ShareSoc
UK Individual Shareholders Society

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Dear all,

I am sending this email on behalf of ShareSoc, the UK Shareholders' Association and ShareAction.

Thank you for meeting with us on 18th September and for your update on the work of the Digitisation Taskforce. We await the publication of the final report of the Taskforce and we will make further submissions then.

We fully support the modernisation of the UK's shareholding framework. Our concern is to ensure that shareholder rights are protected.

Shareholder rights are protected by law, including in particular under the Companies Act 2006. The Companies Act 2006 introduced several new shareholder rights and strengthened existing rights under the Companies Act 1985.

Unfortunately, the ability of Ultimate Beneficial Owners ("UBOs") to exercise these rights has been eroded by intermediation in the chain of ownership due to the way nominee platforms and wealth managers have implemented nominee share ownership.

The Taskforce now has a once in a lifetime chance to remedy this, in accordance with principles 2 and 3 of its Terms of Reference. We see digitisation as a unique opportunity to use the benefits of technology to reverse the erosion of individual shareholder stewardship which has occurred as a direct result of the widespread use of nominees.

We are pleased that the Taskforce recognises the need to protect (and enhance, in the case of existing intermediated shareholders) shareholder rights including information rights, communication rights, voting at general meetings, appointing proxies and attending general meetings, and requisitioning general meetings and resolutions.

Effective communication and shareholder engagement are prerequisites for individual investors being able to hold boards of companies to account. Shareholder rights, supported by a free flow of information, represent a fundamental check and balance in corporate governance. This in an important plank in successful enterprise and competitive capital markets, and it must be protected. Individual shareholders may not always be aware of their rights and responsibilities in this area but these rights must not be allowed to be undermined by detrimental changes to shareholding infrastructure or by market forces.

A public company is currently required to keep a register of information received by it under s793, and to keep that register available for inspection for members with a proper purpose. Whilst we agree with your conclusion that further granularity down to the level of UBOs should not be publicly accessible to all (given privacy concerns and the possible unintended use of that information), we think the current rights (which are limited and protected by the proper purpose test) should apply for UBOs in future. This right is essential for individual shareholders to be able to communicate with one another, to requisition shareholder resolutions and hold boards to account.

We note that there are laudable examples of nominees and issuers upholding shareholder rights. Two of us have personal accounts with Interactive Investor and note that ii provides most shareholder rights without charging extra for them. Also, many issuers now make efforts to engage and interact with retail investors, for example through meetings with retail investors.

However, we consider that isolated examples of good practice do not justify the risks of leaving shareholder rights to market forces. In suggesting such an approach, the Taskforce risks creating a perverse financial incentive for reduced shareholder engagement and giving too much freedom to bad actors, both to the detriment of investors and London's reputation as a world-leading stock market.

We support the idea of a base level of service required of all intermediaries, which incorporates all of the above shareholder rights (as intentionally required for direct shareholders in the Companies Act 2006). The default should be for all these shareholder rights to be activated, with no financial incentive for a UBO to forgo them.

We acknowledge that there will be a cost associated with preserving, protecting, and (in the case of intermediated owners) restoring shareholder rights. That cost is foreseen and mandated by CA2006 and should, in any case, be significantly reduced by digitisation. The cost of the provision of shareholder rights is already ultimately borne by shareholders.

Allowing an intermediary to offer a service level which does not include exercise of shareholder rights would invalidate the concept of a base level of service – the base level then immediately becomes the premium level, creating a financial incentive for UBOs to relinquish their rights. There would be no mechanism to prevent charges for exercising rights becoming excessive.

Shares have always come with property ownership rights. Sensible investors would rightly be nervous about buying shares in an unquoted company which did not provide CA2006 shareholder rights, and we do not consider there to be a reasonable justification for why these rights should be considered optional when the investment is made via a nominee.

Hence we wish to stress to you, in the strongest terms, our concerns about a government-appointed Taskforce potentially perpetuating the ability of nominee platforms to offer deficient service levels and to charge fees for the exercise of basic shareholder rights enshrined in law.

We remain hopeful that the Taskforce fulfils its Terms of Reference by ensuring that the rights of existing certificated shareholders are not degraded and that intermediated investors benefit from equivalent rights to direct shareholders and enjoy, by default, the ability to exercise those rights effectively and efficiently.

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