Ms Elena Arranz
Companies Division
DEPARTMENT OF TRADE & INDUSTRY
Room 502
10 - 18 Victoria Street
London SW1H 0NN

26th July 1995

Dear Ms Arranz,

DISCLOSURE OF INTERESTS IN SHARES - CONSULTATIVE DOCUMENT URN 95/633 - PROPOSALS FOR REFORM OF PART VI OF THE COMPANIES ACT 1985.

I am responding, on behalf of the United Kingdom Shareholders' Association, to your request for comments on the above titled Consultative Document.

We have given careful consideration to the contents of the document. In general terms - in regard to those matters where the Department has included firm proposals - we are in agreement with such proposals. None-the-less, there are a few areas within the document where we have varying degrees of reservation. These are later commented upon as appropriate.

First however, we record strong support of the proposed change in the UK disclosure regime from the concept of "an interest in share capital" to one of "the holding/control of voting rights and/or the right to acquire or dispose of voting rights". For various reasons this change appears desirable - even without the impetus of the EC Directive.

The Companies to which the law on disclosue (of voting rights) should apply - Pages 7 to 9:

It is considered that unlisted companies whose shares are not "publicly traded" should be removed from the scope of the Automatic disclosure provisioms (presently S.198, etc.) but should retain their existing rights under the company enquiry provisions (presently S.212). To retain such existing rights would not appear to be incompatible with other proposals recorded in the document.

The Time Limit for (Automatic) Disclosure - Page 9:

It is considered there is no case whatsoever for any change to the (already well established) time limit for disclosure. See, however, later comments under "netting-off".

Disclosure Thresholds - Pages 9 to 13:

Any change to the presently applicable initial automatic thresholds of 3% and 10% is felt to be very undesirable. So far as subsequent automatic disclosure levels are concerned, the alternative proposal (i) at the head of page 12 is strongly supported. Alternative proposals (ii) and (iii) are opposed.

From the viewpoint of the ordinary general investor (shareholder) in a listed company, to adopt either of these alternative proposals would result in a greater degree (than at present) of possible potentially misleading data being given in a company's Annual Report to its members.

> Listed companies must 'circulate' to their members with(in) the Annual Report a statement of interests disclosed up to a date not more than one month prior to the date of the notice of the AGM. Under the alternative proposals (ii) and (iii) the company could well be "stating" (perfectly correctly) a disclosed interest of, say 5.1%, whereas the true significant interest (of the party concerned) could well have been 9.9% at the record date.

The foregoing argument could equally be used, of course, to support alternative proposal (iv) but we are mindful of the need to reduce, where possible, the burden of dislcosure. We would, however, ask that - in the light of our own concerns for the general shareholders (and potential shareholders) having meaningful data - the Department give further consideration to maintaining a 'status-quo' (alternative proposal (iv)).

Concert Parties - Pages 12/13:

The Department proposal in 4.13 is supported.

The Competent Authority - Pages 13 to 15:

The proposals of the Department, as follows, are supported -

Second sentence of 5.1 ("parallel notification").
The whole of 5.2.
Last sentence of 5.3.
Last sentence of 5.4 (to do otherwise would be Needlessly confusing).

The content of 5.5, 5.6 and 5.7 is noted.

Disclosure: Interests and Obligations - Pages 15 to 25:

The content of 6.1 to 6.5 is noted and the Department's proposals at the foot of 6.5 is supported. Within this proposal, as recorded, are the words - "including the potential To hold and control". It is assumed this phraseology includes Both "potential to, stemming from a contractual arrangement with a third party" and "potential to, stemming from the current Holding of the company's convertible and/or warrants".

The content of 6.6 to 6.9 is noted and the Department's proposal within 6.9 is supported.

It is considered that 'the information to be notified' should 'specify etc.' and give 'category etc.' as is intimated in 6.10.

Within 6.11, should not the words "each class of" have been included after the first word (i.e "to") on Page 18?

