insurance-based Investment Products.) This is the latest in a saga of consultations and regulations on this topic the latter having been signed off in 2014. The aim is to produce an EU-wide standard for a document of no more than three pages to be given to all potential purchasers of PRIIPs.
The Press Release for the latest consultation claims that it is a major step forward for the EU's retail investors. It also is said to benefit from an extensive consumer testing study. That study surveyed nearly 7,000 people across 10 countries and resulted in a 497 page report. Despite this our colleagues in Better Finance found it necessary to protest in their response that the draft took account of the views of the institutions and not those of the customers. I see that our own Financial Services Consumer Panel also criticised all three of the main aspects of the draft. These are just two of the 91 responses available to read on ESMA's website which they are presumably now working through.

Just seeing these two consultations reinforces my previous feelings about the vast bureaucracy in Brussels. I often wonder if the politicians are really aware of the impact it has. I see no sign in all the arguments about Brexit as to any progress in this respect.

Roy Colbran

How well or badly are AIM company directors reporting to their investors?

by Mark Gahagan

Mark Gahagan

To answer this question is the purpose of an innovative project begun by UKSA last year and now proceeding well. So far, UKSA member Hubert Beaumont has done most of the research, but he is being strongly assisted by UKSA member Sandy Forbes; they both deserve our thanks. The objective is to analyse, one by one, the annual reports produced by the top 100 companies in the Alternative Investment Market (AIM) as listed by Investors Chronicle each April.

As reported in January, examination of the latest reports from Asos and Ithaca Energy was completed and our assessments published, with another two, GW Pharmaceuticals and Tissue Regenix Group, published at the end of February. We are currently working on Abcam and Hargreaves Services. Following on are Purecircle and PaySafe (both now main-listed), Sprue Aegis and Utilitywise. Keep watching for these.

There is now an AIM_100 tab on the UKSA website, so do have a look. As the introduction to it states, we are doing this to enable us to comment on how well or badly directors are reporting to their shareholders and potential investors. We are emphatically not commenting on the suitability of any company as an investment and nothing we publish should be construed as a comment on any company's viability.

We seem to have a regular struggle obtaining printed copies of the reports we wish to examine, which surely should not be the case and we say so. We are developing a standard approach to our assessments, but this will be kept subject to review. Each initial assessment is subject to iterative review and receives UKSA director approval before being placed on the website.

We are giving thought to making more use of the assessments, by drawing attention to them on bulletin boards, to the media and to the companies themselves. We'll also be bringing them to the notice of the Financial Reporting Council, which is not moving fast enough to tackle some of the issues we are uncovering.

Mark Gahagan,
Project Leader

The EU Audit Directive and Audit Regulation – Implications for Private Shareholders

Mohammed Amin

Mohammed Amin

Mohammed Amin is a chartered accountant and chartered tax advisor, and before retirement was for over 19 years a tax partner in PricewaterhouseCoopers.

It is easy to get lost in the minutiae of EU legislation or to allow it to become a substitute for sleeping pills! Accordingly, before addressing how private investors should think about this issue, it is, in my view, essential to step back and look at the bigger picture.

One's view of the world is inevitably coloured by one's experiences. Apart from one year of teaching, my entire working career was spent in professional accountancy, primarily at the top end (6 years at Arthur Andersen and 22 years at Price Waterhouse/PricewaterhouseCoopers.)

External shareholders of listed companies face a simple problem. The company's management which the shareholders appoint has many incentives to present its financial results in the manner which is most favourable to management's interests. From time to time this extends to outright falsification. Hence the need for external auditors independent of management to provide an opinion on the accounts prepared by management.

As with all regulators, this in turn creates the risk of "regulatory capture." Management have every incentive to be "nice" to the auditors in order to influence the way they opine upon the accounts. This risk is amplified because it is very easy for the auditor to end up regarding management, particularly the Chief Financial Officer (CFO) as the auditor's client. In practice it is the CFO who authorises payment of the auditor's invoices, and who hires the auditor to provide non-audit services. Furthermore, upsetting the CFO is likely to lead to the termination of the audit engagement.

All audit regulation and rule setting is an attempt to address the above problems. The situation today is undoubtedly less bad than in, say, the 1930s but is far from perfect.

Against this background, what does the EU legislation actually do?

The EU has been producing community-wide legislation on accounting and auditing matters for many years. Accordingly, Directive 2014/56/EU of The European Parliament and of The Council of 16 April 2014 proceeds by amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts. *"By 17 June 2016 Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof. Member States shall apply those measures from 17 June 2016."*

As Member States have certain flexibility in how they implement the Directive, it is more useful to look at the planned UK implementation than the text of the Directive itself.

