Investment Management Association

ima

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clgconsultations@bis.gsi.gov.uk

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

Dear Adam

A LONG-TERM FOCUS FOR CORPORATE BRITAIN

IMA represents the asset management industry operating in the UK. Our members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of £3.4 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, the Annual IMA Asset Management Survey shows that in 2009 IMA members managed holdings amounting to 40 per cent of the domestic equity market.

In managing assets for both retail and institutional investors, IMA members are major investors in companies whose securities are traded on regulated markets. Therefore, we have an interest in the effective, efficient and transparent allocation of capital and the long term sustainability of UK companies. We welcome the Department for Business Innovation & Skills issuing this call for evidence and giving us the opportunity to comment and set out in the attached our comments on the detailed questions and below our key points.

In the Paper the Secretary of State asks whether more needs to be done to secure growth and whether the UK's corporate governance framework promotes long term growth or undermines it. It is widely accepted that the UK operates high standards of governance and that successive codes and the operation of the "comply or explain" regime have led to a steady improvement in the stewardship of UK companies. As he acknowledges in the Foreword, "we are now building on our high standards of corporate governance with a new Stewardship Code" and also have a new Corporate Governance Code which is effective for financial years beginning on or after 29 June 2010.

65 Kingsway London WC2B 6TD
Tel:+44(0)20 7831 0898 Fax:+44(0)20 7831 9975

www.investmentuk.org

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The role of shareholders in markets (Chapter 4)

We believe the case has not been made that there is a problem of excessively short term behaviour by investors. The great majority of investors in UK equities continue to manage their clients' money in ways that seek to build value over the long term, whether those clients are institutional investors like pension funds or investors in retail funds. They do so because it is in their interests to keep their clients by delivering sound performance over the longer term. We think it is a mistake to put excessive reliance on average portfolio turnover figures; these can be a misleading indicator of how long a manager holds particular stocks, and may be distorted by the inclusion of trading by hedge funds and other investors with explicitly short term strategies.

We were troubled to read some serious misapprehensions in the section headed "Agency problems" (paragraphs 4.23-29); these are addressed in more detail in the attached answers to the questions. But in summary, this section fails to recognise that the incentives created by the agency nature of investment management – under which client assets are held separately from the manager and remuneration is by an arm's length fee – are fundamentally different from those of a proprietary trader or other entity trading its own assets.

Thus, the suggestion that investment managers can generate income for themselves through fees from excessive portfolio changes is wholly mistaken. Very similar misunderstandings run through the discussion of fund manager remuneration, which is in any event currently being addressed by the Financial Services Authority.

Shareholder stewardship

IMA supports the transparency afforded by the UK Stewardship Code and the related FSA requirement that investment managers disclose their commitment to the Code or explain their alternative business model. We are working with the FRC in monitoring what this means in practice and plan to report in March 2011. We consider that these new initiatives should be given time to take effect before changes to the UK's corporate governance regime are considered. Nor do we believe that changes to the regime would necessarily promote long term growth in that the most important factor is the underlying business environment: the availability of skills; the supporting infrastructure; and a tax system that encourages innovation and ensures the UK remains competitive. Indeed with so many UK companies deriving revenues from overseas, it is vital that the UK's market is open to international investment – as noted above, UK institutional investors only hold around 40 per cent of the UK equity market.

We think, however, that the Call for Evidence may not fully recognise the limitations in what shareholder engagement can achieve. Investment managers do not run companies; they do not set strategy; and they are not insiders, having access only to information that is available to the market as a whole. Managers compensate for such information asymmetries by diversifying their portfolio construction. Also UK investment managers typically have relatively small holdings, particularly in larger companies. This can at times make it difficult for them to be effective on their own and yet there are concerns that should they come together and act collectively, issues of insider trading, changes of control, and industry collusion and "the concert party" rules could be triggered. The FSA has issued guidance and the Takeover Panel a Practice Statement to help allay these concerns and facilitate collective engagement. However, it is questionable whether these go far enough in that a number of our members still have concerns and the guidance and Practice

Statement will not necessarily change behaviour in that uncertainty still remains.

