SHAREHOLDER REQUISITIONED MEETINGS AND RESOLUTIONS

1. Introduction

In response to the Securities and Exchange Commission's request for submissions in relation to the topic of "proxy access", this note summarises the powers of shareholders under English law to require company directors to convene an extraordinary general meeting ("**EGM**") of shareholders for specified purposes or to have resolutions circulated for discussion at the company's forthcoming annual general meeting ("**AGM**").

Whilst the Combined Code on Corporate Governance in the UK encourages dialogue between listed companies and their shareholders, shareholder activism in the UK, whether in the form of proposing resolutions, voting or raising questions at AGMs or lobbying management at other times has generally been relatively low key. Bodies representing institutional shareholders (such as the National Association of Pension Funds (NAPF), Association of British Insurers (ABI) and Pensions Investments Research Consultancy (PIRC)) have generally sought to influence corporate governance through investment guidelines issued to their members. However, we are increasingly seeing shareholders in UK companies raising matters for discussion and, in some cases, requisitioning the company to convene an EGM or placing items on the agenda for an AGM (although these latter courses of action are used only infrequently and largely remain in reserve for shareholder use).

Shareholder activism in the UK is facilitated primarily by the power of institutional shareholders to influence the way in which listed companies conduct their business and/or the composition of a company's board by bringing pressure to bear in private meetings with the company or through press and analyst comment. There are, however, certain statutory rights pursuant to which shareholders can requisition shareholder meetings and/or propose resolutions to give directions as to the management of the company and/or to appoint or remove directors. Because of this, when shareholders express their dissatisfaction with the incumbent management of UK publicly listed companies, those management teams are aware of the shareholders' powers and, for that reason, are often likely to be responsive to shareholder concerns without the need for those shareholders to actually exercise their statutory powers. The powers themselves are used relatively rarely in practice.

Typically, the calling of general meetings, the nature of the business to be discussed and resolutions to be considered by shareholders at those meetings are the province of a company's board of directors. The role of shareholders in the company's decision making is normally limited to a right to vote on matters specifically reserved to shareholders by the company's articles of association (by-laws) or by applicable law.

There are principally two types of shareholder resolutions - ordinary and special. The appointment and removal of directors only requires an ordinary resolution although

separate resolutions are generally required for each appointment and removal. Special resolutions are required in order to, among other things, amend the company's constitution and articles of association (by-laws), change class rights and disapply pre-emption rights. An ordinary resolution requires approval by a simple majority of the votes cast in person or by proxy at a general meeting and a special resolution requires approval by a majority of not less than three-quarters of the votes cast in person or by proxy at a general meeting.

Although the statutory powers to require companies to circulate proxy materials including resolutions proposed by shareholders are used relatively rarely in practice, appendix 1 to this note sets out some examples of shareholder activism involving UK listed companies where these powers have been exercised.

2. Statutory provisions

The two key statutory powers available to shareholders who wish to raise matters for discussion in general meeting are the powers to:

(i) requisition an EGM; and

(ii) propose a resolution for consideration at an AGM.

Each of these powers is addressed briefly below.

In addition, there is a statutory right for shareholders exercising these powers to have a statement prepared by them circulated by the company to all shareholders regarding the subject matter of the resolutions (see paragraph 2.3 below). This is separate from the requirement on the company under the UK Listing Rules to issue an explanatory circular in respect of a requisitioned EGM or the business to be considered at the AGM (see paragraph 5 below).

2.1 *Shareholders' right to requisition meetings*

Notwithstanding anything to the contrary in the company's articles of association, section 368 of the Companies Act 1985 (the "**CA 1985**") provides that shareholders holding not less than 10 per cent. of the paid up share capital of the company carrying the right to vote may requisition an extraordinary general meeting ("**EGM**") of that company. The requisition must state the objects of the meeting, be signed by the requisitionists and deposited at the registered office of the company. Following a valid requisition, the directors must "forthwith proceed duly to convene" an EGM. The requisitionists do not have to compensate the company for the costs of holding the meeting.