In October 2015 the relevant department, the Department for Business Innovation and Skills (BIS) issued a document 2015 "Auditor Regulation: Consultation on the technical legislative implementation of the EU Audit Directive and Regulation."

Responding to such technical consultations is hard work and it is no surprise that all 25 responses which BIS has published came from either large audit firms, professional bodies, large investors etc. The key things (in my view) that shareholders in listed companies can expect to see are:

The maximum duration of an engagement, for which an auditor should be appointed and reappointed annually before a tender process is required will be ten successive accounting years. This will mean a significant increase in tender activity compared with past practice. I recommend reading the Cranfield University April 2015 PhD thesis "The Factors Affecting the Auditor Selection Decisions of FTSE 350 Companies in Competitive Tenders" by Philip Drew, a former PwC colleague which contains a goldmine of informative data. For example it shows how rare audit tenders have been.

By 20 years the company must change its auditor. This is the first introduction of mandatory rotation in the UK. Some countries such as Italy have had mandatory rotation for many years. Opinions are divided on the merits. If the mandatory rotation period is too short, the audit firm never has time to gain sufficient detailed knowledge of the client, which creates the risk of bad audits. However, with 20 years that is not a real risk!

Audit firms are prevented from offering services that are considered to give rise to too great a risk of compromising the auditor's independence. These services are described in a "blacklist" in the Regulation. The fee

income from remaining permitted non-audit services is capped at 70% of the average audit fee income from that client over the 3 preceding financial years. In practice this is likely to make little difference. For the last 15 years there has been great pressure on listed companies to not use their auditors for non-audit services and these have declined markedly as a proportion of the audit fee.

There are many technical changes which will be of interest only to auditors and to the companies which engage them which in practice matter little to private investors.

Apart from the increase in audit rotation which we are likely to see, these changes, in my view, do little to address the fundamental problem that company management have far too much influence on the appointment and termination of auditors. While the formal decision is now taken by the independent non-executive directors on the audit committee, my perception is that they still pay far too much attention to the views of management. My own attitude when I served on audit committees was that the better the relationship between the CFO and the auditors the worse I felt and vice versa!

Mohammed Amin

Small caps - the views of one investor

by Sandy Forbes

It has been suggested to me that I might join the list of UKSA members giving some insight into my investment activities.

I am 56 years old and have been investing in shares and funds for the past 22 years. I stopped working as a manager in the international oil industry 8 years ago and since then I have been a private investor supporting myself and my family. I am not a millionaire so these investments are very important to me especially as my pensions commencement dates seem to be drifting further away. I concentrate mainly on individual stocks the majority of which are listed in London.
I also hold some investment trusts and other funds and some VCT and EIS shares. I believe that the majority of funds have management charges that are way too high. I mainly buy and hold shares in individual companies for years although I hold around 10% or so hoping to make short term profit (within a year of buying them).

I don't think that there is a consistent definition of a small cap so I base mine as being in the FTSE Small Cap Index or being of a market value of

£30-500 million whether listed or not. I try to hold around 30% of my portfolio in small caps. During the past twenty years I have been more successful with my investments in this sector.

I have bought and sold (some several times) including *Stakis Hotels, Speedy Hire, Stobart Group, De La Rue, Premier Oil, Just Car Clinics, Loch Fyne Oysters, Investec Smaller Companies IT, Robert Wiseman* and quite a few others. I currently hold *Mears Group* (for growth in care services), *Speedy Hire* (for growth in construction industry); *ETFS Metal Securities Physical Gold* and *Highland Gold Mining* (as a hedge against inflation and as a safe haven); *Standard Life UK Smaller Cos Trust* (to spread risk with a professional and reasonable fees); *Parkmead Group*; and *Pressure Technologies* . I also hold several VCT's and EIS companies in my portfolio with British *Smaller Companies VCT* and *Childcare EIS* being my favoured ones.