The Paper recognises the issues around the changing nature of UK share ownership and an area the Government could address is the fact the UK tax system acts as a disincentive to investment in equities. Thus with an investment in equities there is stamp duty on purchase, the dividend income is taxed and paid out of profits that have been subject to corporation tax, and there is tax on any gain on sale, whilst bonds and cash are only subject to income tax. In particular, stamp duty on the purchase of shares increases the costs of capital and reduces returns to investors, and we would welcome its abolition.

Please contact me if you would like clarification on any of the points in this letter or the attached, or if you would like to discuss any issues further.

Yours sincerely

Liz Murrall
Director, Corporate Governance and Reporting

ANNEX

IMA's ANSWERS TO THE DETAILED QUESTIONS RAISED

IMA's answers to the detailed questions raised are set out below.

THE BOARDS OF DIRECTORS

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

We believe that in general UK boards have a long term focus and do not base their strategic decisions on short term movements in the share price. We know of no evidence that Board policies are driven by short term share price movements – in any case effecting change to a company's commercial strategy takes time, and can only be done within a long term framework. In order to benefit their company's shareholders, employees and other stakeholders, it is important that boards plan for the long term as is now recognised in Section 172 of the Companies Act 2006, which introduced a statutory duty for a company's directors to act to promote the long term success of the company.

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?

It is a Companies Act requirement that shareholdings in any UK listed company of three per cent and over have to be disclosed. For shareholdings of less than three per cent, Section 793 of the Companies Act 2006 allows a public company to require a person it knows, or has reasonable cause to believe, has an interest in its shares to disclose the fact.

We consider these provisions strike the right balance in that we would have serious doubts about the practicability of requiring all investors to provide such information. Nevertheless, due to way shares are held under nominee names such that shareholders are not readily identifiable, companies may not know when it may be appropriate to make such an enquiry. Thus it would be helpful if institutional investors ensured that, where they have holdings in nominee names, they alert companies to their identity and reveal in which name they hold their shares.

Even when a company has identified the investment manager concerned, it may not be obvious which part of the group – which geographic office, or which subsidiary, for example – is the investor. To address this, consideration should be given as to whether registrars, custodians, investment managers and issuers could provide a more comprehensive service than is available today.

SHAREHOLDERS AND THEIR ROLE IN EQUITY MARKETS

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

Around twenty years ago UK insurance funds and pension schemes were typically the major long term owners of UK equities with exposures approaching 60 per cent of the UK equity market. As the chart at paragraph 4.2 of the Paper indicates, since the mid-1990s the proportion of UK equities owned by UK institutional shareholders has declined from 60 per cent to 40 per cent. There are several reasons for this.

First, there has been a trend worldwide towards investing in international equities and not just domestic shares. Secondly, the equity allocations of UK pension funds and life insurers have declined, reflecting the changing nature of liabilities and the impact of accounting and

solvency based regulation. The UK tax system can also be a disincentive to invest in equities – see question 8. At the same time while there has been strong growth in UK mutual fund holdings of UK equities, this has not been sufficient to counteract these other trends.

As noted in the Paper "the consequences of the international investment market have been overwhelmingly positive for the UK[1]". However, it can be more difficult for overseas shareholders to engage with UK companies which, given their increasing presence on UK share registers, can further limit what engagement can achieve – see covering letter.

4: What are the most effective forms of engagement?

There is no clear agreement on what is meant by the terms "engagement" or "stewardship". The preface to the Stewardship Code states: "engagement includes pursuing purposeful dialogue on strategy, performance and the management of risk, as well as issues that are the immediate subject of votes at general meetings".

However, engagement includes any procedures by which institutional investors seek to improve long term value, and can involve more than just dialogue for example, in extremis it can include tabling a resolution or convening an Extraordinary General Meeting. It is now an FSA requirement that investment managers disclose on their websites their commitment to the UK Stewardship Code or their alternative business model. The Code sets out good practice for engagement and in summary, expects institutional investors to:

- disclose publicly their policy on how they will discharge their stewardship responsibilities (so that there is transparency on their approach, if any, to engagement);
- monitor their investee companies (essentially so they can determine when it is necessary to enter into an active dialogue with investee company boards);
- be clear when and how they will escalate their activities;
- have a clear policy on voting and disclosure of voting activity; and
- report back to clients.

