COMMISSION OWNERSHIP

CONSULTATION RESPONSE: A LONG-TERM FOCUS FOR CORPORATE BRITAIN
Department for Business, Innovation and Skills

The Board of Directors

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

A listed company's primary objective is to provide a return to its capital investors. The company share price and annual dividend are both 'real time' indicators by which the company's success in achieving this aim is judged.

Boards are highly mindful of share price fluctuations, and adopt strategies that seek to maximise this indicator of their relative success.

The extent to which investors and consequently boards recognise that this measure is necessarily a snapshot indicator of the health of a business and not the sole measure of the company's success in creating return has we believe deteriorated such that more investors seek predominantly short term increases in value and boards feel under more pressure to provide it – even at the expense of longer term growth.

Consequently, UK Boards are under pressure to adopt strategies that focus on measures that will be reflected in the share price in the short term. They will also shy away from strategies that whatever their long term merits have short term costs and risks. The economic crisis illustrated in stark fashion that a system which focused solely on the pursuit of maximising shareholder value in the short-term was defective.

One aspect of this is the tendency of British business to focus less on organic expansion but to aim to expand through merger and acquisition activity. UK Boards will justify such deals as a way of enhancing the firm's market position by achieving synergies and overall improvements in efficiency.

There is much evidence available however to show that many acquisitions destroy value for the shareholders of the acquiring company.

Acquisitions have a role to play but there is a concern that the present system distorts in favour of buying over organic growth. A short-cut to business growth can be rewarding for all concerned in the short term, and is often more easily achieved than longer term investment in operating businesses to grow them over the long term.

For listed firms, there are three key factors:

- **The responsibilities of UK Boards:** The legislative and regulatory environment in which Boards work, where Directors responsibilities are potentially too focussed on maximising short term share value
- **The behaviour of investors:** The increasing extent to which investors seek solely short term returns
- **The distortion of agency :** more layers of agents between underlying beneficial owners and companies with incentives misaligned with the interests of their principals

The responsibilities of UK Boards

Directors have a duty to act in the company's best interests. Until the Companies Act 2006 introduced its reforms, this was often interpreted as maximising shareholder value. The new Act replaced this with a duty of 'enlightened shareholder value,' which now requires directors to have regard to the longer term and to various factors including the interests of employees, suppliers, consumers and the environment.

Yet Directors will remain liable to the company and therefore its shareholders for any breach of this duty where the company can demonstrate that it has suffered loss as a result of the breach. In effect, it can be argued that the new responsibility has changed little because it involves such a 'grey area' of judgement, and that directors are open to legal action from shareholders who might not agree with the strategy adopted. In practice the new Act does not protect Directors from, for example, multiple law suits seeking damages if a – often any - possible takeover offer is not actively solicited and recommended to shareholders.

The issue is therefore not the intent of the 2006 change, but rather its lack of specificity; it is not clear enough and does not create the intended safe harbour for Directors acting properly.

Board responsibilities to promote a long term view and to be less obligated to act in accordance with short term pressures must be more clearly set out in law. Directors who act prudently and thoughtfully and seek advice to supplement their own experience should do so free of external legal pressures which may cause them to place excessive weighting on short term fiduciary criteria. The proper exercise of business judgement must provide a robust safe harbour. This would provide a protection to directors who are seeking to fully exercise this role, and also clarity for investors whose behaviour will be modified to the extent that, for example, attempting to pressurise boards with legal action during a bid is no longer a tactic that will be as easily rewarded.

The behaviour of investors

There has been a fundamental decline in long term UK investors owning a large proportion of UK companies and accordingly having a vested interest in their long term success.

In 1990 foreign individuals and financial institutions such as hedge funds held just 12.5 per cent of all British shares; by 2006, they owned 49.6 per cent. Over the same period the proportion of shares held over the long-term by British insurance companies, unit and investment trusts and pension funds fell from 58.8 per cent to 30.5 percent - a rough proxy for the decline of long-term share ownership.

The growing hedge fund class of investor is significant here, by seeking to exploit short-term market trends in order to generate returns. As such funds have been growing in importance, their role in markets has become increasingly noticeable.