If the directors do not, within 21 days of the deposit of the requisition, convene an EGM, the requisitionists (or any of them representing more than half of their total voting rights) may themselves convene a meeting within three months of that date. The company must repay to the requisitionists the reasonable expenses incurred by them by reason of the directors' failure to convene the EGM. The company can retain that

amount from any fees or other remuneration payable to the defaulting directors. If the requisition contains a special resolution, the directors are deemed not to have complied with their obligation to call a meeting if they do not give the notice to shareholders required for special resolutions (21 clear days notice). To avoid the directors seeking to delay the actual holding of the meeting after the notice has been issued, they are deemed not to have complied with their obligation to call a meeting if they convene the meeting more than 28 days after the date of the notice convening the meeting.

Notably, neither the CA 1985 nor the UK Listing Rules impose any requirements as to the time of day or location of general meetings of public companies. Unless the company's articles of association contain any contrary provisions, it would therefore be possible, in theory, for a company to arrange for an EGM requisitioned under section 368 to be held at a location and time likely to dissuade large numbers of individual shareholders from attending. In practice, such a move is unlikely as it is likely to attract public criticism, may well be seen as a sign of weakness and is likely to provoke an angry response from the requisitioning shareholders, which might draw more attention to their proposals.

Technically, a requisitionist of an EGM is only required to state the "objects" of the meeting and a requisition could simply outline the issues to be discussed at the EGM. Resolutions could then be prepared and proposed at the meeting depending on the views expressed at the meeting. However, certain resolutions (including a resolution to remove a director) may only be validly passed at a general meeting if shareholders have been given 21 days notice of the resolution. A company's articles of association will also normally require that prior notice is given of the identity of any person who is being proposed as a director. In practice, it is usual for requisitioning shareholders to prepare and propose specific resolutions which are set out in full in the requisition and notice of meeting. This also allows all shareholders of the company a chance to consider fully those resolutions and to ensure that shareholders can lodge proxy forms in respect of those resolutions. Further commentary on the form of resolutions which may be proposed is set out in paragraph 3 below.

The Companies Act 2006 (the "**CA 2006**"), which will replace the CA 1985 during the course of 2007/2008, will not materially amend these provisions.

2.2 ***Shareholders' rights to propose resolutions***

Section 376(a) CA 1985 deals with shareholders' rights to propose resolutions to be considered at a company's AGM. This section provides that (i) shareholders holding not less than 5 per cent. of the total voting rights of the company or (ii) not less than 100 shareholders holding shares with an average of not less than £100 per member paid up on such shares (this reflects the nominal value not the market value of the relevant shares), may requisition the company to give shareholders notice of any resolution which may properly be moved and is intended to be moved at an AGM.

A company is not required to comply with section 376 unless a copy of the requisition signed by the requisitionists is deposited at the registered office of the company not less than six weeks before the AGM (in the case of a resolution requiring prior notice). If the resolution does not need advance notice then the requisition must be received by the company at least one week before the AGM.

In contrast to the position where shareholders requisition an EGM (see paragraph 2.1 above), where the requisitionists seek to propose a resolution at an AGM, the CA 1985 requires the requisitioning shareholders to provide the company with funds to cover the cost of distributing the resolution(s). In practice, these costs are likely to be minimal where a circular is already being prepared and circulated by the company in relation to the AGM (for example, where the requisition is received before the notice of AGM is issued by the company) and are often waived by the company. The Institute of Chartered Secretaries and Administrators ("**ICSA**") supports the circulation of shareholder resolutions received in time to be accommodated within the timetable for printing and despatch of the notice of AGM without charge. The ICSA also recommends as best practice that, unless the company agrees to incur all costs of circulation, a further resolution should be included giving shareholders the opportunity to decide whether the company or the requisitionists should bear the relevant costs.