The Code, which is to be applied on a comply or explain basis, allows investors to take a range of approaches – for example, some may be more proactive and meet with companies regardless of whether there are issues, others may be reactive and only enter into a dialogue when there are concerns, whereas others may restrict their activities to voting. How a manager engages and what is the most effective means of doing so depends very much on the circumstances concerned and the expectations of its clients.

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

The interaction referred to in question 4 may take place at any level within the respective organisations involved – investment managers may involve individual fund managers, analysts and corporate governance staff, and the corporates may include both executive and non-executive directors, and other management and personnel. Most meetings with managers will be on issues about company strategy/performance and in the main are attended by fund managers and research analysts. But investment managers often employ governance experts, with voting and other agencies to assist, which may have different lines of communication with companies, for example, via the Company Secretary or NEDs.

[1] Paragraph 4.3.

Investment managers seek to ensure that different messages do not pass along these different channels of communication. IMA benchmarked the industry's engagement and adherence to the Statement of Principles[2] drawn up by the Institutional Shareholders' Committee (ISC[3]), and on which the Stewardship Code is based through regular surveys. The last survey to 30 June 2008[4] covered 32 investment managers representing 68 per cent of UK equities under management, and described how they seek to ensure that engagement is integrated into the investment process. Thus 30 managers reported that the engagement policy is approved at a senior level in the organisation. Similarly, for 18 managers the final voting decision on a controversial issue is taken at a senior level and a further 13 firms actively involve the individual fund managers; in only one is the decision reserved for the engagement specialists.

More recently, the Guidance to Principle 1 of the Stewardship Code expects managers to disclose their internal arrangements on how stewardship is integrated into the wider investment process[5]. We are working closely with the FRC in monitoring adherence to the Code for 2010. We plan to publish the final report on this monitoring exercise in March 2011 and are specifically looking at this issue.

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

Voting is important as a means for shareholders to express a view but, as noted under question 4, stewardship/engagement is more than just voting in that it is an ongoing and regular process. A focus on voting undermines this in that, whilst institutional investors will vote their shares, they will often seek to influence management in advance of the vote and may only vote against company management when that engagement has failed.

IMA supports transparency and the UK Stewardship Code expects institutional investors to disclose their voting polices publicly and to report to their clients on how they have exercised their responsibilities. It also states that they should disclose publicly how they have voted and where they do not explain their reasons – a "comply or explain" approach. However, we are strongly against fund managers being required to disclose how they have voted to the public for the reasons set out below.

- *The voluntary approach is working and an increasing number of managers are making their voting records public.* The industry is committed to ensuring that the voluntary approach delivers. IMA's regular surveys on its members' engagement activities confirmed that managers increasingly put details of their voting on their websites and make them public. According to the last survey, as at 30 June 2008, 24 managers put details on how they had voted on their website, compared to 15 as at 30 June 2006; 10 in 2005; and seven in 2004. One disclosed its policy on disclosure. As noted, we are currently monitoring adherence to the Stewardship Code and plan to report on this in March this year. However, our preliminary findings indicate that as at 30 September 2010, 26 asset managers and six pension funds made details on how they have voted public with two asset managers committing to do so in the future. Of the 13 asset

[2] http://www.investmentuk.org/press-centre/2002/20021021
[3] The members of the ISC are: the Association of British Insurers; the Association of Investment Companies; the National Association of Pension Funds; and the Investment Management Association.
[4] http://www.investmentuk.org/press-centre/2009/20090520-01
[5] The Stewardship Code is now the responsibility of the FRC which is listing those managers that commit to the Code on its web site with a link to the manager's policy statement.

managers that did not publicly disclose, in all cases they made this information available to their clients (some on request) and some stated that they do not publish publicly for reasons of confidentiality.

- *The voting process could be undermined*. Public disclosure could undermine and generally "dumb down" the voting process due to the sensitivity of the issues and the confidentiality necessary. Public knowledge of a disagreement with investee company management may also have an adverse effect on value without solving the disagreement and could result in institutional investors, their employees or clients, facing the risk of inappropriate pressure by special interest groups.

