# Directors' Remuneration Consultation Document (October 2013)
# Shire plc response

## Extending the provisions on clawback arrangements

We support the need for sound risk management in the context of remuneration arrangements. Clawback mechanisms are one of a variety of safeguards that companies can have in place to protect against excessive risk-taking.

However, in our view, there is no evidence for any change to the current arrangements. A combination of the financial crisis and the current code provisions has already brought the idea of malus and clawback to front of mind for all listed companies. This combined with the new requirement for companies to seek shareholder support for their remuneration policy by way of a forward-looking binding vote will allow shareholders to express their views as to whether provisions adopted are sufficient. We believe the new regulation should be given time to bed down and best practice to emerge.

**Is the current Code requirement sufficient, or should the Code include a "comply or explain" presumption that companies have provisions to recover and/or withhold variable pay?**

Yes, the current code requirement is sufficient. There is no need to include a "comply or explain" presumption.

**Should the Code adopt the terminology used in the Regulations and refer to "recovery of sums paid" and "withholding of sums to be paid"?**

Yes, we would support consistency in language between the code and regulations.

**Should the Code specify the circumstances under which payments could be recovered and/or withheld? If so, what should these be?**

No, the code does not need to specify circumstances under which payments could be recovered.

**Are there practical and/or legal considerations that would restrict the ability of companies to apply clawback arrangements in some circumstances?**

Yes, there are significant legal and practical challenges in the actual operation of clawbacks, in particular in respect of paid monies / vested equity and in certain jurisdictions around the world.

## Remuneration committee membership

**Are changes to the Code required to deter the appointment of executive directors to the remuneration committees of other listed companies?**

No, changes to the code are not required in respect of the appointment of executive directors to the remuneration committee of other listed companies.

Your own consultation document demonstrates that there is no evidence of an underlying issue given the votes against the remuneration reports of those companies that have an executive director versus those that do not. Clearly shareholders are not unhappy with the current situation.

In addition, the talent pool for remuneration committee members is already limited given the role has become more complex and time-consuming in recent years, with arguably a growing gap between the risks and rewards of serving on the remuneration committee of a UK plc.

Finally, shareholders already have the opportunity annually to vote down the re-election of a director should they disagree with a director's appointment to the Remuneration Committee.

**Votes against the remuneration report**

**Is an explicit requirement in the Code to report to the market in circumstances where a company fails to obtain at least a substantial majority in support of a resolution on remuneration needed in addition to what is already set out in the Regulations, the guidance and the Code?**

No. We believe that the Code should not prescribe how boards should respond if the company fails to obtain a substantial majority in support of a resolution on remuneration.

Firstly, most companies already take the outcome of the current advisory vote very seriously and invest time engaging with their shareholders, as appropriate. This current practice will be further strengthened by the reality of a binding vote on pay which will occur for the first time for most UK listed companies in the 2014 AGM season. Therefore, shareholder engagement is unlikely to be improved by increased requirements and there is a risk that companies would become pre-occupied with timing and the process rather than properly addressing shareholders' concerns.

Secondly, there are significant practical difficulties in identifying shareholders and how they have voted given the nominee system (i.e. beneficial holding of shares can exist through a chain of intermediate nominees, trusts, and asset managers). This is particularly the case in relation to non-UK shareholders. In addition to finding out how shareholders have voted, there is no robust way to ascertain the key issues behind a low "for" vote given shareholder bases are increasingly fragmented and different shareholders are likely to have voted "against" for different reasons.

Thirdly, we believe it is appropriate to leave each remuneration committee to determine what they regard as appropriate support for their remuneration report. This varies by company, depending on the business cycle that they are currently experiencing, the nature of their shareholder base and the complexity of their remuneration arrangements. We see no need for the Code to provide more detail in this area.

Finally, the relatively low level of support for a resolution on remuneration could already be a known issue in advance of the AGM. The company may have made an informed and careful choice to proceed with a particular remuneration policy or proposal despite anticipating that a significant proportion of investors might not be supportive (given either published views or feedback obtained through prior consultation). This situation is increasingly likely given the propensity of small shareholders to remain unresponsive to proxy solicitation. In addition, shareholder bases will likely become increasingly fragmented as inconsistent shareholder and proxy advisory guidelines continue to proliferate.

**Other issues**

**Is the Code compatible with the Regulations? Are there any overlapping provisions in the Code that are now redundant and could be removed?**

We support amending the Code's remuneration sections to ensure there is no overlap with the new legislation's disclosure requirements, or at least no inconsistency.

**Should the Code continue to address the three broad areas of pay design, remuneration-setting processes and disclosure requirements? If so, do any of them need to be revised in the light of developments in market practice?**

Yes, the Code should continue to address these three broad areas. Given that guidance/views from various shareholder and proxy advisory bodies is so inconsistent, we believe it is beneficial to have some high-level guidelines that companies are encouraged to adopt.