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Dear Sirs

We refer to the FRC's proposed revisions to the UK Corporate Governance Code. We recognise that this Consultation is the result of your previous discussions with the Government and the Green Paper Consultation on Corporate Governance Reform so we will limit our comments to the specific questions which we consider to be of particular significance.

#### Significant Votes Against

Paragraphs 35 – 38 inclusive of the Consultation are headed "Significant votes against resolutions" and refer to the number of resolutions from last year's AGM season which had more than 20% of votes against.

The proposed revisions to Code Provision 6 state "when more than 20% of votes have been cast against a resolution, the Company should explain, when announcing voting results, what actions it intends to take to consult with shareholders in order to understand the reasons behind the result". It also refers to an interim action that, no later than 6 months after the vote, an update should be published before the final summary is provided in the next Annual Report. You will also be adding a footnote to the revised Code to highlight that the Investment Association's soon to be launched public register will be available for reviewing these updates.

Question 5 asks "Do you agree that 20% is "significant" and that an update should be published no later than 6 months after the vote?".

Our view is that setting the threshold at 20% is too low and cannot be described as "significant". Given that companies require 75% of voting shareholders to support a special resolution, it is possible using the 20% trigger that the threshold would be breached even though the special resolution is approved. We do not believe that companies should be required to take the actions set out in paragraph 38 in such circumstances.

Furthermore, if 75% of the issued share capital is voted, the 20% threshold would be triggered by only 15% of the share capital. We do not believe that a vote against of this size should have the consequences proposed by the revised provision.

We would set the threshold at a much higher rate, say 40%, whilst noting that, even in that instance, any ordinary resolution will still have been passed by a majority of shareholders.

In making these comments we should point out the impact that the shareholder representative bodies can have on voting on resolutions given the number of institutional shareholders that follow those recommendations as a matter of course. The approach that the shareholder representative bodies take in setting their recommendations is less than perfect in some cases, for instance where companies do not feel that they have been given the opportunity to discuss issues raised by the representative bodies in advance. Much has been written about the role they undertake and their ability to carry out their role as effectively as possible. We believe that this context is important in determining what is a “significant” vote against and requires the bar to be set at around the 40% level.

The FRC is already concerned, and rightly, about the loss of trust in business by members of the public. Every time, a company receives “significant votes against”, that will provide the trigger for the press to write a story about the incident and that is liable to exacerbate mistrust in business. It seems to us that there is no reason to add to this negative news flow where there are genuine reasons for shareholders to take a different view on a resolution. The trigger for reporting needs to be much higher than 20% in our view.

We also have our doubts about the effectiveness of publishing an update about the vote within six months of the vote. We suspect that all this will encourage will be a succession of anodyne comments along the line of “shareholder consultation on the issue is taking place”. We would suggest that it is only required that comments on the adverse result of the vote and subsequent shareholder consultation are set out in the following year’s Annual Report.

### Independence

Question 7 asks “Do you agree that nine years, as applied to NEDs and chairs, is an appropriate time period to be considered independent?”

The Consultation effectively takes away the Board’s discretion to decide whether the test for independence is met. We think this will make it more difficult for directors to remain on a Board for more than nine years, even when there are good reasons for doing so.

We think the proposal will also make it more difficult for boards to plan succession for a chairman role, given the application of this principle to chairmen.

The appointment of the Chairman to a Board is seen by us and most companies as one of profound importance. At present, Nomination Committees can assess on an even playing field external candidates with candidates who are already NEDs in the Company. Under your proposals, we understand that a Chairman would not be regarded as independent once he/she has served for nine years on the Board even if, say, four of them were as a NED prior to becoming Chairman. We would suggest that this guideline could unduly prejudice a Nomination Committee in favour of an external candidate to ensure that he/she could be regarded as independent for a full nine years.

We would suggest that you consider an adjustment to the nine year rule to allow a chairman to be deemed as Independent for a full nine years after appointment as Chairman, subject to his/her total time on the Board as a NED and Chairman together not exceeding twelve years.

We are happy to discuss these points should you wish to make contact with us.

Yours sincerely

**Tim Fallowfield**  
**For and on behalf of the Board.**