- *A "one-size-fits-all" requirement would undermine progress.* As well as looking at the number of managers that disclose, the IMA survey analysed voting details published on web-sites. This showed a wide variation in the matters reported, indicating the complexity of this matter and the difficulty of introducing regulations that would require uniform disclosure. In effect, imposing a "one-size-fits-all" requirement would undermine progress.

- *Disclosure would be costly.* For those that do not disclose, there would be costs in disclosure of: setting up systems; vetting the information; and analysing the information. These costs are likely to be significant with no real benefit as the majority of retail investors take little or no interest in how votes are cast – they invest in funds in order to secure a return.

- *Mechanistic, meaningless reporting would result.* Requiring disclosure would result in pages of statistics and tables, which could be meaningless without further analysis. Furthermore, as investment managers act for different clients, they can vote a particular block of shares different ways. For example, some beneficial owners give managers discretion to vote, some give specific instructions and some ask that the recommendations of a particular voting service are followed. It would not be appropriate for the number of shares voted to be disclosed and thus managers will end up disclosing "some shares were voted against, some were voted for and some were consciously with held".

In conclusion, we consider that the framework for disclosure under the Stewardship Code for those investment managers that commit to it is working well.

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

Very often the term "investor" is used to describe a range of players in the equity markets: the buy side firms and the investment managers that manage pension funds, insurance funds and collectives; the sell side firms that provide specialist research to the buy side and execute proprietary and client orders; and proprietary firms that trade their own capital. These participants each have a role in the market place but are highly diverse and operate a range of strategies and approaches.

To consider investment managers specifically, there is a similarly wide spread of approaches. Many managers of retail funds and of institutional money continue to pursue classic "buy and hold" strategies. Indeed this is the essence of "active" fund management – the manager seeks to identify stocks which are under priced by the market and buys them in the expectation that over time the return will be greater than that of the market as a whole. This remains one of the most important techniques that fund managers seek to

deploy. In more recent years, there has been a growth of alternative investment strategies, for example, hedge funds and other investors pursuing "quantitative" strategies which may involve turning over portfolios more rapidly. The emergence of such strategies would shorten average holding periods across the market even if the behaviour of most managers is unchanged.

We note the reference to holding periods having fallen from 5 years in the 1960s to 8 months today[6], and have looked again at the Bank of England source which is cited. The paper in question provides no analysis in support of this conclusion, save a chart which suggests that the steepest declines in holding periods occurred in the late 1960s and early 1980s: it is far from clear what the implications of this are for policymaking in 2010. In any case, turnover figures in themselves can be misleading: turnover can be the result of changes in the composition of indices; investor funds flowing into or out of open-ended funds; or mandate changes by institutional clients. None of these has anything to do with short-termism. We are seeking to gather more material on portfolio turnover rates and will write to you again in due course.

It is vital that there are both long and short term participants to ensure market liquidity and reduce the cost of capital. Within the investment management industry itself there are a range of approaches and strategies. In particular:

- Of the £1.6 trillion of equities that IMA members manage, we estimate that around 30 per cent is run passively. Of the actively managed component, there are likely to be considerable holdings that could not be characterised as short-term: beating benchmarks still requires you to have quite a proportion of a given market, although approaches and turnover levels obviously vary. There will always be changes in holdings at the periphery as investors buy or sell as clients change or align holdings according to changes in an index for an index fund. These changes tend to be small but can distort turnover figures.

- Institutional mandates are generally awarded by clients who look at performance over five years. While performance will naturally be monitored regularly – typically quarterly – it would be very rare for mandates to be terminated on the basis of short term underperformance. Also whilst the actual investment entity may be awarded fees based on quarterly performance, individual portfolio managers' performance is assessed on a medium to long-term basis (we understand one, three and five year timeframes are used) and other factors are taken into account.

- In 2004, we sponsored a survey jointly with the NAPF on the length of manager mandates - http://www.investmentuk.org/assets/files/press/2004/20040913-01.pdf. This followed a focus on short-termism in the Myners' Report of 2001 and subsequently by the Treasury. While it showed that investment managers were under some pressure from pension funds to deliver performance in the short term, they typically retained mandates for five years or more, so that there was little sign of poor short term performance leading to the mandate being lost.