I a very keen on The Parkmead Group which produces oil and gas from a portfolio of fields across the United Kingdom and Netherlands, and holds interests in over 50 exploration and production blocks across Europe. One segment invests in oil and gas exploration and production assets and another is a provider of. Energy-economics services I also like Pressure Technologies, a designer and manufacturer of high-pressure engineering systems, serving the energy, defence and industrial gases markets across the world. It s activities encompass Cylinders, Engineered Products and Alternative Energy. I rate the Choef Executive of the first as an outstanding entrepreneur and I am attracted by the technology of the latter. Underlying my belief in both companies is my conviction that the current chaos in the hydrocarbons market represents an opportunity rather than a threat

I am generally very happy with the outcome of the smaller companies I have invested in. My greatest gain was in *Foresight VCT* when I sold it during the hi-tech bubble for ten times the price I paid for it. I have also lost my entire investment in *Eurodisney*. In general I have found the risk to reward ratio to be acceptable. The volatility in the share prices gives room for profit but I do think that they are exaggerated by the perception that the risks to smaller companies are much higher than that of FTSE 100 or 350 companies. Just look at mining shares, banks etc and decide if risks are indeed higher. Small caps can be researched effectively and offer greater opportunities than their larger cousins.

Sandy Forbes

Gibraltar

by Helen Gibbons

Helen Gibbons

With a population of just 30,000 people, Gibraltar is by all measures a small jurisdiction. It nevertheless has a vibrant financial sector, not least because of its favourable tax regime for the insurance and e-gaming industries. In fact, Gibraltar-registered insurers now provide cover for one in six UK motorists.

Gibraltar's legal system is distinct from but similar to that of the UK. The common-law basis is an obvious attraction for financial service providers from an Anglo-Saxon background.

Gibraltar is keen to shed its 'offshore' tax-haven image. It is now emphatically an onshore jurisdiction, white-listed by the OECD and compliant with EU regulations. Indeed, it has every reason to demonstrate full compliance; Spain would not be slow to highlight any violations. Formalities surrounding anti-money laundering, taxation, information sharing and beneficial ownership are stringent – in my experience sometimes more so than in the UK.

Despite its strong record as a financial centre, Gibraltar was the only EU jurisdiction without an exchange, and hence the only one unable to provide capital-market services.

That deficiency was remedied in November 2014 with the opening of the GSX, Gibraltar's stock exchange. Gibraltar already had extensive fund expertise, so it was logical to start by listing funds. A further catalyst was the EU's Alternative Investment Fund Managers' Directive (AIFMD), which will be fully in force by the end of 2018. This requires funds to have an EU presence in order to serve EU investors. Moreover, funds need to list because many institutions can now only invest in listed funds. A listing also meets the growing demand for transparency.

Competing fund jurisdictions such as the UK, Ireland and Luxembourg are well-established homes for larger funds. Gibraltar is therefore targeting the smaller-funds segment. 'Boutique' funds will be attracted by the market's small size, flexibility, fast time to market and close relationships with the regulator, the Financial Services Commission.

The GSX currently has ten member firms. It lists sterling- and euro-denominated funds from three fund service providers, as well as two debt securities. At present all listed funds are open-ended, although the plans include closed-ended funds, debt, derivatives and asset-backed securities. There are no plans as yet for direct company listings. Gibraltar-based companies such as Bwin (since acquired by GVC Holdings) have previously listed in London.

EU membership is a key advantage to Gibraltar, since it allows 'passporting', whereby firms authorised to provide financial services in one jurisdiction can provide them in another without the need for authorisation in that second jurisdiction. A firm is merely required to notify its home member-state supervisory authority that it wishes to provide these services in a named jurisdiction.

'Brexit' would cast doubt on this passporting facility, unless an alternative arrangement could rapidly be put in place. Gibraltar's financial services industry, like that of the UK, will have to contend with a few months of uncertainty.

Helen Gibbons

Great stuff, Helen. My attention was caught in particular by the mention of *GVC Holdings* which has been not only a great performer in its recent history but market collywobbles about the ability of the management to deliver, and keep delivering have allowed gyrations in the share price which allow the company' s supporters to add to their holdings in attractive terms. Moreover, the strategic direction of the company has been handled in masterly form - no brutal over-priced share raids to give a greater canvas, but coming at the right time into imaginative break-up situations. The abovementioned capture of the business of the already successful *bwin* is the most recent such.

Yes, I am involved in the share register of GVC. Yes, I am declaring it. No, we do not make share recommendations and this is not a share recommendation. And if anyone thinks that I am being disingenuous in so saying, my word, you should see some of my other investments.

Bill Johnston

Investor rights in ISAs: what you may not know

by Eric Chalker

Some time ago, Roy Colbran discovered HMRC 'guidance notes for ISA managers' which, if acted upon, would give ISA investors in company shares more control over their investments than seems to have generally been the case. More recently, I became aware that lying behind the 'guidance' are Parliamentary Regulations which actually *oblige* ISA managers to do things that some are still reluctant to do.