Shares in large listed companies are traded many times over, with few investors considering a long term interests to last longer than a year or two. The number of investors committed to long-term share ownership consistently fell as the number of short-term funds consistently rose.

Investors are now more often criticised as exhibiting short-term attitudes and a superficial understanding of companies in which they hold shares.

This has created a widening gap between the investment horizons of Companies - often rightly measured over five years or longer and those who invest in them who want returns in months or sooner.

Conflicting external pressures are experienced particularly when a company is 'in play;' (whilst the subject of a potential takeover or merger). A large proportion of a Company's shares are likely to be acquired by investors who have a very short term view of return and will be aggressively insistent that its Board acts only in accordance with their particular interest.

As a proportion of UK share owners, pension funds, insurance companies and unit trusts have decreased in recent years but in some notable cases have increased their activism in company governance. The role played by such funds seeks to align a more long term view of the interests of the beneficial owners over short term pressures of the market.

The corporate governance influence of many investors is lacking. They are not equipped to assess Companies, their Boards and their stewardship. They can buy and sell shares and press for a takeover to be accepted or not but cannot provide further direction.

This increases the extent to which the UK system relies on takeovers to effect corporate change when more long term return to the UK would be created through more active exercise of ownership in the selection of Boards and subsequent monitoring of their performance.

The distortion of agency

The City of London is transactionally orientated. Accountants, law firms and investment banks all heavily rely on the income generated from advising on transactions and have an

interest in promoting them. We are not arguing that their advice is wrong, but that it is given within a framework that focuses on transactions and hence is distorted in their favour.

The best firms do invest in advice on long term strategies, and some consultants specialise in supporting this approach. Listed companies at the least should have a retained advisory team that provides the board with required advice on the Company's plans to defend its strategy should it be bid for. It is too late to make much beneficial change once a bid has been made and it is hard for a Company to negotiate advisory fees other than in advance.

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?

Constant changes in shareholdings, particularly at critical moments make it difficult for Boards to keep abreast of current ownership.

Otherwise, the legal framework is sufficient to identify beneficial ownership except where institutional shareholders act on behalf of the beneficial owners of their funds. It is not possible to get a view from the share ownership register who the ultimate beneficial owners are.

We believe that the legal framework could be strengthened to ensure easier identification of share holders. Further, 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

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

Foreign ownership has increased considerably

At the end of 2008 the UK Stock Market was valued at around £1,158 billion. Of all the shares issued 58.5% were owned by UK investors and 41.5% by non-UK investors, an all time high from a level of just 7% in 1964.

During the 1980s and 1990s, the proportion of shares owned by rest of the world investors increased substantially from 3.6% in 1981 to around 13% during the period 1989-92 and rose again to 16.3% in 1993 and 1994. By 2000 holdings had increased to 35.7%.

The past decade has continued to see increases, with holdings in 2006 at 40.0% and the 2008 figure higher again at 41.5%. The large increase since 1994 partly reflects the growth in international mergers and acquisitions, as well as refinements to the classification of holdings, including the incorporation of securities dealers' data.

The Commission view is that the nationality of a shareholder does not alone determine its quality. While it is widely understood that the UK's openness to foreign capital and

investment is one of the strengths of the British economy this applies chiefly to new investment: new asset formation and the creation of new employment. Foreign ownership of existing assets confers no automatic benefit for the investee country. Alone however, amongst leading economies, the UK acts as if the control of foreign ownership of Companies is best uncontrolled and that a more protectionist stance would damage prospects for growth and prosperity.

In an era when UK long term investors were more key in influencing markets, the UK's lack of power to assert a legitimate public interest in relation to public companies conceivably mattered less than it would have otherwise. A number of high profile cases of foreign takeovers have highlighted the importance of understanding the relative difference between the openness to foreign ownership of the UK and its competitors.

There are more examples from around the world where there are restrictions on foreign ownership than where there are not.
The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that serves the President in overseeing the national security implications of foreign investment in the economy.

