Executive Pay: Shareholder Voting Rights Consultation Response Form

The closing date for this consultation is 27 April 2012

Please return completed forms to:

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Confidentiality & Data Protection

In the interests of transparency, the Department may choose to publish the responses to this consultation. **Please state clearly if you wish your response to remain confidential.**

Please note also that information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

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Name of respondent

The Local Authority Pension Fund Forum

Please state whether you are responding as an individual or representing the views of an organisation by ticking the appropriate box below:

	Business or business representative organisation
X	Investor or investor representative organisation
	Government or regulator
	Lawyer
	Remuneration consultant
	Other professional advisor
	Trade union or employee organisation
	Individual
	Other (please describe)

Question 1: The Government proposes to require an annual binding vote on remuneration policy. What are the costs and benefits of this approach?

Costs:

It is possible that there will be costs to companies in terms of preparing proposals that are rejected by a binding, forward-looking vote. However, the same is true of any other vote at a company meeting where the vote is binding. Overall the Forum considers that costs relating to the introduction of a binding vote are negligible.

Benefits:

There are a number of potential benefits. First, if forward-looking, it would give shareholders the power, when required, to prevent companies from introducing changes to remuneration. The existing advisory vote, whilst useful, cannot have the same impact, especially as it is generally regarded as a backward-looking instruction even if not always used that way in practice. The vote could also capture important aspects of remuneration policy that are currently not easy for shareholders to target, such as changes to incentive schemes. Finally, a binding vote may strengthen public confidence in shareholders' ability to restrain executive pay where this is required. There is a genuine public perception that shareholder engagement over pay is toothless.

Question 2: In the event that a company fails the binding vote on remuneration policy, the Government proposes that it maintains its existing policy or returns to shareholders with amended proposals within 90 days. What are the costs and benefits of this approach?

Costs:

Requiring companies to return to shareholders within 90 days with further proposals will impose some costs on companies, in terms of arranging materials and, presumably, the costs of holding an EGM. However, it seems likely that in practice, faced by such costs, companies would choose instead to maintain their existing policy.

Benefits:

The benefits are broadly as set out in our answer to Question 1, as in practice we expect that most companies will choose to retain their existing policy, at least until the following AGM.

However, a further unintended benefit might be to demonstrate, one way or another, whether companies' claims that changes in remuneration policy – significant rises in base pay, increased maximum awards under incentive schemes etc – are actually "necessary" in order to retain key staff. If a company fails a binding vote where such changes were proposed and decides to maintain its existing policy, and staff do not leave as a result, this will provide useful information.

Question 3: The Government proposes that directors' service contracts and other arrangements should, if necessary, be amended to take account of the new requirement to seek shareholder approval of remuneration policy. What are the costs and benefits of this approach?

Costs:

We are not convinced that there are significant costs to be incurred here, as directors' contracts are often relatively vaguely worded in respect to, say, entitlement to bonuses and other incentive schemes. In addition, this would be a one-off cost, as future contracts would need to be written to take account of the existence of such a vote.

Benefits:

The benefit is that where shareholders do decide to give a binding instruction to companies, then this can be brought about without conflict with existing contracts.

Question 4: The Government proposes that remuneration packages offered to in-year recruits should be confined by the limits and structures set out in the agreed remuneration policy. What are the costs and benefits of this approach?

Costs: We do not think there will be any additional costs incurred as a result of this. Benefits: As above.

Question 5: The Government proposes that the report on future remuneration policy should provide more details on how approved LTIPs will operate for directors in that particular year. Do you agree with this approach?

Do you agree? Yes. This could be one of the most important benefits of such a vote as it could, for example, require companies to have shareholder approval for changes to performance criteria, allocation of maximum awards etc under LTIPs.

Question 6: The Government proposes to increase the level of shareholder support that should be required to pass the vote on future remuneration policy. Do you agree with this approach and if so, what would be an appropriate threshold?