It is actually even more interesting than that. There is a body of ISA Regulations going back to 1998. They have been amended 38 times, but I have been assured that the basic rights given to investors have never changed. They have always been as they are now. So for ISA users, Part 9 information rights under the Companies Act have always been irrelevant.

The body responsible for sponsoring The Individual Savings Account Regulations 1998 (SI 1998 No. 1870) and all its amendments, originally the Inland Revenue, is now Her Majesty's Revenue & Customs (HMRC). I have been told that there is no-one now in HMRC who has knowledge of the origin of the Regulations. Indeed, enquiries about them are diverted to the Tax Incentivised Savings Association (TISA), a non-profit body which to all intents and purposes is now the guardian of the Regulations, although HMRC is still the government agency which owns them.

So far as enquiries have been able to discover, the true origin of the ISA Regulations lies in the preceding regulations governing Personal Equity Plans (PEPs). This makes sense and also explains why the ISA Regulations are as helpful as they are to investors, even if their implementation by ISA providers has been, shall we say, somewhat lax.

The introduction of tax-incentivised PEPs was intended to encourage more savers to put their money into equities. This meant that, for the first time, investors would choose which company shares to buy, but would not be the legal owners because in order to prevent abuse of the tax privileges the shares had to be held by a nominee.

One can imagine that, behind the scenes, a debate took place about the consequences of this for the investor, with the outcome being a decision to require the nominees to give PEP investors, should they so wish, the same rights that investors in company shares had always had. After all, PEPs were not simply a means of tax-free saving but, as Wikipedia tells us, were intend-

ed by "*Margaret Thatcher's Conservative government to encourage equity ownership among the wider population."* Equity ownership requires shareholder rights – or their equivalent – if it is to be meaningful. So this is what was provided and these provisions were carried through to the 1998 Regulations when ISAs
replaced PEPs.

What do they say? The answer can be found in Regulation 4(6)(c) and (d), which are there for us to use.

"In relation to a stocks and shares component, and (other) qualifying investments....., the account manager shall, if the account investor so elects, arrange for the account investor to receive a copy of the annual report and accounts to investors by every company, unit trust, open-ended investment company or other entity in which he has account investments."

"In relation to a stocks and shares component and (other) qualifying Investments....., the account manager shall be under an obligation (.... if the account investor so elects) to arrange for the account investor to be able –

(i)to attend any meetings of investors in companies, unit trusts, open -ended investment companies and other entities in which he has investments,

(ii) to vote, and

(iii) to receive, in addition to the (annual report and accounts), any other information issued to investors in (any of the investments mentioned above).

It is clear that the government intended all ISA investors in equities to be enabled to act as shareholders if they so wish. It's the law. All that is required is a single request to the ISA provider and the ISA provider must deliver. However, the Regulations unfortunately say nothing about charges and that is something I am very conscious of in my discussions with the Department of Business Innovation & Skills (BIS) about all aspects of nominee accounts generally. As we all know, when an ISA provider imposes prohibitive charges for doing what the Regulations require it to do, the rights that the government intended us to have become in effect null and void.

There is one other thing. Regulation 4(6)(f) stipulates that, on the instructions of the account investor, all or any part of an ISA account" *shall be transferred to another account manager...."* Now, this says nothing about *withdrawing* investments from an ISA, for which ISA managers like to make charges. The law requires an ISA manager to *transfer* the account or part account. It seems to me that charging to do this, on the basis that it is equivalent to withdrawing investments, is a breach of the Regulations.

Eric Chalker, Policy Director

Letters

The following letter has been sent to the Chairman of FCA by our own Chairman, John Hunter. The content is of course self-explanatory.

Dear Mr Griffith-Jones

Pooled Nominee accounts

I attended the WMA Summit today and heard your talk, which I found encouraging both in tone and in detail. I was particularly struck by your comment of not wanting to rely in the future on regulation in the form of 'waiting for things to go wrong'. This has encouraged me to raise with you an issue that UKSA has broached at a number of levels within the FCA but where we feel the reaction has been akin to 'waiting for things to go wrong'.

UKSA is campaigning for investors in pooled nominee accounts to have full rights as shareholders. But that is not what this letter is primarily about. The immediate issue is that investors in pooled nominee accounts are not even being told the nature of their investment.

To oversimplify, such investors have none of the rights of shareholders: their rights, if any, derive from what their broker promises to do for them. Their names are not on the register – indeed the company does not know who they are – and they are subject to counterparty risk with the broker as counterparty.

The extent of ignorance about this matter is illustrated by the explanatory section of the London Stock Exchange website. A description of nominee accounts mentions none of the downsides, but includes statements that 'Investors are ….. the legal owners of the shares' and 'Nominee accounts ….. are financially secure'.