- It is usually assumed that there is good governance unless something suggests otherwise and governance does not tend to detract from an investment decision in itself. Bad governance could deter a fund manager from buying shares but is more likely to contribute to a decision to sell, especially if the fund manager has been unable

[6] Paragraph 4.19

to address issues through other means. This is more difficult the less liquid a security is and in the interests of protecting an investment's value, can force fund managers to look at removing and replacing directors if they can and it is not too costly.

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?

As noted under question 7, participants in the market are diverse and it is important that there are both long- and short- term investors for market liquidity. Thus we do not consider that any action is needed to encourage longer holding periods for UK equities. Indeed to do so could adversely impact market liquidity and increase the cost of capital.

Some have suggested that longer holding periods could be encouraged by giving preferential rights to those that hold shares for the longer term. However, there are significant practical issues in differentiating shares. For example, some investors (for example, index funds) are by definition long term but on their initial investment would be treated as short term. Nor is it clear why an active investor when it first makes a considered decision – which could be the outcome of prolonged analysis and research – to take a position in a company should be disadvantaged; this would almost certainly create market distortion. It is also unclear how an increase (or reduction) in an existing holding would be treated; if an existing long term holder was able to get the same treatment for new purchases, it would be very easy for any investor to secure better rights by taking very small holdings in many companies.

Whilst we do not consider there need to be incentives to hold equities long term, steps could be taken to encourage more investment in equities in that the UK tax regime acts as a disincentive. Thus with equities there is stamp duty on purchase, the dividend income is taxed and paid out of profits that have been subject to corporation tax as is any gain on sale, whilst bonds and cash are only subject to income tax. In particular, stamp duty on the purchase of shares increases the costs of capital and reduces returns to investors and we would welcome its abolition.

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

Paragraphs 4.23 to 4.29, which refer to agency issues, state incorrectly that "fund managers can generate income for themselves through fees related to the number of portfolio changes (which could lead to excessive churn in the equity markets) yet these may not necessarily result in increased long term value for their clients[7]".

This comment reveals a fundamental misunderstanding about the nature of investment management business. Investment managers are paid by agreed arms-length fees, normally a percentage of funds under management. Client assets are held separately from the manager. An investment management firm does not have an incentive to over-trade portfolios, because the associated costs would simply reduce investment performance (and hence a firm's competitiveness in attracting clients) and its revenues, because of the *ad valorem* nature of fees. Trading commissions accrue to market makers and brokers, not to investment managers, in whose interest it is to keep such costs to a minimum.

[7] Paragraph 4.25

It follows that the principal-agent problem posed in this section does not arise.

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

Investment managers owe their duty to their clients. Those clients may be institutions which have given specific mandates which the manager must adhere to: it is for the client to specify how it wishes the money to be managed and what reporting requirements to put in place. Managers are fully transparent with their clients. As discussed in the response to question 7 above, there is little evidence that we are aware of that this is giving rise to excessive short-termism.

For retail funds, there is not of course the same dialogue between manager and client. But authorised retail funds are subject to strict regulatory rules requiring them to be transparent about charges, pricing, portfolio composition and other matters.

As noted above under question 6, IMA supports transparency and it is now an FSA requirement that investment managers disclose on their websites their commitment to the UK Stewardship Code or their alternative business model. This will ensure that those that appoint investment managers to manage their funds are aware of how a manager exercises its stewardship responsibilities, if any.

The Code also expects those that commit to it to report to their clients on how they have exercised their responsibilities and also to have a public policy on voting disclosure. We are working with the FRC in monitoring what this means in practice. As part of this, we are evaluating the disclosures and the underlying activities that support those disclosures. We plan to publish the final report in March 2011 and consider that this framework should be given time to take effect before other initiatives are considered.

