APPENDIX H: US CORPORATE GOVERNANCE PRACTICES

As part of its strategy for helping to improve corporate governance practices in US investee companies, USS has undertaken follow-up activity to ensure that momentum on the issue of joint Chairman-CEO is sustained and reinforced.

1. Responses to USS's letter to US investee companies

USS has now received replies from 11 of the 33 companies written to. These responses articulated a range of reasons for not having an independent Chairman but none are convincing:

- "A split role could create confusion, divisiveness or rivalry and add another level of bureaucracy". This suggests some confusion in the minds of respondents about the established roles of chairman and CEO, despite leading US pension funds such as CalPERS being clear that chief executive officer is responsible for providing management of the day-to-day operations of the company whilst the Independent Chair is responsible for coordinating the activities of the Board of Directors.
- "A one-size fits all approach should not be applied". Interestingly, respondents nevertheless felt that it was appropriate to have a standard approach in the US, i.e. to combine the roles. They also favoured the standard approach of having a "lead director" (as proposed by both the Business Roundtable and the NYSE).
- "It is not the structure that is important, it is the quality of the board and the independence of the directors." Whilst the latter two factors represent the goal, it is clear that some structures are not well suited to delivering genuine independence (e.g. having an over dominant CEO-Chairman who appoints "independent" directors).
- "There is no evidence to suggest that a separation would result in better performance and we are doing well, so why change things?". There are no single corporate governance improvements which can be tracked, in a conclusive "cause and effect" manner, with enhanced business performance. What is clear is that companies that have better corporate governance systems and more genuinely independent directors, do in general outperform their peers and do offer better prospects for risk management if things go seriously wrong. There is also little reason for thinking that the benefits gained by companies listed in the UK and other markets will not be forthcoming to Corporate America.

2. Letter to NYSE

In July, USS Ltd wrote to the Chairman of the New York Stock Exchange to highlight three fundamental issues, which were not covered in the recommendations made to the Exchange by their Corporate Accountability and Listing Standards Committee, namely:

- Separation of Chairman-CEO
- Expensing stock options and
- Updating the role of the audit committee to cover all risk factors, including those associated with environmental, ethical, governance and social impact.

Railpen, the Australian Institute of Superannuation Trustees, Shell Pensions Management Services Ltdand other institutional investors have also written to NYSE focusing on one of more of these issues.

3. Media coverage

It is noteworthy that there is growing comment on this issue from leading business journals. This includes articles and editorials from the FT (Top executives under pressure, 11/7/02; Unilever Chief warns US media groups, 5/7/02; A tarnished icon of the American Way, 22/7/02), and Business Week (e.g. Best & Worst Boards, 7/10/02). USS's views have also been noted (e.g. in NY Times, 5/7/02 and the FT, 8/7/02).

The FT has also published a letter from USS focussing on risks associated with US corporate governance and leadership norms with regard to succession planning (16/9/02).

Summary

The responses USS has received are typical of the opinions of those currently serving as joint CEO-Chairman but they do not explain why, according to a survey by McKinsey & Co., 70% of US Board Directors favour a split in roles. USS therefore concludes that the basic challenge is that this norm is deeply ingrained and agrees with the respected US think-tank, the Council on Foreign Relations, which notes that "Corporate governance reform will be difficult: vested interest on all sides, in the United States and overseas, will resist or defect change…. The United States can gain from adopting governance reforms patterned on best practice elsewhere… and thereby demonstrating that the reforms are part of a worldwide effort, not a simple projection of the US system." Whether US and other institutional investors will continue to accept this current norm on the absence of an independent Chairman is increasingly doubtful and collaboration with peers in the UK and US will become an increasingly important aspect of this component of USS's work.