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Dear Ilaria

You asked us to send you our comments on the draft Implementing Acts relating to the update of the Shareholder Rights Directive (SRD). Our comments are summarised below.

1. **Restrictions of nominee accounts**: It has been a serious concern of both the UK Shareholders' Association (UKSA) and The UK Individual Shareholders Society (ShareSoc) for many years that investors who hold their shares in nominee accounts are disenfranchised. They have no right to receive notification of the company AGMs, no right to attend the AGM and no right to vote at the AGM. This is both unfair and deeply unsatisfactory for these reasons:

    a. Nominee accounts are little more than an administrative convenience for companies, registrars, intermediaries, HMRC and others, including investors. The fact that under current UK law the nominee is the legal shareholder and is under no obligation to pass the voting rights to the ultimate share owner or investor is an aberration (the only exception is ISA accounts but as the platform operators don't inform their clients of this fact and in most cases provide no voting mechanism this has become of little consequence). Because of the advent of electronic trading, and other barriers such as the discouragement of personal crest accounts and certificated trading, nominee accounts have become the only method by which most private individuals can and do invest. They are not in practice given other alternatives.

    b. The current system of nominee accounts places little or no obligation on the nominee to do any real work on behalf of the client. It is in most cases it is a licence

to sit back and collect money from investors for performing relatively simple administrative tasks (such as collecting dividends and allocating them to the relevant client account). It is no wonder that nominees (who are essentially just intermediaries), registrars and often the companies themselves have no desire to see this system change. The general use of "pooled" nominees also undermines the legal rights of investors and hides who they are from companies (the "issuers") which is a barrier to good corporate governance and shareholder democracy. Their preference by brokers and platform operators for an easy life however does not justify allowing the system to continue as it is.

c. The disenfranchisement of private shareholders is one of the key reasons for the emergence of the 'ownerless corporation' which has come in for so much criticism from investors, politicians and many other groups over the last five to ten years.

d. There are no technical reasons why, in this day and age of sophisticated information systems, it should not be possible for private investors who are invested through a nominee account to enjoy <u>all</u> the normal shareholder rights.

2. **Proposed Amendments to the Shareholder Rights Directive**. The draft implementing regulation (appended) for SRD II states that:

> '8. The obligation of intermediaries to facilitate the exercise of rights by the shareholders includes the obligation to confirm the entitlement of the shareholder to participate in a general meeting and the obligation to transmit the notice of meting to the issuer'.

To maintain a position which states that in this instance 'the shareholder' simply means 'the nominee' seems obtuse. The nominee is clearly an intermediary in the chain of share ownership and should under proposed EU law be passing the rights of share ownership to the ultimate owner and investor.

Other points to note are:

a. While the definition of 'shareholder' remains up to member states the intentions of the EU and SRD II are, as outlined above, very clear. Britain's stance in maintaining that the nominee is the ultimate shareholder is perverse. It is at odds with the intentions of SRD II and the relevant Implementing Regulations.
b. There is a requirement for the term 'shareholder' to be defined more clearly and appropriately in UK law. There is also be a need to define terms such as:
    a. 'share'
    b. 'client'
    c. 'intermediary'
    d. 'entitled position'
c. In this respect the UK should adopt definitions in line with those being proposed by the EU, namely:

i) "Client" means the natural or legal person who is not itself recognised under the applicable law as shareholder in an issuer company, but on whose behalf a shareholder acts and who is entitled to the benefits of ownership, including the right to exercise voting rights, even though another party actually has possession and title to the share;

ii) *Entitled position'* means the position of shareholding, to which the rights flowing from the shares, including the right to participate and vote in a general meeting, are attached. The entitled position shall be determined based on settled positions struck in the books of the issuer company CSD or other first intermediary by book-entry at the close of its business, which position shall be reflected in the books of every intermediary in the chain of intermediaries.

We believe that these definitions are a starting point which may require further clarification and refinement.

3. **Potential role and significance of private shareholders in ensuring good corporate governance:** Statistics from the ONS show that in 2016 (the last date for which figures are available) UK individuals owned 12% of UK quoted shares by value. This represents an increase from an historic low of 10% in 2010 and 2012. This figure included UK individuals who own shares in UK listed companies in their own name and individuals who own shares through a nominee (for, example in a stocks and shares ISA).

   It is also worth noting that the Office for National Statistics estimated that 59% of total shareholdings by value in UK quoted companies at the end of 2012 were held in multiple-ownership pooled nominee accounts. These accounts, which include investment trusts and funds, are accounts in which details of the beneficial owner are not held centrally and must be established by means of a Companies Act 2006 Section 793 request. This figure, which includes overseas investors, has not been updated by the ONS for 2016.

   This is, however, a striking figure and one which goes to the heart of effective UK corporate governance. It prompts the questions:

   - How can there be meaningful control over issues like high levels of executive pay when 59% of shareholders have no or very limited voting and other rights?
   - How can there be any form of effective corporate governance based on shareholder oversight when the legal shareholders, as defined in UK law (nominees and fund managers), make no attempt to consult the beneficial owners and, in a significant number of cases, fail to exercise their own voting power on behalf of the beneficial shareholders or else simply vote in favour of resolutions regardless of the stewardship implications of their voting?

   As it stands, the definition of the term 'shareholder' in UK law could hardly be more perverse in the way in which it frustrates meaningful shareholder oversight of UK companies and their governance.

This might be understandable if there was some sound justification for this lamentable state of affairs but there appears to be none.

4. **Shares Traded on AIM:** The Alternative Investment Market (AIM) is the London Stock Exchange's global market for smaller and growing companies. The latest ONS statistical bulletin 'Ownership of UK Quoted Shares 2016' estimates that over 29% of all shares traded on AIM are owned by private individuals. This is more than double the proportion of the main market which is owned by individual investors. We believe, therefore, that SRD II should also apply to AIM.

5. **UK's Position in Europe post Brexit:** Although the UK is almost certain to be leaving the European Union in 2019, it is important that in the field of investment and financial services the UK remains as closely aligned as possible with the rest of Europe. In this respect the UK, whilst it may not legally obliged to enact SRD II, should at the very least seek to abide by the spirit of the Directive. It should not be seeking to slide out of certain fundamental aspects of the directive by adopting or retaining flawed interpretations and definitions of what is meant by a shareholder and hence what their rights are.

Yours sincerely,

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