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Dear James,

Thank you for seeing us on Tuesday. We pressed upon you the concept of shareholder committees for individual investors, as outlined in the Protection of Shareholders Bill (POSB). For UKSA, its members and individual investors generally, this is a necessary remedy for at least some aspects of the poor governance of UK banks and an opportune initiative to take for the two banks now substantially in public ownership, not least as an example to others.

We promised to send you a briefing note. On reflection, we think this is best served by the handout prepared for the press conference (attached) supplemented by the following comments.

**Walker Review: practicalities**

We recognise that you have an immediate priority to support Sir David Walker in producing his report by July 16 and that this timetable precludes radical departure from a framework already determined. You were kind enough to hint to us that governance issues would almost certainly be restricted to governance as exercised by institutional shareholders. We have given some thought to how the principles of POSB could be adapted to address this.

The core POSB ideas are:

The shareholders on a corporate register, as a group, are not representative of those who have a beneficial interest in corporate wealth creation. Call the latter group 'beneficial owners'.

Therefore it would improve corporate performance if the beneficial owners could be given some influence. (The stronger form of this statement is that the corporate governance model is broken.)

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The chosen vehicle is a Shareholders' Committee (SC). The members of the SC are elected by the beneficial owners only. (In the Bill 'private shareholder' is in fact defined as equivalent to 'beneficial owner', extended to include those investing through nominees). The members need not, themselves, be beneficial owners.

The SC would have no power over corporate decision-making. But it would have influence. It would obtain this influence by a) the company having an obligation to communicate with it, b) the Committee having the capacity to communicate with the shareholders and the market (it's perhaps a useful template to think of the SC as having the same rights, and restrictions, in communication as the directors), c) the members of the SC being seen to be individuals to whose communications it is worth paying attention.

We have suggestions for solutions to all the practical problems of implementing such a proposal (some of which are in the press briefing). But these would only be starting points in a necessary consultation involving all the affected parties. We will refrain from additional detail in this letter.

In terms of what would be practical in Sir David's report, one option would be to state the problem (as in 1. and 2., but placed in a practical banking context) and invite industry recommendations for a) the medium through which rights of beneficial ownership could be expressed (i.e. if not an SC, then what?), b) practically, how beneficial ownership should be defined. Bluntly, this would at least open up the issue to the consideration it deserves, while putting the responsibility for a solution in the institutions' court. No doubt their recommendations would address issues such as governance costs, free-riding, nominee shareholdings and tracker funds.

### **Costs**

You asked for some indication of costs. These would comprise:

The cost of changes to registrars' software. The changes made following the 2006 Companies Act to implement the provisions on information rights would give some indication of amount.

The time of the Committee members and their corporate contacts to conduct their business. For a major company, maybe 10 expensive people for 40 hours per year = £200,000. (The original POSB proposal was that committee members would be unpaid, but bank governance is a special case.)

The cost of communication to shareholders: negligible (we believe that shareholders who wish to exercise new governance rights have an obligation to be web-enabled).

### **Shareholder engagement**

We feel obliged to re-emphasise our concern for the erosion of beneficial shareholders rights, highlighted by the Walker Committee's terms of reference being restricted to institutional shareholder engagement.

The introduction of shareholder democracy is an integral part of the solution, *not* an addition to the problem. It is *because* institutional investors - that is, those who hold shares on behalf of individual, beneficial owners -- cannot truly speak for those real owners that the FSA's objectives cannot fully be met without some direct individual investors' involvement.

With the exception of certain institutions that have shown themselves willing to behave as owners, individual investors are the *only* part of the "savings and investment" community that can be relied upon to speak for those long term interests which recent events have put at risk. An oversight in drafting the terms of reference should not be allowed to stand in the way of properly addressing the problem the Walker Review was established to tackle.

This matter is sufficiently important for us to seek a meeting with Sir David Walker himself, which we will endeavour to do as soon as possible and we ask you to facilitate this.

### **Contacts**

You are welcome to contact Michael Riding (0203-258-2051, [Fmprising@aol.com](mailto:Fmprising@aol.com) ) or John Hunter (01689 855774, [johnheather60@aol.com](mailto:johnheather60@aol.com) ) as well as myself to discuss any of this further.

Yours sincerely

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## **BILL CASH'S BILL FOR THE PROTECTION OF SHAREHOLDERS:**

### **SUPPLEMENTARY INFORMATION**

#### **Rationale**

The UK Shareholders Association (UKSA) strongly supports this bill which aims to give a voice to private shareholders. They are important because they can take a direct and personal interest in the progress of the companies in which they invest. But the domination of share registers by institutional investors, and the way so many individuals hold shares in nominee names, means that the Annual General Meeting no longer serves the purpose for which it was designed, of making the directors answer to the beneficial owners of the business. This has fostered a lack of strategic direction in individual companies, an emphasis on short-term goals and a focus on shares as instruments for trading and not symbols of responsible ownership. Taken together, these are a persistent drain on the wealth-creating capacity of the quoted company sector.

#### **Main features of the Bill**

The Bill will require every public company to elect a shareholders committee unless the private shareholders decide they should not do so. The members of the committee will be elected, or re-elected, annually at the AGM, by vote of private shareholders only. The committee will meet a nominated director at regular intervals and whenever there is anything significant to discuss, and will be empowered to communicate directly with shareholders to the same extent as the directors. It will only have powers to communicate, on the basis of confidentiality: it will have no binding powers.

