

22nd November 2007

Mr C McCreevy
European Commissioner for Internal Market & Services
European Commission
B-1049 Brussels
Belgium

Dear Commissioner

**CONSULTATION ON SIMPLIFICATION OF EU COMPANY LAW,
ACCOUNTING AND AUDIT REGULATION**

We write on behalf of Railpen Investments and Universities Superannuation Scheme (USS) as two leading UK occupational pension funds with a long-standing interest in corporate governance, to comment on the Commission's proposed simplification for EU companies in company law, accounting and auditing.

Railpen Investments is the investment monitoring arm of the Railways Pension Trustee Company Limited, which is trustee of various railway industry pension schemes in Great Britain. With total assets under management of approximately £20 billion (p28 billion) and with over 350,000 beneficiaries, it is one of the largest UK occupational funds. Railpen is a major institutional investor in European companies, investing assets worth approximately £5.4 billion (p7.6 billion) in capital markets across Europe.

Universities Superannuation Scheme is the principal occupational pension scheme for employees of UK universities and other higher education and research institutions. It is the second largest pension fund in the United Kingdom, with assets of over p44billion. The fund currently has p7 billion invested in European equities. USS aims to be an active and responsible long-term shareholder of companies in which it invests. The Fund has a commitment to encourage good corporate governance and responsible corporate behaviour in all markets in which it invests. This is based upon the view that the management of such issues is good for long-term corporate and stock price performance.

Railpen and USS take considerable interest in all areas of company law, both within the UK and across Europe. We consider the simplification of company law to be a necessary aim, in that it will greatly enhance capital efficiency and increase capital flows across Europe. However, this should not be to the detriment of basic investor rights and protections and it is with this in mind that we express concern over the possibility of the abolition of the 2nd Company Law Directive: Simplification of Capital Maintenance Rules.

Capital maintenance rules are the quid pro quo for the limited liability structure that forms the basis of company structures, and should not be substituted for other rules, either at European or national level, which may represent a retrograde step with respect to investor protection. One of the key protections for capital maintenance is the existence of pre-emption rights, which serve as a mechanism to protect the shareholdings of existing investors from becoming too diluted when a new issue of shares is made. If these were to be repealed, the implications for the long term investment principles upon which pension and savings vehicles are based would be compromised. A further consideration is that pre-emption rights underpin the basis upon which responsible share ownership principles are derived, and may present a threat to the established processes of encouraging good corporate governance practices and board accountability by long term investors, whether institutional or retail.

We are aware of the response from the UK's Association of British Insurers in this area, as well as responses from other UK institutions, all of which outline similar concerns. We hope that the Commission will listen carefully to these concerns when deliberating on the repeal or otherwise of the 2nd Company Law Directive. The concerns about outright abolition or even partial repeal centre around the risk that different domestic legislation across Europe on these issues will lead to inconsistencies of approaches and could lead to a more fragmented market, which would seem to us to be the opposite of the aim of a single capital market across Europe. Should outright abolition of this Directive occur, we are certain that domestic legislation would be introduced to deal with the issue; certainly in the UK, investors would expect the DBERR to respond on this critical matter of investor protection.

I hope that these comments are helpful. Please contact me if they need clarification or you feel that we can otherwise be of assistance.

Yours sincerely

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