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

13 January 2011

Dear Mr Gray,

BIS Long-term Focus Consultation

We strongly welcome this BIS initiative to encourage corporate Britain to be more long-term in its thinking. In particular, we believe that the investment chain contains many opportunities for conflicts of interest and short-termism and point out possible ways in which these can be overcome. We focus on the fiduciary duties of directors to their shareholders and those that exist in the investment chain.

By way of background, the BT Pension Scheme is the largest private sector pension scheme in the UK. It owns Hermes Fund Managers Limited (HFML) which is one of the largest asset managers in the City of London. Hermes Equity Ownership Services, an HFML subsidiary, responds to consultations on behalf of many clients from around Europe and the world, including the BBC Pension Trust, the Lothian Pension Fund, The National Pension Reserve Fund of Ireland, PKA of Denmark, PNO Media (Netherlands), Canada's Public Sector Pensions Investment Board, and VicSuper of Australia (only those clients which have expressly given their support to this response are listed here).

We answer the specific questions in the consultation paper below.

Yours sincerely,

Tim Goodman
Hermes Equity Ownership Services Limited

Helene Winch
BT Pension Scheme Limited

HERMES

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:

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Long-term Focus Consultation
Corporate Law and Governance
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Organisation (if applicable): Hermes Equity Ownership Services

Address: Lloyds Chambers, 1 Portsoken Street, London, E1 8HZ

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

	Quoted company
	Other company
x	**Investor or investment manager**
	Business representative organisation
	Investor representative organisation
	Non governmental organisation (NGO)
	Trade Union
	Lawyer or accountant
	Other (e.g. consultant or private individual)

The Board of Directors

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

Comments
The answer to this question is more complex than a simple yes or no. All boards should be looking at longer term factors as part of their risk and opportunity analysis as they develop and refine strategy. What constitutes long-term will vary by industry: the oil industry and fashion retail have very different time horizons for example. However, all businesses will be affected profoundly by longer term factors (one only has to think about the revolution in IT, data, telecoms and the internet or the shift of much manufacturing away from the UK to the developing world and so on). We believe that all properly functioning boards will consider the long term as appropriate for their business. Notwithstanding this assumption there are a number of factors that almost universally result in a shorter term focus. Despite some shift away from equities by UK pension funds and insurance companies, there has been an increase in equity holdings by similar overseas investors. Directors of companies owe a fiduciary duty to these owners, and importantly their underlying beneficiaries: pension fund members and policyholders. However, these long-term owners, in the main, do not intermediate directly with the directors. Within the investment chain fund managers are typically appointed to invest on behalf of pension funds and insurance companies. This means that not only is there an agency problem at board level there is also one at fund manager level (typified by many conversations between fund managers and boards that focus on factors influencing short-term share price movements) and sometimes also between pension fund trustees and insurance company boards and their underlying beneficiaries. Capital allocation and decision-making is dominated by the fund managers and boards rather than by the underlying owners or their representatives. Both boards and fund managers tend to have shorter term perspectives and incentives than those of the underlying owners. Whilst we will discuss this more later, we would note at this stage that most incentive arrangements for executive directors focus on annual and three year time horizons; fund managers can often have one year horizons. Therefore capital allocation and decision-making is likely to be dominated by shorter-term decision-making even though the underlying owners of the business wish the companies to be run and managed on their behalf both to create and to protect wealth over the longer term. The long-term is not simply an aggregation of a series of short-term periods. Without a long-term strategy that is reviewed and executed effectively, companies are likely to be doomed to be out-witted, out-performed and over the long term less able to compete even if in the short term they perform well.

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
We believe that there are enough shareholder identification measures in place and the current Companies Act regime permits sufficient identification of shareholders except for one major point: where shares are held within the pooled funds of fund managers, the underlying beneficial owners can be hard to identify individually. This increases the power of the fund manager over the shares, particularly as in nearly all cases they also retain control over the voting rights. We believe that the legal framework could be strengthened to ensure easier identification of share holders (see below). Enacting legislation to ensure that the underlying holders control the voting rights over pooled funds may be more difficult but the regulator of fund managers should ensure that the underlying voting rights are retained and readily exercised by the beneficial owner if shares are held within pooled funds as part of their testing of the fund manager's fiduciary obligations to its clients. We note that it should be a requirement of listed and quoted companies to have similar shareholder identification measures enshrined in their articles if they are domiciled other than in the UK.