Australia and Canada both have Foreign Investment Review Boards. The Boards examine proposals by foreign interests to undertake direct investments make recommendations to their Governments' foreign investments policy.

When PepsiCo was thought to be interested in buying Danone, the French government came up with 11 strategic commercial sectors that should be protected from foreign takeovers.

Russian legislators have limited foreign investment in 42 strategic sectors, including energy, mass media and aerospace by giving a Russian commission of economic and security officials a veto over any deal in which a foreign company wants to buy control — more than 50 per cent — of Russian companies in the named sectors.

There is a legitimate public interest in ownership structures. In addition to the general interest of having open vibrant markets a country properly considers the interests of consumers, employees and tax payers. In the UK the operation of open and vibrant markets which create monopolies or market concentrations is considered against the public interest and is controlled by The Competition Commission. With the exception of defence the UK does not currently recognise any other public interest in the ownership of companies.

The focus of the Commission is making ownership more effective for beneficial owners. To the extent that the government considers that there is or could be a national interest in resisting takeovers, it cannot expect this judgement to be made by shareholders. Only the government can take the powers required to exercise judgements of this nature. If it does, that would be largely in line with international practice. If it does not, it cannot rely on others to assert its interests on its behalf.

Implications:

- There are no restrictions on foreign ownership of UK firms, in contrast to other leading competitor countries
- Key national interest industries (such as utilities and finance, for example) do not receive particular protection
- UK corporates are therefore more open to foreign takeover than those in other countries

Individual share holding is falling

Just 10.2% of the value of shares traded on the UK stock market were held by individuals at the end of 2008, down from 12.8 % two years previously. This fall equates to a decline of £120 billion.

The proportion of shares held by individuals has been on a downward trend since 1964 when individuals owned 54% of quoted shares. Although the trend was flat at around 20% between 1989 and 1994, by 2004 holdings had decreased to 14.1%. Included in individual ownership are shares owned by company directors and those in privatised and demutualised companies which are still owned by individuals. The figures for individuals' shareholdings do not give a complete picture of their equity investments, as individuals' shareholdings in unit trusts are not shown separately in the ONS survey figures.

The data highlights how the 1980s government inspired revolution in private share ownership failed to create a lasting impression on the stock market. More recent events to affect the market, such as the dotcom bubble bursting and the financial crisis of 2008 have led to individual consumers owning ever smaller share portfolios.

The financial crisis of 2008 led to unprecedented government intervention in the UK financial industry. The initial recapitalisation of The Royal Bank of Scotland Group plc (RBS) in November 2008 included an injection of £15 billion as the Government acquired around 58% of the ordinary share equity in the company, increasing the public sector's ownership of shares tenfold. However, the overall intervention represents little more than 1% of the total ownership of UK shares.

Implications:

- UK Individuals are less likely to own shares now than at any time in the past and the trajectory for this proportion remains downward
- A growing proportion of shares are now held by short term specialist funds such as hedge funds
- The behaviour of these funds can influence UK Boards by affecting share prices

If there were a favourable tax treatment for dividends and capital gains based on length of holding, this could help rebalance short term thinking. This is the one simple approach the Government could quickly take and should not cost the Government money - it just needs to adjust levels of tax to secure the same overall take, incentivising longer term holdings.

Institutions own about half of all shares

Taken together, the proportion of shares held by institutions on behalf of individuals makes up half of the UK based shareholdings. Of these, insurance companies, pension funds, unit trusts and investment trusts account for more than half of the investment value. The institutions act as an agent on behalf of their policy holders and individual investors who are the ultimate owners of the assets.

Since the high point of 1992, when pension funds held almost a third of all shares, the proportion of shares held by pension funds has fallen. With the increasing number of alternative investment opportunities throughout the 1990s, fund managers looked to broaden their portfolios to seek higher returns and to spread risk. Holdings were at 12.8% at the end of 2008, the lowest figures since the 1960s.

One further issue is that fund managers appointed by the long-term owners and retail investors are frequently rewarded and remunerated by short-term measures, frequently of no more than a year's duration.

Often, success fees are as a result of short-term increases in asset values, which further encourage trading rather than long-term investment. The cost of trading is borne by the beneficial owners through taxation and transaction charges.