Instances of small shareholders coming together in order to be able to make use of the right to propose a resolution at an AGM which is available to 100 shareholders holding shares with an average paid up value of not less than £100 per member are extremely rare. We are, however, aware from a press report which appeared in The Guardian newspaper on 30 April 2007 that a small shareholder in Tesco plc, a large UK supermarket company, is trying to canvas support in order to be able to propose a resolution at Tesco's AGM (to be held in June of this year) which would oblige the company to adopt certain practices in its dealings with supplies in low usage countries with a view to ensuring better working conditions for workers in its supplier factories.

The CA 2006 will not materially amend these provisions, other than to excuse a company from compliance where a court finds that the requisition right is being abused, which is broader than the current situation where the company can seek to be excused only where it believes the intention is to disseminate defamatory matter (see also paragraph 2.3 below).

2.3 ***Shareholders' rights to have statements circulated***

Section 376(b) CA 1985 provides that (i) shareholders holding not less than 5 per cent. of the total voting rights of the company or (ii) not less than 100 shareholders holding shares with an average of not less than £100 per member paid up on such shares, may require the company to circulate a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at a meeting, regardless of whether the resolution is proposed by the shareholders or by the company. This power may be exercised in conjunction with both a shareholder's power to requisition an EGM and to propose a resolution at an AGM.

For tactical reasons, it is common for requisitioning shareholders to refrain from using this right because of the restriction on the length of the permitted statement and because the remainder of the content of the document in which the statement is disseminated to shareholders would be controlled by the company. This is discussed further in paragraphs 5 and 6 below.

Section 377 provides that a company can apply to the court to establish that the rights conferred by section 376 are being abused to secure needless publicity for defamatory matter and that, as a result, the company need not circulate the statement. This provision is rarely invoked.

3. **Enforceability of resolutions**

A shareholder seeking to have a resolution put to a company's AGM or an EGM must be careful to ensure that the drafting of the resolution is sufficiently precise so that its provisions are capable of binding the company and its directors and/or to avoid it being invalid by virtue of conflicting with the provisions of the company's articles of association or provisions of relevant law. Case law suggests that directors are not required to put a resolution to a meeting where that resolution is incapable of being validly passed.

A shareholder seeking to requisition an EGM under section 368 CA 1985 must be even more careful as there is case law that if the resolutions set out in the requisition are not capable of being validly passed then the directors will not be obliged to convene the meeting.

On the other hand, it might be possible for directors to claim that an overly precise resolution conflicts with the provisions in most companies' articles of association or provisions of relevant law which provide that responsibility for the management of the company rests with the directors. Such a resolution would not then be binding even if validly passed. It would again be open to the directors to refuse to put such a resolution to the meeting. It is, however, common for provisions of this nature in a company's articles of association to specify that the directors' power is subject to regulations made or directions given to the directors by way of a special resolution of the company's shareholders (this requires the support of 75 per cent of the votes cast in person or by proxy) or, less commonly in our experience, an ordinary resolution (this requires the support of a simple majority of the votes cast in person or by proxy).

In light of the issues outlined above, resolutions seeking to influence how the company should be managed may be drafted as requests to the board to consider acting in a certain way. Resolutions of this type could be validly passed by a simple majority but would not, as a general matter, be regarded as binding on the directors. Directors however have a legal obligation to act *bona fide* in the best interests of the company, which they would need to bear in mind when deciding whether or not to act in accordance with such a resolution if it was not otherwise effective to restrict their management powers. In addition, if such a resolution was duly passed at a general

meeting of the company, the directors may well seriously damage their ongoing relationship with shareholders and the wider investment community if they were to ignore it.

It is worth noting that, in the BP example from 2001 described in appendix 1 to this note, the shareholders who exercised their rights under section 376 CA 1985 (see paragraph 2.3 above) to propose resolutions at BP's AGM to direct that the directors of BP take certain actions, put forward the relevant resolutions as special resolutions as BP's articles of association provided that the directors' powers to manage the business were subject to regulations made by special resolution. By way of contrast, in the Novar situation which is also referred to in appendix 1, the relevant resolutions put forward by shareholders exercising their rights to requisition an EGM took the form of ordinary resolutions (rather than special resolutions) as Novar's articles of association provided that the directors' powers to manage the business were subject to regulations made by way of ordinary resolution.