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
There has been a shift over the past period towards UK pension funds holding fewer UK equities. At the same time long-term foreign investors, including sovereign wealth funds have grown and their exposure to UK equities has increased. Other developments have included increased short-term holding of UK equities as hedge-funds, high frequency traders and similar have grown. Meanwhile, many retail investors now hold their shares via nominee accounts for a variety of reasons. Markets abhor vacuums and, whilst it is important not to overstate their influence and size, this hole is being, at least partially, filled by less long-term entities with trading rather than ownership philosophies. Not least among the reasons for this change have been regulatory pressures on pension funds. That pressure continues – most recently with the Pension Protection Fund's levy proposals which strongly incentivise bond investment. These regulatory pressures also apply in different forms to other in theory long-term investors; for example, the influence on insurance companies of Solvency II and its predecessors. Much of the regulatory change has significantly negative unintended consequences: as investors shift more to fixed income portfolios they invest in higher proportions of risky fixed income assets to maximise returns and use swaps and other derivatives to increase their exposure to attractive markets. This increased risk and the use of derivatives is not at all what was intended. Such regulatory intervention has also

driven the shift into other asset classes such as private equity and hedge funds, both of which have been associated, not always correctly, with short-termism. There is therefore a danger of regulatory intervention as it may result in unintended consequences.

We would also note that public authority contracts fall under the EU's public sector tender regime which requires retendering every three years. Whilst there are clear public interest benefits in this regime, it does mean that mandates focused on the long-term are more difficult to maintain.

What has been relatively unchanging during these changes – and an issue that is not fully resolved by the Stewardship Code – is that the fund managers who are appointed by the long-term owners and retail investors (many of whom are long-term owners) are frequently rewarded and remunerated according to short-term measures, frequently of no more than a year's duration.

Disappointingly, these owners, the institutional and retail customers of the fund management industry, have not so far been able to better align the interests of their agents with their own. For instance, most payments for success are as a result of short-term increases in asset values, normally relative to an index. This encourages trading rather than long-term investment aligned to the longer-term periods to which long term investors are more closely aligned.

Trading rather than long-term strategies additionally siphon wealth away from the underlying owners and into brokerages via transaction charges, the spread in prices and of course into the government's coffers via stamp duty.

Moreover there are problems with the sell-side analyst community. These analysts tend to think primarily about trading of shares, rather than more deeply about companies' long-term prospects. As their work is funded by commission payments for trading, this focus on transactions is inevitable.

All these factors stem from problems in the investment chain which serve to make the connections between the owners of capital and the companies in which the capital is invested indirect, with opportunities at each stage for conflicts of interest and increased short-termism.

What is needed is a shift to a form of more responsible asset management, which more closely aligns the interests of the fund manager with those of the client. As well as taking account in investment decision-making of longer-term issues such as governance, strategy and culture and environmental, social and economic sustainability risks, such an approach would focus on the fiduciary duty owed to clients. This fiduciary approach includes: transparency over mandates and benchmarks, and honesty about performance relative to them; a focus on risk-adjusted returns, encompassing all the key risks from a client's perspective; a genuinely long-term approach to investment; and effective alignment of interests through fee and pay structures.

On the issue of fee and pay structures, we would welcome the FSA being flexible

when applying its rules to individual remuneration structures such that they respect the impact of fee structures which themselves build in long-term performance measurement and deferral. It would be unfortunate if a one-size fits all approach to remuneration hampered the development of longer-term fee structures.