Implications:

- The proportion of shares held by institutions is growing and therefore the importance of institutional shareholders is increasing
- Institutions act on behalf of beneficial owners: the interests of the ultimate owners need to be safeguarded

4. What are the most effective forms of engagement?

Engagement is a cost to investors as it requires professional resources to complete properly and will be seen as an unnecessary expense by those with only short term investment interests.

UK corporate law assumes that primary power should be vested in shareholders and that directors should have little entrenched power. There have been examples of UK public companies that were consistently poorly managed that were only changed by a takeover. The takeover is a blunt and relatively inefficient way of changing corporate governance. Boards with more authority to act in the interest of all shareholders would help bridge the growing gap between Companies and the horizons by which they must be managed on one hand and some investors and how they would like then to be managed on the other.

The quality of Boards has to be high particularly if Boards are to be made less susceptible to short term pressure from investors. The evolution of Boards more weighted to external directors and less full time employees, is positive. The development of Chairmen who are

more fully engaged is positive. The current rules and codes work well if implemented correctly on skills and experience.

The main opportunity for shareholders of all kinds to communicate with the directors in UK companies is at the annual general meeting. To the outside observer, the AGM is often a non-event. They are usually poorly attended with few penetrating questions put. Institutional shareholders prefer to engage privately rather than give an appearance of public confrontation. Private shareholders who speak are more likely to be concerned with their own experience as customers or issues of particular interest to them. Few shareholders bother to complete their proxy cards.

The professional investment community seek to compensate for potential remoteness by allocating time to management meetings, employing analysts to study business performance and governance specialists to monitor corporate behaviour.

Recognising the problem, the company addresses the risk of detachment from investors by providing increasing amounts of information in conformity with statutes or codes and supplementing the data with market updates, results presentations and face to face investor meetings. This constitutes a considerable investment of management time and cost, sometimes at the expense of operational involvement, but necessary when owners are remote and disparate.

The Stewardship Code aligned to the Combined Code should work – no further codes are required, but investors must engage actively in the companies' processes.

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

Institutional investors are no more homogenous as a class than individuals. They vary greatly in size and purpose: pension funds, insurance companies, unit and investment trust managers, have different obligations, and are under different pressures. They can discharge their obligations in various ways, by managing funds in-house, or employing external managers. What they all have in common is that the managers are investing someone else's money.

Yet they will have different objectives – dividend versus capital growth and the growth of ethical funds. Directors must be able to acknowledge these differences.

We have separately notes the problem of agency where the short-term outlook of much of the fund management industry is not aligned with the interests of long term beneficial owners.

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?

We do not believe that the costs of voting disclosure should be an argument against transparency. Yet from mere voting disclosure, it is not possible to understand the thought processes behind the voting nor the care taken or the contact that has taken place between the company and the voter.

We do argue that votes should be used but also recognise that voting in line with a proxy agency or in line with the board's recommendation is meaningful engagement.

The Commission believes that it may be worthwhile to reconsider the form of the AGM to make it a more significant occasion and to improve the accountability of the firm's executive management. The reality is that for many small shareholders it is uneconomical to inform themselves on how to vote and there may be a case for providing them with an expert service through intermediaries.

Private Shareholders' only ever see the company's management at the AGM itself but few of them attend, much less speak at AGMs. Individuals have the report and accounts and newspaper comments and they may have their broker's advice, but unlike professionals they lack the knowledge to hold the board to account.

If investors lose confidence in the company they either sell their shares or hold on to wait for an improvement. Such shareholders have nowhere to turn for help if they feel that what is wrong is on the board; they can vote against the directors but unless they are supported by others, this will have little effect. This sometimes leads individuals to air their concerns through the media, but our view is that this in itself would constitute evidence of a failure of engagement.

Despite their importance to the future prosperity of so many of us, there is little engagement between pension owners, the managers of the funds and the firms they invest in.

