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Mr Adam Gray
Long Term Focus Consultation
Corporate Law and Governance
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

By email: clgconsultations@bis.gsi.gov.uk

13th January 2011

Dear Mr Gray

A Long-Term Focus for Corporate Britain – A call for evidence

The Institute of Chartered Secretaries and Administrators Registrars Group (the Group) represents the major service registrars in the United Kingdom whose members are outsourced registrars for more than 99% of all quoted companies in the UK. The three major Registrars are Capita Registrars, Computershare Investor Services and Equiniti. The Group is responsible for formulating policy and best practice guidelines in all areas relating to share registration.

A fundamental part of the services that we provide relate to corporate governance, particularly the identification of shareholders and the administration and support of company general meetings, and we therefore have unrivalled expertise in these areas. We have not directly canvassed views on the consultation paper from our customers but have had a number of discussions with some of them to explore issues raised by the consultation paper and, to that extent, those views are reflected in this response.

As requested, we have used the response form prepared by BIS, and this is attached. I do hope that our comments are helpful, and will be happy to discuss any of them should that be of further assistance.

Yours sincerely,

Peter Swabey
Chairman

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BIS Department for Business Innovation & Skills

A LONG-TERM FOCUS FOR CORPORATE BRITAIN
Call for Evidence Response Form

A copy of the consultation available at: http://www.bis.gov.uk/consultations.

Responses to the Consultation should be received by 14 January 2011.

Completed copies of the response form should be returned:

Via email to: clgconsultations@bis.gsi.gov.uk

Via post to:

Adam Gray
Long-term Focus Consultation
Corporate Law and Governance
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Name: **Peter Swabey**
Organisation (if applicable): **The Registrars Group of the Institute of Chartered Secretaries and Administrators**
Address: **Aspect House, Spencer Road, LANCING, West Sussex. BN99 6DA**
Email:

Please tick the box from the following list of options that best describes you:

Q	**uoted company**
	Other company
	Investor or investment manager
✓	**Business representative organisation**
	Investor representative organisation
	Non governmental organisation (NGO)
Trade	**Union**
La	**wyer or accountant**
	Other (e.g. consultant or private individual)

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The Board of Directors

Question 1: Do UK boards have a long-term focus – if not, why not?

Comments
Our belief is that UK boards do try to have a long-term focus, although this is frequently challenged by the short-term interests of investors, politicians and press. It can be difficult for a Board to properly focus on the long-term interests of the company and its stakeholders when faced with the requirement for quarterly reporting in the form of Interim Management statements or otherwise; the requirement for announcement to the market of potentially price-affecting information, which may often be of a transient or short-term nature; and the focus of a number of investors on short-term share price movement – typically as a result of their own obligation to report on a short-term basis.

Question 2: Does the legal framework sufficiently allow the boards of listed companies to access full and up-to-date information on the beneficial ownership of company shares?

Comments
Yes. The UK shareholder identification model – part 22 of the Companies Act 2006 – which is typically referred to as s793, but which actually relies to a large extent for its effectiveness on the supporting legislation in the rest of that part of the Act, provides the most comprehensive solution in global markets to the problem of beneficial shareowner identification. We believe that it is imperative in the interests of UK companies that the Government take steps to ensure that this class-leading regime is not watered down as a presumably unintended consequence of otherwise well-intentioned legislative activity from the EU.

Shareholders and their role in equity markets

Question 3: What are the implications of the changing nature of UK share ownership for corporate governance and equity markets?

Comments
Our overall impression is that the changing nature of UK share ownership has tended towards a decrease in the number of investors who are interested in the stewardship responsibilities associated with their shareholdings. Many investors do take an increasingly keen interest in the companies in which they invest and serve a very real 'stewardship' function. However, this seems to us to have been more than counterbalanced by the effect of changes in the way in which investment decisions are made. For example, some tracker investments take the view that they will always be 'in' a stock regardless of any governance issues because it is, for example, a constituent of the FTSE350 index. Other chart based investors or users of computer based programmed trading, where buy and sell decisions are based on a computer program and may happen many hundreds of times a day, move in and out of a stock so quickly that they deem it a poor use of resource to spend time understanding the business in which they 'invest' – the very essence of short-termism. There has also been an increase in the use of cross-border investment vehicles, which have a reputation for lower levels of engagement.

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Question 4: What are the most effective forms of engagement?

Comments
Companies will be better able to answer this question than ourselves.

Question 5: Is there sufficient dialogue within investment firms between managers with different functions (i.e. corporate governance and investment teams)?

Comments
Companies will be better able to answer this question than ourselves. Certainly there is anecdotal evidence that this has not always been the case, but we have not heard of recent examples.

Question 6: How important is voting as a form of engagement? What are the benefits and costs of institutional shareholders and fund managers disclosing publically how they have voted?