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

Comments
Engagement, to be effective, is time and resource intensive because it requires detailed research, experienced staff (usually requiring a different skill-set) and a longer-term perspective in which to effect change. Those who have a shorter-term perspective will not be interested in effecting change that can take years to come about. Above all, engagement has a financial benefit over the long-term and such a result is the most important indicator of effective engagement. If engagement were easy, everyone would be doing it. For engagement to be successful one must identify companies at which there are issues on which to engage, develop an understanding of the issue, and engage persistently with the company to attempt to bring about change. To achieve worthwhile change is often not easy; it may take a number of meetings with various board members together with associated correspondence and other contact, working with other shareholders and other stakeholders as well as using voting influence as a tactical tool. Before an engagement starts, it will be necessary to conduct research, identify objectives and milestones along the way so that success can be identified. One important aspect of engagement which we believe is important is that, except in very rare circumstances (such as when relations with the board have irretrievably broken down) details of any engagement should be kept confidential between the board and those engaging (and their clients). Whilst leaks to the media or elsewhere may act as a catalyst for progress over the shorter term, they will sour future relations as trust will be eroded and such leaks can also serve to increase the tension, thereby making useful progress more difficult. We are strongly of the view that to attempt to measure engagement quantitatively is disastrous. This will lead to poor quality engagement which will not achieve significant success, will alienate boards and will make it more difficult for those who wish to conduct more serious engagement as their efforts will be in danger of being tarnished by association with those who are ill equipped to do such work. Not only for confidentiality reasons but also for ensuring quality should engagement be judged solely by the clients of those conducting it and not broadcast to the general public.

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

Comments
This question cannot be answered "yes" or "no". As we have previously discussed the fund management industry acts as agents for many long-term owners. We have also argued that there are significant problems with this agency relationship, notably the short-term outlook of much of the fund management industry. In turn this means that many fund managers do not place much emphasis on longer term matters, not only of governance related matters but also of longer term risks such as climate change, stakeholder relations and reputational management. In turn, this leads to unequal relations within many fund management firms where governance and other longer term matters are not given sufficient prominence or importance. It also leads to Socially Responsible Investment strategies for a small proportion of the funds under management as a substitute for taking a longer term approach to all investments. In contrast, within some firms the dialogue is more developed and longer-term factors are taken into account in investment decisions, dialogue with companies and voting decisions. Whilst the Stewardship Code has both reflected and encouraged this development, as has the development of some more explicit mandates from owners, much of the fund management industry is at best playing lip service to this dialogue. We believe that the owners themselves must ensure that fund managers run money over more appropriate time frames. This in turn will drive better dialogue on longer-term issues which will therefore assume greater importance. This problem spills over into relations with investee companies. We would suggest that what frustrates companies is to have two separate, sometimes contradictory, conversations with different representatives of fund management firms, one covering shorter-term investment (trading) matters and the other longer-term factors. This problem might be addressed in multiple ways, perhaps by fund managers integrating longer-term issues into their analysis and investment decision-making, or by the staff considering governance and long-term factors having greater cognizance of the business specifics of the company in question. We would note, however, that in some ways the two-pronged dialogue is a reflection of the bifurcated nature of the investment community, with investment decisions predicated on short-term thinking, fund managers incentivised over the short-run and focused on risks to the fund manager, while the governance and other long-term risks matter to the underlying clients, who seek to ensure that these are raised and addressed through different routes. It will only be addressed in the end by a more effective alignment of interests of fund managers – both firms and the individuals within them – with the long-term risks and perspectives of their clients.