As has been noted above, institutional investors account for a growing proportion of UK shareholdings. Institutional investment vehicles have considerable power over companies, and could be harnessed to serve the broader social and political interests of those whose money they are responsible for. The Commission would like to see the democratic potential of stock markets exploited more fully.

To this end:

- Major institutions should attend the AGMs
- If there is a company/management problem, they could be a rallying point
- Professional investors can publicly take management to task in public at the AGM

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

Short termism is an issue to the extent that Companies have investment horizons necessarily longer than that of their investors. It becomes a critical issue with the rise of asset classes such as high frequency trading in which investors can have no role in the stewardship of the Companies in which they invest. Shareholders who hold shares for short periods rely on other owners to exercise stewardship in ways they cannot; the appointment of directors being the most fundamental.

The more shareholders who hold shares for the short term, the more they are reliant on others. Yet those others who are not investing just for the short term obtain no advantage and cross subsidise the remainder. Shares in large listed companies are traded many times over, with many investors considering a long term interests to last only a year or two. The number of investors committed to long-term share ownership consistently fell as the number of short-term funds consistently rose.

Investors are often criticised as exhibiting short-term attitudes and a superficial understanding of companies in which they hold shares.

In 1990 foreigners and financial institutions like hedge funds held just 12.5 per cent of all British shares; by 2006, they owned 49.6 per cent. Over the same period the proportion of shares held over the long-term by British insurance companies, unit and investment trusts and pension funds fell from 58.8 per cent to 30.5 percent - a rough proxy for the decline of long-term share ownership.

The growing hedge fund class of investor is significant here, by seeking to exploit short-term market trends in order to generate returns. As such funds have been growing in importance, their role in markets has become increasingly noticeable.

One aspect of hedge fund behaviour that has attracted particular concern is the practice of short-selling, which can cause great volatility for companies. This behaviour could lead listed firms to react to the short-term concerns of the City, with Boards distracted from building long-term value. The best Boards will focus on delivering consistent shareholder value growth over the medium term and let the market take care of itself.

Additional external pressures are experienced when a company is 'in play' huge changes are experienced in the shareholdings as large investors take positions on the likely outcome for the companies concerned.

Shareholders do in fact have the power to influence management and to encourage management to take a longer term view, but for the range of reasons above, do not tend to exercise it for a longer term view.

As a proportion of UK share owners, pension funds, insurance companies and unit trusts have decreased in recent years but in some notable cases have increased their activism in company governance. The role played by such funds seeks to align a more long term view of the interests of the beneficial owners over short term pressures of the market.

In short shareholder value and true stakeholder involvement are by no means mutually exclusive; they can be two sides of the same coin. The Commission is interested in practical answers to the difficulties caused by an over-reliance on one yardstick for the apparent success or failure of a firm.

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?

No response.

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

The agency problem is created when ownership is separated from management. Managers are agents of Boards, who are agents of the shareholders and there is a further agency relationship between the institutions that hold shares and the beneficial owners – individual fund investors and pension holders etc. The result is a lack of alignment between the interests of the groups as agents have to rely on assumptions as to the interests beneficial owners want to see pursued and will have incentives that misalign their interests with those of their beneficiaries.

Codes of governance seek to remedy the agency problem between executives and shareholders by introducing measures that create incentives or impose sanctions that seek to align executive self interest with the interests of shareholders, or will monitor executive conduct in order to constrain their potential opportunism.

The principal is vulnerable to the self-interest of their agents either in the form of a lack of attention to principals' interests or through incentives that damagingly misalign their own.

It is difficult or expensive for beneficial owners, often large fragmented groups of investors, to verify what their agent is actually doing.

As these assumptions have informed the reform of corporate governance in recent decades, they have resulted in what are now an almost universal set of techniques and practices designed to control the conduct of executives both within the corporation and externally.

The agency role of fund managers is of interest to the Commission. For example, pension funds own large amounts of the listed companies that we rely on for so much employment and wealth creation. The success of these companies matters to us both directly through their payments to the exchequer, their contributions to employment, and also indirectly through the value of the investments that our pension funds hold in them.

Despite their importance to the future prosperity of so many of us, there is little engagement between pension owners, the managers of the funds and the firms they invest in.