#### **Appointment of committee members**

Those who put themselves forward for nomination would typically be private shareholders who take a special interest in the company but there would be no required qualification for nomination. Election would be by vote of the private shareholders only, at the AGM. Committee members will be re-elected each year but there would be no barrier to re-election. For this purpose those who hold their shares through nominees will have equal rights to vote and their nominee company will be obliged to give the company the necessary evidence to confirm their ownership.

## **Obligations of the Company**

The company must:

- a) nominate a Director to attend meetings and communicate with the company on behalf of the committee,
- b) make available to the committee appropriate means of communication with shareholders,
- c) provide a committee secretary if asked,
- d) include a committee report within the Directors Report,
- e) supply the mechanism for the election and re-election of committee members and,
- f) pay the committee's reasonable expenses

## **Some Questions and Answers**

### **Q1. How will the committee interact with the Directors?**

A1. One Director will be appointed to attend, but not vote, at meetings.

### **Q2. How will they communicate with the main body of shareholders?**

A2. They will have made available to them the same means and timescale as available to the directors.

### **Q3. How will you ensure that the committee members are competent**

A3. There are a large number of able people who would welcome the chance to make a difference in this way.

### **Q4. Will committee members be paid?**

A4. Reasonable expenses only will be paid by the company.

### **Q5. Will the committee have any secretarial support?**

A5. Yes, it may appoint a secretary (obviously part-time) although normally the Company Secretary, or someone in the Secretary's office will fulfil that role.

### **Q6. Will committee members receive confidential information not in the public domain?**

A6. Yes, the committee will be less effective if restricted to published information and will function on the basis of confidentiality. Thus directors would have to be prepared to justify reasons for major corporate actions, such as a takeover or their remuneration packages, before these become *faits accomplis*. This follows the precedent of Works Councils who are already entitled to information that is confidential, and is consistent with the usual relationship between companies and major institutional investors.

**Q7. What will be the committee's powers and duties?**

A7. The committee's sole duty is to communicate with directors and shareholders. It has the power to enforce on the company the responsibility for providing the necessary mechanisms for that communication.

**Q8. Aren't your committees just duplicating the role of the independent, non-executive directors?**

A.8. We don't comment on the effectiveness or otherwise of the non-executive directors. But the governance system as it is has clearly been ineffective. We point to: the current mess in the banking sector; inappropriate takeovers and diversifications, driven by the needs of traders, the fees of advisers and the egos and pay of CEOs; over-leveraging of companies to flatter Earnings per Share, meet executive performance thresholds and increase volatility; the whole share buyback party of the last few years, designed to recycle capital to institutions despite the increased risk to corporate survival; many examples of companies simultaneously pursuing growth strategies and starving themselves of capital; companies run as private fiefdoms of the CEOs; inordinate time devoted to devising complex reward packages; and the excessive (and often inappropriate) performance bonuses that those packages deliver.

**Q9. Why are you giving so much prominence to private shareholders when they are such a small part of the totality of investors? Since the majority of shareholders are typically pension funds or managers of funds on behalf of individuals, why aren't these the right people to represent the interests of individual shareholders?**

A9. A substantial body of private shareholders who invest through nominee accounts (which includes all ISA equity investors) are disenfranchised and their votes assigned to the nominee, so the percentage of interested private shareholders is higher than the statistics show. We believe that among individual shareholders there is a community that take a close, detailed and highly-informed interest in the companies in which they invest. These will, in effect, be representatives of all private investors and savers whose money has been entrusted to institutions. The latter are subject to conflicting pressures; there is no incentive for them to spend time on corporate governance; their cheapest option if they are dissatisfied with a company is to sell the shares. Nevertheless, there will be no problem if the private shareholders wish to elect someone who is not a shareholder.

**Q10. These committees will further intrude on the valuable time of the senior executives of the company. Is that desirable?**

A10. To the extent that it moves executive focus towards real wealth creation and away from actions designed to support the marketing of shares and share-related services... yes. But given the current concerns and failures, not only are these new proposals justified, they will also create greater efficiency and wealth creation by companies and safeguard the rights of all investors, large and small.

**Q11. Do you see any problems from those who simply hold shares as short-term traders?**

A11. Short-term traders would not be interested in using their governance rights, and are one of the classes of shareholder that create the need for this Bill. Traders will just carry on as they always have done and we do not see that they have an impact on our proposals

**Q12. How do you see this in relation to the rights of employees?**

A12. Employees of companies with 50 or more employees have the right to require a Works Council to be appointed. This Council must be consulted on such matters as the recent and probable development of the undertaking's activities and economic situation and transfers of undertakings and employment prospects within the undertaking. This necessarily includes information not in the public domain and the Regulations require them not to divulge such information to other parties. This Bill gives shareholders, the owners of the business, no more than the employees.

**Q13. The non-binding vote against the Remuneration Report available to shareholders at the AGM has had little effect in curbing inappropriate remuneration. Why will powerless Shareholder Committees be any different?**

A13. These will be standing committees, not just annual nuisances at the AGM, and directors will have to take notice of them. Also, the AGM vote on the Remuneration Report is too late to have any real influence on the outcome, so the power of publicity is neutered. But a committee comment on a takeover proposal, for example, carries the possibility of influencing the outcome.

*Bill Cash became an MP in 1984, is currently member for Stone in Staffordshire and has taken an active interest in the promotion of enterprise and ethical corporate governance.*

*UK Shareholders Association is the leading independent organisation which represents the interests of private shareholders in the United Kingdom. It campaigns to protect the rights of shareholders in public companies, and to promote improved standards of corporate governance. Its educational activities, regular regional meetings, company "analyst" meetings and the resources of its web site, help to inform the public on investment management. UKSA is a "not for profit" organisation reliant for finance on its individual members.*