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
The cost of voting disclosure should be minimal. The chief benefit of vote disclosure is transparency and as a demonstration that the institution has voted. It is important however to note the caveats towards voting disclosure being viewed as particularly meaningful. It is a very quantitative measure. From mere voting disclosure, it is impossible to understand the thought processes behind the voting or the care taken or the contact that has taken place between the company and the voter. It is self-evident that voting in line with a proxy agency or in line with the board's recommendation is not in any sense engagement. Moreover, a conversation that merely obtains clarification on a point that has not been well disclosed prior to voting is not an engagement. Engagement as a minimum must be concerned with effecting change. However, merely contacting a company to explain how an investor intends to vote or how it has voted will be unlikely to effect significant change. Most engagement will involve far more than this simple step as it generally takes more than one conversation to make substantive change. Such change is more likely to come about when those advocating change have a healthy, constructive relationship with the board. Votes against the board can jeopardise the achievement of change by making the relationship more confrontational than it need to be. Discussing concerns with boards and agreeing to change over time rather than sending a signal via voting against the board is far more resource intensive, but may achieve greater influence and over time better results than casting votes with minimal contact either beforehand or afterwards to explain the reasons. We would therefore argue that voting against management is likely to indicate that engagement has not yet been successful or has failed or as is frequently the case a substitute for engagement. At the very least, voting and voting disclosure is a very blunt tool. Without meaningful dialogue with the company, voting can erroneously be seen as a substitute for engagement. We also explain elsewhere that without disclosure as to the reasons for casting votes both for and against resolutions, assessing the quality of voting decisions by a fund manager or underlying owner may lead to the wrong conclusions. Moreover, as we also explain, disclosure of these reasons may jeopardise the spirit of trust and mutual respect that is important in nearly all engagement work. We would also note that some owners are disenfranchised as their fund manager casts the votes attached to their shares without consultation and without the owner having the ability to direct the votes. Votes are often therefore cast in line with the fund manager's strategy that may not be aligned to the long-term, as we have already discussed. An underlying beneficial owner may also use different fund managers with different voting intentions, leading to situations where a single investor's votes cancel each other out. There should be a requirement on fund managers to enable their clients to vote their shares easily in the way in which they wish to do so. This right should extend to pooled funds. It is clear to us that a fund manager's fiduciary duty to

its clients can only be upheld if it provides this right without equivocation and without additional cost. We believe that the investment industry's regulators must test this point as part of their supervisory work.

Question 7: Is short-term ism in equity m arkets a problem and, if so, how should it be addressed?

Comments
Please refer to our previous answers which demonstrate that inappropriate short-termism is a problem in the market. We believe that the investment industry needs to be transformed by participants within it, most notably long-term owners need to ensure that the fund managers that they appoint are aligned both philosophically and via the construction of their consideration to them. The fund management industry must ensure that it fulfils its fiduciary duties to its clients. The sell-side analysts need to be more demonstrably independent from the companies about which they conduct research and from the trading activity of the banks which employ them. Issuers' boards need to be firmer on the importance of longer-term perspectives. Those companies who have refused to provide quarterly results updates should be applauded as an important step in this direction. **To address some of these failings we suggest:** **Better disclosure to underlying beneficiaries by pension funds and insurance companies:** As a minimum the pension funds and other long-term owners of assets should explain the principles behind the fee structures for their fund managers, in particular explaining the time period over which performance is measured, the performance measures used and how they align the fund manager with the beneficial owner. **Fund manager remuneration should be better aligned** We also believe that there should be far more investment by fund managers in their own schemes so that rather than taking commissions they share in the risks as well as the upside of their strategies. We therefore believe that disclosure to clients from fund managers should include how much of the firm's wealth and the fund manager's remuneration is invested, and reinvested when performance fees are paid, in their funds.

Moreover, base fees should solely cover the administrative costs of the fund manager. To minimise the ability to inflate base fees there should be more transparency over costs and their allocation for fund managers' clients.

Fund managers should explain how their strategies are aligned with the mandate agreed with them and in the client's long-term interests As well as disclosure on remuneration, fund managers should therefore provide details to their clients on how their strategy is aligned with their clients' interests, in particular explaining how buying and selling strategies are tied into developing sustained, long-term value and managing risk and how the frictional costs of transactions are weighed up against these long-term goals. They should report to clients the frictional costs of share trading. Mandates should set turnover expectations and subsequent reporting should provide explanations for any breaches of these expectations. Such mandates should also discuss and agree the risk profile of the fund and be otherwise transparent to demonstrate alignment to the fund manager's clients. Fund managers must ensure that they are good fiduciaries of their clients' monies and this means putting clients' interests ahead of their own. This means putting integrity ahead of winning business that is not appropriate for clients.

Pooled accounts Fund managers must ensure that their clients have unrestricted voting rights in pooled accounts and that they report to companies, on request, the major holders of shares within them. Moreover, the underlying owner should have the ability to exercise its ownership rights, such as voting and engagement, over these shares.