Institutional investment vehicles have considerable power over companies, and should be harnessed to serve the most informed view of the interests of those whose money they are responsible for. The Commission would like to see the democratic potential of stock markets exploited more fully.

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

The Commission does not believe that the costs of greater disclosure either by the fund managers or by their clients would be significant.

We do 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

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

Managers, in common with all market participants are likely to be governed by self-interest. There is a natural tendency as executive tenures shorten that most will try to make the best of their opportunity as senior business leaders by making it as rewarding as possible.

Additionally, Shorter tenure may have implications overall for short-termism 'I'll be gone/you'll be gone.'

Boards retain advisors to consider the market for executive pay, and will typically consider what competitors are paying as a benchmark. This practice is likely to have a ratcheting effect on the overall market as companies seek to align their remuneration policies with others, rather than their own criteria. Remuneration committees must explain better how they ensure that consultants they employ are independent.

Many schemes for rewarding executives have been linked to share prices, and this may encourage executives to engage in strategies that will temporarily boost the share price and thus the size of the reward linked to it. Most such schemes are designed to work in the short-term and could end up destroying long-term shareholder value.

Indeed, short and medium term fluctuations in the share market may have nothing to do with the performance of the individual firm, as their share value is merely moving in parity with a falling or growing market.

It is therefore important that Boards seek to align directors' remuneration with the actual performance of the business, relative to the market it operates in, and not just to the absolute share price.

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

Remuneration Committees and Boards need to be publicly held to account by engaged investors.

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?

Shareholders have the right to vote on remuneration at the Company's AGM. However, this is not always exercised. Yet, remcos will have considerable power from major institutional shareholders.

Legislation and regulation cannot replace active and responsive investors, who should attend AGMs and follow the FRC's Stewardship Code.

14. What would be the impact of greater transparency of directors' pay in respect of:

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

On pay, there is already considerable transparency. But there is less transparency on pensions in the UK in comparison to other countries e.g. Australia.

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

The Commission believes that decision making in companies should seek to both represent and serve the owners; structures governing ownership, including takeover rules, should seek to represent the genuine stakeholders.

In principle, this points to measures that increase both the transparency of decision making and the disclosure of relevant information that will affect outcomes for all stakeholders including the ultimate owners.

In practical terms this means that the Commission is interested in steps that increase communication and the understanding of decisions as well as the decision making process itself.

There is widespread and we believe warranted concern that the interests of owners are not as well served as they should be by the current takeover system. There should be more disclosure made in a more substantive way so that owners can be made more aware of all of the relevant circumstances and in particular offeree boards can be equipped to discharge

their responsibilities to shareholders and the company with more information than at present they have or can obtain.

Major shareholders in a public company cannot have compelling reasons in the public interest for insisting on privacy as to their decisions in relation to them. The rationale for this disclosure must be the public interest in transparency and has been established within the Code since disclosure of significant interests and dealings was first put in place. Disclosure of whether or not key shareholders have accepted an offer follows this Code precedent.

Most institutional shareholders act as agents for their underlying principals. How they act in an offer period is relevant to their principals and should be publically disclosed. Some leading institutions disclose their actions in pursuit of a high standard of corporate stewardship and we believe that all public investors should be required to do so. It is hard to see how beneficial owners in particular can be informed and able to form a view as to whether their agents are acting as they would wish without this disclosure.

We would support the additional transparency afforded by introducing disclosure of acceptance and scheme of arrangement voting decisions for all holders of more than a critical percentage of shares.

In takeovers under the 2006 Companies Act, Directors have a responsibility to take decisions which are based on fiduciary duty 'with regard to' other issues – employees, environment etc. Equally there is no specific time-line on value assessment – short, medium or long.

If the Companies Act required Directors to give equal weighting to 'other' issues and write down their conclusions as well as define their value time horizons – 1,3,5 10 years - when making a recommendation, it would balance the short term financial focus and provide directors and shareholders with greater visible rationale for their decisions.

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?

The Commission does 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 owned firms, as such votes would be very difficult to enforce across national boundaries.

Other

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

None.