Appendix 2 to this note contains copies of the relevant provisions from the articles of each of BP and Novar at the relevant time.

4. **Resolutions for the removal and/or appointment of directors**

Shareholders' statutory requisition powers are commonly used to seek to appoint or replace directors.

Directors can be appointed and removed by ordinary resolution, except that the maximum (and minimum) number of directors may be prescribed by the company's articles and can only be amended by special resolution. Directors are appointed (and removed) by majority voting (i.e. separate resolutions, each requiring the support of a simple majority of the votes cast in person or by proxy) and not by plurality voting on a combined slate (i.e. where those directors receiving the greatest number of votes are appointed). Accordingly, where a shareholder seeks to reconstitute a company's board, separate resolutions removing each incumbent director and appointing each new director should be put to the meeting.

As mentioned above, the appointment of an additional director requires an ordinary resolution of the company. Similarly, the removal of a director requires an ordinary resolution. Special notice is, however, required to be given to the company of any such resolution if the director to be removed has not yet reached the end of his period in office or the resolution is to appoint someone to replace that director. Special notice is notice which is given to the company at least 28 days prior to the meeting at which the resolution is to be proposed and the company must then give shareholders 21 days notice of the resolution.

It is also usual for a company's articles of association to provide that prior notice must be given to the company of the intention to propose the appointment of a director (typically not less than seven or 14 days notice prior to the meeting). In addition, that notice must contain certain basic information such as confirmation that the person

proposed is willing to act and certain information required by the CA 1985 to be included in the register of directors to be maintained by the company (such as name, occupation, date of birth and other directorships held).

There is generally no requirement for the requisitioning shareholders to disclose actual or potential conflicts of interest which their proposed board candidates might have in any notice to the company requisitioning an EGM or proposing an AGM resolution or in any statement or circular. If, however, the relevant person was to be elected as a director then any such conflicts of interest would need to be disclosed to the board in accordance with applicable company law and the company's articles of association. If an actual or potential conflict is likely to be a major element in the company's arguments as to why shareholders should reject the proposed director then the requisitionists may however choose to disclose and address it as a tactical matter.

In the Active Value/Liberty plc situation referred to in appendix 1 to this note, certain Liberty shareholders requisitioned an EGM and proceeded to send their own circular to Liberty shareholders (this was in addition to and separate from the circular which the board of Liberty had previously sent to shareholders, as they were required to do by statue, convening the EGM and containing the notice of meeting setting out the requisitionists' proposed resolutions). This appears to have been a tactical move by the requisitionists as it allowed them to respond to the arguments put to shareholders by the board of Liberty in its earlier circular and to set out their arguments in favour of the board changes they were seeking together with brief details of their strategic plans for the company and to express their desire to maintain the independence of the board of Liberty by proposing the appointment of new independent non-executive directors as necessary in the event that their proposed changes were approved. See also paragraph 6 below.

It is worth noting that in the recent Aegis/Bollore and Spirent/Sherborne situations described in appendix 1, the requisitionists chose not to provide any substantive information to the company about the proposed new directors.

In the Redbus Interhouse situation referred to in appendix 1, each of the resolutions relating to the removal of a particular director also included the proposal to appoint another person in his place. However, the identity of the replacement was not set out in the requisition (but was instead to be notified to the company prior to the EGM) and therefore could not be set out in the notice convening the EGM. By way of contrast, in the Spirent/Sherborne situation seven resolutions were proposed dealing separately with the removal of each of three incumbent directors and the appointment of each of the four new directors. This was presumably for tactical reasons as it was possible that even if some or all of the resolutions to remove the incumbent directors had failed, some or all of the resolutions to appoint new directors might still have succeeded.

5. Circulars to shareholders

As discussed above, section 376 CA 1985 allows shareholders, who satisfy the relevant shareholding qualification referred to in paragraph 2.3 above, to require a company to circulate a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution at an AGM or the business to be dealt with at a meeting generally.