Voting The regulatory intervention on voting in the US and Europe should be supported and the following should be enacted:

- Custodians to facilitate and support voting;
- An audit trail of votes should be enacted so that those voting obtain confirmation that their vote has been successfully cast
- Holders of borrowed stock should be unable to vote

Once enacted such reforms will enable greater use of voting rights in a considered way.

Regulatory supervision The relevant regulators within the industry must ensure that the fund managers, their clients and their clients' beneficiaries have their fiduciary rights safeguarded, taking into account these matters.

Other points

In our response to question 3 we touched on the sell-side analyst community. Whilst there are some creditable exceptions to the research that is more ordinarily produced, the fundamental issue would be best resolved by owners becoming more assertive over their rights and reducing the conflicts in the investment chain. The sell-side analysts exist to encourage trading, thus creating brokerage revenues. Research that encourages long-term investment is therefore counter-productive for many brokerage firms. As fund managers become increasingly aligned to the longer term, demand for

more strategic, long-term research will increase. Moreover, the analyst community should begin to focus their discussions with boards on longer term issues which will have further beneficial effect.

Long-term owners, particularly smaller pension funds are disparate, isolated and find it hard to exercise their ownership rights as a result of the asymmetry of power, information and influence compared both to companies and fund managers. It is important that pension funds are more empowered by solutions to these problems: these might best include making it easier for pension funds to consolidate.

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

Comments
We refer to our previous answers.

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

Comments
We refer to our previous answers.

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

Comments
We do not believe that the costs of greater disclosure either by the fund managers or by their clients would be significant. However, we see significant benefits in greater disclosure: • Trustees and other agents of the beneficial owners would have a greater sense of different approaches in the market and could more readily assess what was available and what most readily fitted their longer-term requirements; • Underlying beneficiaries would be able to challenge the trustees if they felt mandates were awarded that were not properly aligned We further believe that such transparency would help discussions between the board and its owners and their representatives as it would assist the board in understanding better their shareholder register. We would note that there are likely to be difficulties around commercial sensitivity of public disclosure of the precise details of mandates and consideration. However we believe that the general terms and descriptions of the mechanisms by which fund

managers are rewarded would nevertheless be helpful.

Directors' Remuneration

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

Comments
Whilst there are global competitive pressures on pay, particularly on the largest companies and in booming sectors, there is some evidence that both remuneration committees and investors have not been as successful as they should have been in aligning pay to longer-term performance. There have been a number of successes, such as reducing contract periods, abolishing retesting of share awards and more transparency over pay schemes. However, pay appears sometimes to be increasing faster than it needs to and is not always aligned as strongly to performance as it should be. Reasons for this include: • Regular benchmarking rather than paying what is the minimum appropriate to recruit, retain and motivate; for example newly promoted individuals should not be paid the median for their role; we also note that selection of comparator groups can enable misleading results to be obtained. Benchmarking can be skewed to provide results that can demonstrate that directors are underpaid by careful selection of comparators. We have recently seen one relatively newly appointed executive be compared with executives of larger, more successful companies in his industry who have been in place for long periods in an attempt to justify a substantial pay increase. This is not unusual. • Pay schemes often have design flaws which enable substantial payouts to the executives when shareholders' experience is different. For example, sometimes awards are made for relative total shareholder performance (TSR) being above median whilst absolute TSR has fallen; remuneration committees seldom use their discretion to scale back awards to align more properly their executives with the experience of shareholders who have suffered an absolute fall in their returns. • Directors tend to receive bonuses and share awards as multiples of salary. In the event of share price decreases, this has the effect of increasing the number of shares awarded and therefore the potential return from any increase in TSR via share price accretion and dividend payment. However, shareholders may still be nursing losses from their

original holding whilst the executive has the opportunity to obtain substantial awards for the three year period for which he was granted new conditional shares at a low price.

- Bonuses are seen as an entitlement rather than as a result of good performance. This leads to bonuses being paid whilst owners have suffered poor performance.
- Retention is being used as an excuse to over-pay: if there is a retention issue, it suggests that the board has not addressed succession sufficiently well;

We could provide a number of other examples of problems. Essentially, remuneration committees often develop pay policies that are insufficiently aligned to the long-term and are generic in nature rather than specific to the company. Where pay seems unmerited on the high side, they are generally reluctant to resolve the issue, in particular through the use of discretion, whereas when performance is less good there often seems more willingness to use discretion or to claim that softer measures have been met to enable payments to be made.

