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Dear Mr Hodge,

REVIEW OF THE EFFECTIVENESS OF THE COMBINED CODE

UKSA is the leading independent organisation which represents the interests of private shareholders in the United Kingdom. We wish to comment on just two matters in connection with the July 2009 second consultation:

1. The role of the Private Shareholder

As far as we can see the present Combined Code and the consultation paper are silent on any role for the private shareholder. This is consistent with the Walker Review whose terms of reference mentioned only institutional shareholders.

We believe that the time has come to recognise that the obstacles in the way of effective institutional involvement will not go away and that private shareholders could and should be a key part of the solution. They have certain virtues not always present in other shareholders: they are the ultimate 'long-only' shareholders; they think like an owner and have an owner's loyalty; they may have long experience of a company; they often have valuable business and investing skills quite the equal of those at the disposal of institutional investors; they have no conflicts of interest; and without commercial pressures they are better able to take a moral position. These virtues, previously influential, have become submerged because private shareholders have been squeezed out of the picture and many of them disenfranchised.

In France, a number of major companies have set up consultative committees composed solely of individual shareholders and they clearly value their contributions. In Australia our opposite number, the Australian Shareholders Association, maintains regular dialogue with companies and is highly influential.

We are currently in conversation with Sir David and his team with a view to pursuing these ideas further but would be pleased to expand our discussions to include your review team.

2. Show of Hands Voting at General Meetings

UKSA is very concerned at the developing practice among leading listed companies of abandoning show of hands voting at General Meetings. We have noted particularly that some boards of directors appear to believe that they should do this in order to comply with “best practice”, invoking phrases from Paul Myners’ 2004 Report in support.

The value of General Meetings as a forum for investors, and the importance of the manner in which the meetings are conducted, is generally recognised, and the Combined Code reflects this in section D2, “Constructive Use of the AGM”.

However, the Code does not explicitly endorse show of hands voting. We believe that show of hands voting is an essential aspect of the General Meeting for shareholders who have taken the trouble to attend the meeting, and an important means by which the directors may gauge the opinions of a key shareholder constituency that is not represented in any other way, and that the Code should be revised to endorse the show of hands as good practice.

We are not arguing that voting on a poll should be abandoned: there are valid arguments for requiring that all resolutions be determined by a poll of the entire shareholder base.

However, there is no reason why show of hands voting should not be followed at the end of a meeting by a poll.

We believe it is time for companies to be required either to allow voting by show of hands or to explain why they are not doing so, and we urge that this be incorporated in the revised Combined Code.

A more detailed note giving a recent case history is attached in support of our position.

Yours sincerely,

Roy Colbran

Chairman
UKSA Government Policy Group

SHOW OF HANDS VOTING AT GENERAL MEETINGS

CASE HISTORY

The changes that we have described are best represented by taking the example of a FTSE 100 company.

During the company's General Meeting, held in July 2009, the Chairman announced that after all the resolutions had been discussed the meeting would move to a poll. When this was questioned, during the meeting and immediately afterwards, the Chairman and other officers of the company said this was simply the application of best practice as laid down by the ABI and other bodies, and that any concerns might more effectively be taken up with those bodies rather than with the company officers.

A subsequent letter from the Company Secretary stated:

"In respect of voting at general meetings, the best practice is to vote on a poll as opposed to a show of hands as this method allows shareholders who may not be able to attend general meetings to have their votes counted. Our registrars inform us that only 2 out of their 27 FTSE 100 clients continue to vote on a show of hands and we believe that the fairest means of voting for our shareholders as a whole is that of a poll."

EXISTING GUIDANCE AND CHANGING PRACTICE AT GENERAL MEETINGS

We believe that this company's officers were acting in good faith.

However, the position stated in the Company Secretary's letter is not endorsed by existing guidance from ABI, NAPF or ICSA¹.

The 2004 Report by Paul Myners to the Shareholder Voting Working Group is unusual in recommending that issuers should "call a poll on all resolutions at company meetings", but does not recommend that show of hands voting should be abandoned.

Until very recently, voting at General Meetings was generally conducted by a show of hands, and our experience is that most investment trusts, and smaller listed companies in general, still offer show of hands voting followed by a disclosure of proxy votes received.

So it does appear that the abandonment of show of hands voting is a recent development that has started with a few major companies and has spread rapidly, but that it has never been endorsed by the majority of listed companies, by the Combined Code or by the principal bodies representing either institutional investors or private investors.

We are also not aware of any research that has asked private investors who attend General Meetings whether they value show of hands voting. We would hope that the views of private investors would have been sought before the adoption of such a major change.

¹ We should note that the ICSA guidance paper, "Voting at General Meetings", is currently under review.

THE CASE FOR VOTING BY SHOW OF HANDS

The 2008 Combined Code states “The AGM should be used to encourage the participation of shareholders” [Section D2, Constructive Use of the AGM: Main Principle]. Private shareholders who have taken the trouble to attend a General Meeting greatly value the show of hands vote. We believe that preventing them from doing so discourages private shareholders from attending and participating and is therefore against the spirit of the Combined Code.

We are particularly concerned because the General Meeting is likely to be the only occasion on which private shareholders are able to express their concerns, individually and collectively, to the board of directors, and the show of hands is a key element in this. There are many occasions when decisions by directors, and resolutions being considered at a General Meeting, may favour the interests of some investors over others. The most obvious and common instance is a discounted placing that is open to most institutional shareholders but from which the private shareholders are excluded. On these occasions, where private shareholders are most likely to be disadvantaged, the show of hands is the only mechanism that allows the interests of these shareholders to be visibly recognised, because on a poll their votes will generally be swamped by the institutions’ votes.

So the show of hands at a General Meeting is an essential mechanism for ensuring that the interests of an important but often disadvantaged class of shareholders cannot be ignored.

There may be circumstances in which directors feel that a show of hands is not practical, for example, where the directors have reason to believe that the meeting’s business will be deliberately disrupted. These cases should be allowed for, but are unlikely to arise for the great majority of companies, and should be seen as very much the exception.

VOTING BY SHOW OF HANDS VERSUS VOTING BY A POLL

We are not arguing that voting by a poll should be discouraged, in favour of show of hands voting.

Both outcomes are important:

- The show of hands vote allows those shareholders who have taken the trouble to attend the meeting to express their collective view and to see the outcome for themselves; it is also the only way in which everyone – including the directors – can see whether the views expressed by individuals reflect widespread concerns among those present;
- but the company should ultimately be governed in accordance with all the voting shareholders, weighted according to their shareholdings.

This is why the Combined Code states that a show of hands should be followed by disclosure of proxy voting figures, so that any disparity will be evident, allowing anyone present to demand a poll.

Indeed, many companies may wish to move to a poll at the end of the meeting as a matter of course, and this is a very reasonable position.

However, a show of hands and a poll are not incompatible: a show of hands should generally take very little time, and can be followed by a poll at the end of the meeting.

The default position should therefore be that a show of hands is held on every resolution, followed where appropriate by a poll. The Combined Code’s general approach of “comply or explain” is ideally designed to cope with those exceptional situations where the default may not be practical.