Do you agree? This proposal is a potentially significant reform and, on balance, LAPFF is supportive. If the intention behind the package of reforms is to enable shareholders to more effectively engage with companies over remuneration, then requiring a higher threshold to pass remuneration policy votes is a sensible proposal. In the cases of companies with controlling shareholders, it is currently almost impossible for minority shareholders to prevent them from passing controversial pay proposals, even when there are significant concerns. Xstrata is a good case in point, where a majority of minority investors opposed the remuneration report on two occasions, but the report was still passed. We believe that such cases will far outweigh those such as easyJet, where a disgruntled, large shareholder may use the remuneration vote as a way to frustrate management. Given that the number of companies in the FTSE100 with a large and/or controlling shareholder is on the rise, this point is even more pertinent.

In addition, if a forward-looking policy vote is characterised as an authority granted by shareholders to the board, it is should be noted that in similar cases (ie share issue authorities) a supermajority of 75% is already required.

If so, what would be the appropriate threshold?

75% seems the most appropriate, since this already applies to other votes.

Question 7: The Government proposes to require companies to explain how the results of the advisory vote have been taken into account the following year and to issue a statement to the market sooner than this where there is a significant level of shareholder dissent. What are the costs and benefits of this approach?

Costs:

We believe the costs will be negligible.

Benefits:

As the Department is no doubt aware, currently companies that a receive a significant vote against their remuneration policy but still achieve over 50% in favour, tend to treat this vote as a plain and simple "win". Therefore requiring some sort of statement the following year would increase the likelihood that companies would seek to engage with shareholders to understand the particulars of their opposition. LAPFF would be supportive of requiring a market statement where there is significant opposition of, say, 25% against or more. This would work well with a higher threshold to pass a binding vote on future policy.

Question 8: The Government proposes to give shareholder a binding vote on exit payments of more than one year's base salary. Do you agree with this approach or would an alternative threshold for requiring a shareholder vote be more appropriate?

Do you agree?

The Forum believes that a binding vote on exit payments above one year's base salary would be a very effective reform. In practice we believe that most companies would not seek to make such a payment because of the likelihood that most shareholders would oppose it.

Would an alternative threshold be appropriate?

No, the proposed level is sufficient.

Question 9: The Government recognises that the circumstances under which a director leaves their post are complex and diverse and so invites feedback on the appropriate scope and breadth of the proposed legislative measures.

What should be the scope of the proposed legislative measures? LAPFF believes that that it would be counter-productive to overcomplicate the measures, so the scope and breadth should be determined by the need to seek approval for the overall remuneration policy.

Question 10: The Government proposes that directors' service contracts and other arrangements should be amended to take account of the new requirement to seek shareholder approval for exit payments over one year's base salary. What are the costs and benefits of this approach?

Costs: In common with our response to question 3, whilst we acknowledge that costs will be incurred, these would be one-off costs, as future contracts would need to be written to take account of the existence of such a vote. Benefits: This is a necessary step in ensuring that such a vote is effective. We believe the benefits attached to the introduction of such a vote are significant, in terms of preventing rewards for failure, and greatly reducing potential costs to shareholders.

Question 11: The Government notes that a small number of directors could be entitled to generous pension enhancements if their contract is terminated early. It proposes not to legislate to override these rights, owing to the rarity of such arrangements and the complexity of legislation that would be required. Do you agree with this approach?

Do you agree? Yes, but we would encourage the Department to consider further intervention in respect of directors' pensions, where there appears to be over-generous provision in some cases. LAPFF wrote a letter jointly with the NAPF to the FTSE350 in 2010 to seek improved disclosure. This has, in the main, not occurred. Therefore we would encourage BIS to look at the issue of improved disclosure of directors' pension entitlements as part of its remit for improving remuneration reports.

Question 12: The Government proposes to leave unchanged the existing requirement in company law (section 188 of the Companies Act) to get members' approval for notice periods of more than two years. Do you agree with this approach?

Do you agree? Yes.

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