We would note that the previously discussed conflicts in the investment industry also play a baleful influence on remuneration. As a result of the inappropriately short-term focus of much of the industry, there is a preponderance of focus on shorter-term measures in remuneration schemes. For example, earnings per share is used very widely, despite its flaws including the danger of over-leverage, its susceptibility to change as a result of accounting choices and it taking no account of the cost of capital. All three of these drawbacks can cause significant problems to companies over the longer term.

Remuneration consultants continue to play a questionable role. We believe that remuneration committees must explain better how they ensure that consultants are independent and should, as part of this assurance, approve all appointments of the consultants for other matters. The remuneration consultants' code of practice needs to be properly independent and therefore should be properly monitored, policed and enforced. Reliance on the self-proclaimed integrity of the firms and individuals within them is insufficient.

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

Comments
We do not believe that widening the membership of the committee solves the problem. The fundamental issue with remuneration committees is that of quality and as part of investors' assessment of quality is their communication – both via consultation, engagement and disclosure in the annual report. We would therefore encourage remuneration committees to improve their performance rather than to believe that there are panaceas available. Meanwhile the investment community should ensure that it engages more fully with the committees to encourage not only more thoughtful schemes but also better disclosure of them. In this regard, consultations should be more thoughtful and sufficient time should be allowed for them to take place in a constructive manner. Too many consultations take place too close to AGMs and the dispatch of notices of meetings. Remuneration committees should plan better to ensure that this does not happen.

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
We do not believe that more votes solve the problem; in fact they risk replacing thoughtful engagement with voting – a vote against the board's recommendation at an AGM typically means that engagement has failed (or has not properly taken place). We would encourage remuneration committees to be bolder in pushing back on undeserved pay awards, using discretion appropriately and engaging with shareholders appropriately about its use, particularly when discretion is upward, and explaining clearly in the remuneration report about its use. Moreover, we would encourage remuneration committees to be less timid when confronted with having to require changes to executives' contracts, if necessary, of directors in return for the consideration payable to directors. Disappointingly, remuneration committees are too timid in their dealings with executive directors in a way that causes reputational damage to the companies of which they are directors.

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
We believe that good disclosure is an essential part of the remuneration committee's role and it should help to explain the rationale of the remuneration policy. This is why we have been co-sponsoring the Transparency in Governance Awards with ICSA which include awards for remuneration reporting. We do not believe that disclosing the relationship between directors' pay and employees' pay is helpful via quantitative measures, nor do we find the usual boilerplate that pay is set taking account of pay elsewhere within the organisation in any way germane. Nevertheless, helpful disclosure on all these issues that demonstrate that the remuneration committee is able to articulate its decision making process is extremely helpful.

Takeovers

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

Comments
The furore over the possible acquisition by the Prudential of AIG's Asian assets demonstrate that this is not always the case. We would refer BIS to our response to the Takeover Panel's recent consultation for our wider views.

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 do not believe that it is helpful for acquiring companies to put all takeovers to a vote. This would put publicly quoted companies at a disadvantage to private equity companies and would put UK companies at a disadvantage to foreign ones.

As we have previously explained elsewhere in this response, voting against management can represent a failure to engage or a failure of engagement. The example of the Prudential is instructive; the takeover was not put to a vote because of the likelihood of the takeover being voted down. This was as a result of intensive engagement with the company.

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

Comments
To encourage greater board diversity (and for us this includes not only gender and ethnicity but also different backgrounds, attributes and experience) and to encourage greater debate about board composition both amongst boards and their owners, we believe that 1% rather than 5% of voting rights is a better threshold for being able to nominate directors. We believe that this should be introduced and that companies should publicise the closing date for nominations to be permitted without cost well in advance of the deadline. Whilst candidates will require election by ordinary resolution, so inappropriate candidates will not be foisted upon boards, the facility should encourage nominations committees to be more active in engaging with investors on diversity and in ensuring the appropriate board balance.