With regard to the Department's proposals set out immediately below 6.13 -

(a) Agreed
(b) Agreed
(c) We are not sure how "most recently published" is

intended to be interpreted. Is it intended to mean 'published' in the sense of sent to a company's members (hence including a person with an obligation to disclose) in written form (e.g. Annual Report or, in the case of a listed company, half-yearly Report) OR is 'published' intended to also include a notice sent at any time, and by whatsoever allowable means, to the Stock Exchange? If the latter is intended then presumably the person having 'obligation to disclose'will have to be "deemed to be aware". The last seven words on page 18 appear to imply the former interpretation.

(d) This, as written, seems to give rise to two questions:

(i) Is it meant to be the same as "a company's total currently exercisable voting rights figure in respect of each class of shares...etc...? (It is considered not always meaningful to aggregate the voting rights of different classes).

(ii) Why is there no mention of 'half-yearly Reports'? (Line No. 15 of 6.12 makes specific mention of "changes...which occur between the six-monthly reports".

With regard to (a) and (b) at the top of Page 19:

(a) It is considered that an interim "change threshold" of 5% should be applied, but - again - we are unclear as to "how published".

(b) It is considered interests benefitting from the 10% differential threshold should be separately disclosed.

The Disclosure Obligations of a Subsidiary:-

The Department's proposal in 6.16 appears sound.

The Disclosure Obligations of the holder of Allotted but Unregistered Shares and of the holder of Warrants and/or Convertibles:

The intent of the Department's proposals (as set out under Item 9 on Page 3) are supported but we have some unease upon two points of detail:

(i) The second sentence of Item 9 on Page 3 commences with The words "such potential investors". Should not These words be either "such investors" or "such Potential holders of voting rights"?

(ii) Is there intended to be a difference between "last Known total exercisable voting rights" and - as Stated elsewhere - "last published total exercisable Voting rights?

Netting off - Page 21:

The Department's proposal in 6.22 is commended. There is, however, a doubt upon one technical point of interpretation stemming from use of the words "between the opening of business on one day ("day one") and the opening of business on the

following day ("day two"). When netting off applies, then how is "the day on which that obligation arises" (existing wording within S.202(i) to be defined?

Limited Partnerships - Pages 23/24:

We find it difficult to understand (having regard to the last sentence of 6.28 and the reasoning in the last three lines of 6.29) why the last word on line one of 6.29 could not, usefully, be "all" rather than "general".

Could consideration be given to a proposal similar to the intent of 6.29 (i.e. "distinguishing between" and " reveal separately") being applied also to pension fund and charity related disclosures/notifications?

Charities - Pages 24/25:

No observations, other than that immediately above.

The Test of Knowledge - Pages 25/26:

The Department's proposals regarding the introduction of the new "test of knowledge" are supported in principle but we have deep unease about the Department's attitude as indicated in lines two, three and the first half of line four on Page 26. It would appear to us that it is very desirable for the reform presently under consideration to ensure that a new Part VI provides that howsoever a voting rights threshold is reached (e.g. whether by acquisition or disposal OR in consequence of a company 'buy-back' of issued shares or any other company instigated action) there is an automatic disclosure/notification obligation.

In Item 2 on Page 2 (of the document) is reference to "Part VI having come to have a second purpose"; such purpose providing information - which is considered to be useful - to a company's shareholders (and intending/potential shareholders) generally (i.e. via the reporting of disclosures/notifications in both company annual reports and in investor orientated press publications). With the present time trend towards increasing equity capital 'buy-back', failure to amend Part VI on the lines we advocate could well lead to an increase in instances of 'misleading data' being perceived by investors (and by private investors in particular).

It seems to us to be illogical, as well as undesirable, to continue with a situation where - for example - a holding of 3.1% of voting rights reached consequent upon acquisition is notifiable (and hence declared in listing in a company's annual report) whereas a holding of 3.2% of voting rights reached consequent upon a reduction of a company's issued capital is not notifiable (and hence not included in the company's annual report under the (customary) heading of 'significant holdings'.

We ask that you give further, serious, consideration to this particular matter.

In the third line on Page 26 should not the word "percentage" immediately precede the word "holding"?

Company Investigations - Pages 26/27:

The Department's proposals are supported.

Finally, I would make the point that UKSA would be very willing, if invited, to serve on any committees or working parties engaged on corporate law reform. You may feel it desirable that the views of private shareholders should be more strongly represented during the time that reforms are being considered and formulated?

Yours sincerely,

Donald B Butcher
Chairman