The question about pay seems to stem from the same misunderstanding that is behind Question 9. See, for example, the comment in paragraph 4.28 "Investors suffer if the fund managers acting on their behalf take too much out of the system". While it is true that the level of fees has an impact on performance, this comment is made in the context of a paragraph about pay of individual fund managers. Individuals are paid by the firm, not by the client, so that decisions about an individual's remuneration do not affect the cost to clients.

The remuneration of individual fund managers is currently being addressed through the FSA's implementation of the Capital Requirements Directive, and we do not believe there is a case for further regulation.

DIRECTORS' REMUNERATION

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

IMA considers remuneration, including directors' remuneration, is ultimately determined by market forces in a free economy. The largest and most successful companies have to compete globally for talent, and ensure they can recruit the best people.

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

IMA believes the membership of the remuneration committee should remain a committee of the board made up solely of board members. Whilst the remuneration committee is free to take the views and advice of others, as it sees fit, remuneration is a board responsibility, and should remain so. Institutional investors do not seek or want management responsibilities for remuneration.

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?

In accordance with UK company law, shareholders have an advisory vote on the board's remuneration report at the AGM and have to approve all equity related share incentive schemes. We consider that this regime is effective and do not see any need for change. Moreover, although shareholders have a vote on the remuneration report it is not necessarily something that is significant in terms of shareholder value. For example, a recent report led by the IMA Chairman[8] noted that on average the cost to shareholders of fees paid to investment banks for underwriting rights issues was more than ten times the annual remuneration of directors, yet attracted far less attention.

The Paper refers to golden parachutes (payments made to directors to compensate them for loss of office) and the fact they are not subject to shareholder approval if made under an existing contractual entitlement. IMA considers it would be impractical for such payments to be subject to shareholder approval as the payments need to be agreed with the director at the time of departure, and before it would be possible to convene a special meeting of shareholders. Also a requirement to convene a special meeting solely for the purpose of approving such a payment would be expensive for companies.

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?***

IMA supports transparency around directors' remuneration, including the composition of pay and the link between pay and performance. We consider that the requirements of the Companies Act and the Directors Remuneration Regulations already require disclosure of directors' remuneration, and the Directors' Remuneration Report is subject to an advisory vote at the AGM. In addition, following the Companies Act 2006, new Regulations included a requirement for listed companies to make a statement in the board's remuneration report as to how the workforce's pay and employment conditions were taken into account when determining directors' remuneration.

In this context, at times the existing transparency has had the unintended effect of ramping up remuneration by the publicity given to league tables of remuneration and there needs to be some caution about increasing this. Also there has been an over focus on remuneration policies in relation to the board in the UK following the Directors Remuneration regulations. What is more important is the incentives that drive the executive- these are not well

[8] Rights Issue Fees Inquiry, Institutional Investor Council, December 2010. http://www.investmentuk.org/assets/files/research/201013-rifireport.pdf

explored. We would also caution against the UK setting remuneration or taxation requirements that would place it at a competitive disadvantage internationally.

TAKEOVERS

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

To ensure that boards understand the long term implications of takeovers and communicate this effectively, we consider there would be merit in requiring disclosure in the offer document on how the directors believe the offer fulfils their duties under the Companies Act to promote the success of the company and to consider the long term effects on all stakeholders. This should also be explained in the response by the offeree. The offeree company's board needs to consider whether the bid is better value than what the existing management expects to deliver and balance the value of taking cash now versus the uncertainty of equity.

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?

We concur with the statement in the Paper that "there is broad consensus that takeover bids result in large share premiums for target firms. However, the returns to shareholders of the acquiring firms are often zero or negative[9]". The existing Takeover Code has always existed to protect the interests of the target company's shareholder and there are separate rules requiring the approval of the offeror company shareholders in respect of Class 1 Transactions.

Whilst we can see the attraction of this additional check and balance where the shareholders of an acquiring company should be invited to vote on takeover bids, we do not think it would be workable in the case of foreign acquisitions. If offeror companies had to submit all their bids to their shareholders for approval, this could place UK bidders at a competitive disadvantage to any competing foreign bidder not subject to such a requirement. Without a clear proposal for how this would be enforceable in overseas jurisdictions, we do not support this measure.

OTHER

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

IMA has no further comments to make on issues related to this consultation.

[9] Paragraph 6.3.