It cannot be right that brokers do not have to explain clearly what they are peddling when they put clients into pooled nominee accounts. And it cannot be right that the government promotes a method of saving – SIPPs and ISAs – without explaining the potential for catastrophic loss if the broker goes down without properly segregating client accounts - (the maximum compensation is £50,000, a sum that would hardly provide an adequate pension). Not to act on this is 'waiting for things to go wrong'.

We would be happy to discuss this matter with an appropriate member of the organisation.

Yours sincerely

John Hunter
Chairman

To the Editor of The Private Investor

Dear Sir,

Should UKSA be involved?

The consultations discussed on pages 8,9 and 10 both relate to retail financial products and not direct investment in shares. Pressures of time and resources meant that we were not able to contribute to the extent that some of us would have liked. However, they give the opportunity to raise the question of whether UKSA should get involved in topics concerning retail investment more widely than just direct shareholding.

There are some who believe that we are an association of individual shareholders with limited resources and should and need to concentrate all our efforts on issues directly affecting them. On the other hand we are a body with the knowledge and desire, at least among some of us, to try to influence these matters more widely. A good precedent is the effort we put into the RDR ("Retail Distribution Review"). One of our members actually gives us credit for achieving the abolition of commission. I wouldn't go nearly as far as that but I do think that the robust comments we submitted must have given a strong push in that direction.

If we had some material part in achieving that objective I would argue that that did more for the public good than anything else we have done. If we have people around happy to give time and energy to other Retail matters in the name of UKSA, necessarily on a very selective basis, why shouldn't we join in? It would be interesting to know what members think.

Roy Colbran

Footnote to Roy's letter - see overleaf

I understand Roy's wish to spread our resources to cover 'retail financial products', but as a matter of policy we are not doing this because we need to concentrate on the issues that most require our attention, namely those that affect individuals investing in company shares.

Eric Chalker, Policy Director.

Dear Sir,

It is seven in the morning and I am asleep. I wake up because my mobile phone has gone 'ping'. It turns out that the 'ping' is an e-mail from Savill's plc alerting me that they have just published their full year's accounts.

I am interested because I hold shares in this company and have asked to be included in their alert service. I originally bought some of these shares for 332p per shares and have watched them climb to 900p before falling back to 650p. On the day the accounts were published the market was bearish and the price fell steadily until lunchtime. By lunchtime I had analysed the accounts and concluded the market had got it wrong and bought some more at 662p

Belatedly, the market woke up and a week later the price was up to 740p.

The moral of this story is that your best chance of beating the market is to move quickly before the analyst's have had their daily meeting. Those who demand share certificates and wait for the annual report to arrive through the post will miss out as the action will have already happened.

Malcolm Howard

UNITED KINGDOM SHAREHOLDERS' ASSOCIATION
CURRENT UKSA EVENTS

BP plc	London	Wednesday, 23 March 2016 - 11:00am	**presentation**	Nick Steiner 020 8874 0977 **n.steiner@ btinternet.com**
Burford Capital	Manchester	Thursday, 14 April 2016 - 12:45pm	**presentation**	Paul Waring 07754 725 493 **paul@xk7.net**
Rentokil Initial	Knaresborough	Thursday, 14 April 2016 - 12:30pm	**presentation**	Julian Mole **julian.mole@ btinternet.com**
WPP	London	Monday, 18 April 2016 - 12:00pm	**presentation**	Nick Steiner 020 8874 0977 **n.steiner@ btinternet.com**
Home Retail Group	Knaresborough	Wednesday, 18 May 2016 - 14:00pm	**presentation**	Julian Mole **julian.mole@ btinternet.com**
Taylor Wimpey	Wakefield	Tuesday, 24 May 2016 - 14:00pm	**presentation**	Julian Mole **julian.mole@ btinternet.com**

UKSA members who have not attended one of these meetings may not appreciate how valuable they are. They are invariably addressed by one or other of the three principal directors and the information presented is the same as that given to City analysts. For some of those who do attend, these occasions are UKSA's most valuable membership benefit and, for this reason, there is often competition for places.

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 8680 5872 or email harrycb@gmail.com

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 834 486 or 07712 591 032 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 834 486 or 07712 591 032 or petertwilson@dsl.pipex.com

SCOTLAND

Volunteers sought

NORTH-WEST

Paul Waring 07754 725 493 or paul@xk7.net

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 Julian Mole at Julian.mole@btinternet.com or Brian Peart, 01388 488419.