Comments
We believe that voting is critically important as a form of engagement – it is after all clear, public and simple for both sides. We believe that there are clear benefits of institutional shareholders and fund managers disclosing publicly how they have voted, in terms of demonstrating that they have taken their stewardship obligations seriously and in terms of the consequently increased focus on corporate governance in UK companies, notwithstanding that a vote against should be a last resort following engagement. We believe that the costs of such disclosure are negligible. However, given the length and complexity of the share ownership chain in some cases, it is important to recognize that there is no value in institutional shareholders and fund managers simply reporting the voting decision that they have made unless they also report clearly the steps that they have taken to ensure that their agents communicate that voting decision accurately and in a timely manner to the company. In recent years there have been a number of complaints from institutional investors that their votes have been 'lost' and this has been the focus of the work of the Shareholder Voting Working Group. As registrars, we have been asked by a number of our clients to carry out a forensic audit of voting, and in all cases these have indicated that the votes are not 'lost' – they are simply either not properly executed by the institutional shareholders or fund manager's agent(s) or the shares are no longer owned by the institutional shareholders or fund managers concerned – perhaps through lending, or perhaps through a disconnect between the corporate governance and investment teams. In terms of timely delivery of votes, we have been aware in the last year or so of a tendency for votes to be received closer and closer to the voting deadline. This has coincided with the development of a market practice whereby one provider is used by the majority of custodians. We believe that it would be beneficial if there was legislation or regulation to require the immediate transmission of votes through the system, rather than their being held back and lodged late in the process, with the associated risk of conflict of interest where information on intended voting patterns may be offered for sale by intermediaries.

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Question 7: Is short-termism in equity markets a problem and, if so, how should it be addressed?

Comments
We believe that short-termism can be a problem in equity markets, but it is extremely difficult to suggest how it can adequately be addressed. It is not practicable to require investors to hold their shares for a minimum period, or to limit voting rights to those who have held shares for a given period, as both models would have a significant impact on the law of property – how can you reasonably prevent someone selling an asset ?

Question 8: What action, if any, should be taken to encourage a long-term focus in UK equity investment decisions ? What are the benefits and costs of possible actions to encourage longer holding periods?

Comments
If we truly believe that too many shareholders focus overly on the short-term and that a long-term focus is right for the UK, we should have a tax system which does more to encourage long-term ownership of shares. The Government could in that case consider the possibility of encouraging longer-term investment though changes to the fiscal regime, and of encouraging greater levels of direct investment in companies by retail shareholders, for example through changes to Capital Gains Tax arrangements or the reinstatement of dividend tax credits.

Question 9: Are there agency problems in the investment chain and, if so, how should they be addressed?

Comments
As outlined above, there are conflicts between the duty of directors to manage companies in the long-term interests of shareholders and the focus that the market – in terms of share price movement – and consequently many investors place on short-term indicators. However, we have no suggestions as to how these may be addressed. In the investment chain itself, fund managers make their voting decisions, but generally do not follow up to ensure that their agents lodge these votes. Custodians hold the shares, but seem to have little incentive to ensure that votes are actually lodged.

Question 10: What would be the benefits and costs of more transparency in the role of fund managers, their mandates and their pay?

Comments
More transparency in the role of fund managers, their mandates and their pay may help investors to choose their agent, but we are not persuaded of any wider market benefit from such disclosures.

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Directors' Remuneration

Question 11: What are the main reasons for the increase in directors' remuneration? Are these appropriate?

Comments
Our perception, based on discussions in the market and with our clients, is that the main reasons for the increase in directors' remuneration include: • Greater transparency through Directors Remuneration Reports, which seems to have created a ratcheting effect; • Increased use of remuneration consultants, who will not benefit from recommending pay restraint; and • Pressure from US executives, where high expectations are the norm.

Question 12: What would be the effect of widening the membership of the remuneration committee on directors' remuneration?

Comments
Our perception, based on discussions in the market and with our clients, is that widening the membership of the remuneration committee may not deliver significant benefits, not least because of the difficulty of ensuring that some of the stakeholders who have been proposed would not be conflicted by a responsibility to act in the interests of the company as a whole. There may be an argument for legislating against cross-membership of remuneration committees.

Question 13: Are shareholders effective in holding companies to account over pay? Are there further areas of pay, e.g. golden parachutes, it would be beneficial to subject to shareholder approval?

Comments
Our experience is that shareholders are generally effective in holding companies to account over pay, and this will be more the case from 2011 with the Corporate Governance Code requirement that all directors offer themselves for re-election, which will enable shareholders to remove directors who are perceived to not be delivering value. We regularly see effective challenge to remuneration policies at company general meetings. The issue of golden parachutes is a complex one, given the fact that these are now so standard in executive remuneration packages, and we have no specific view to offer.

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Question 14: What would be the impact of greater transparency of directors' pay on the:

- **linkage between pay and meeting corporate objectives**
- **performance criteria for annual bonus schemes**
- **relationship between directors' pay and employees' pay?**

Comments
This is not an area in which we have specific expertise, but we would have expected that the linkage between directors pay and meeting corporate objectives and the performance criteria for annual bonus schemes should be clear in the Directors' Remuneration Report insofar as it can be without revealing commercially sensitive information.

Takeovers

Question 15: Do boards understand the long-term implications of takeovers, and communicate the long-term implications of bids effectively?

Comments
We believe that boards do understand the long-term implications of takeovers, and communicate the long-term implications of bids effectively. However, it is important not to overlook the pressures placed on them by investors with a focus on short-term indicators or a desire to obtain short-term benefits. Effective board evaluation will help to ensure that the performance of the board is adequately assessed in this regard.

Question 16: Should the shareholders of an acquiring company in all cases be invited to vote on takeover bids, and what would be the benefits and costs of this?

Comments
We are not persuaded of the benefit of requiring shareholders in an acquiring company to vote on takeover bids unless this can be enforced on non-UK acquiring companies. We accept the argument that this may be desirable in the light of studies suggesting that value is often not increased for acquiring company shareholders, but believe this is more than outweighed by the competitive restriction that it would place on UK companies. Effectively the Government would be increasing the likelihood that UK companies will be taken over by a non-UK predator.

Question 17: Do you have any further comments on issues related to this consultation?

Comments
No thank you.