Neither the CA 1985 nor the Listing Rules require a requisitioning shareholder (as opposed to the company) to prepare such a statement for circulation or prescribe the contents of it. As mentioned above, it is however common for a company's articles of association to prescribe some biographical information that a shareholder must submit to the company in respect of any proposed director.

There may well be tactical reasons why the requisitionists would choose not to have the company circulate a statement. In particular, any such statement circulated by the company would normally be accompanied by a detailed statement from the company rebutting the requisitionists' arguments and recommending that shareholders vote against the resolutions being proposed by the requisitionists. See also paragraph 6 below.

It should be noted that in the BP Amoco situation referred to in appendix 1, the requisitionists required BP to include statements in support of the two resolutions proposed by them and BP, in turn, set out its arguments as to why shareholders should vote against the resolutions. It is also interesting to note that BP included statements from the requisitionists in its AGM circular notwithstanding the fact that these statements exceeded the 1,000 word limit prescribed in section 376.

In practice, a company proposing a shareholder requisitioned resolution at its AGM or convening a shareholder requisitioned EGM will be required under the UK Listing Rules to send a circular to its shareholders in addition to any statement put forward by the requisitioning shareholders. Chapter 13 of the Listing Rules governs the issue of circulars by listed companies to their shareholders, including by prescribing the contents of circulars and requiring a company to seek approval of the circular by the UK Listing Authority in certain circumstances. Generally speaking, a circular issued by a listed company convening a shareholder requisitioned EGM or dealing with the appointment/removal of directors by requisitioning shareholders will require prior approval by the UK Listing Authority, which will review drafts of the circular and may raise comments to which the company would need to respond. The Listing Rules do not, however, contain any specific substantive content requirements in these circumstances and the company will be able to control the content of the document (subject to inclusion of any statement the requisitions might require to be included). They do, however, require a company to include, among other things, a clear and adequate explanation of the subject matter of a circular and, where a shareholder is required to vote, all information necessary to allow the shareholder to make a properly informed decision including a recommendation from the board as to the voting action

shareholders should take (i.e. whether to vote in favour or against) indicating whether or not the proposed resolutions are, in the board's opinion, in the best interests of shareholders as a whole. As a result, the directors of the company will generally use the circular as the means for trying to persuade shareholders to reject the requisitionists' proposals.

Requisitioning shareholders will likely know what information and/or arguments the company is likely to include in its circular to shareholders and can therefore endeavour to rebut those arguments and refute the information in any statement they choose to issue.

6. **Circulars sent by shareholders and access to shareholders' register**

It is open to shareholders to prepare and submit their own material direct to shareholders outside of the 1,000 word statement process referred to in paragraph 2.3 above. This would be in addition to any circular issued by the company containing the notice of meeting setting out the proposed resolution(s) and any statement of up to 1,000 words by the requisitionists. Such an approach allows the requisitioning shareholders to circumvent the 1,000 word limit and, tactically, may avoid the shareholders' material being swamped and rebutted by the company's own material.

As described above, this approach was adopted in the Active Value/Liberty situation referred to in appendix 1 to this note in relation to their successful attempt to institute changes to the board of Liberty plc in 1997. In that situation, the requisitioning shareholders sent out their own circular and also a form of proxy for use by Liberty shareholders notwithstanding the fact that the company had already sent out a form of proxy with its circular containing the notice convening the EGM (as it was required to do pursuant to section 368 CA 198 - see paragraph 2.1 above). By sending out their own circular, the requisitionists were able to respond to the arguments put forward by the board of Liberty against the proposed resolutions. The decision of the requisitionists to send out a separate form of proxy with their circular is also likely to have been a tactical one to make it easier for shareholders who wished to support their proposed resolutions to complete and return a form of proxy voting in favour of the resolutions.

Section 356 CA 1985 permits any member of a company or other person to inspect and be provided with a copy of the shareholders' register, on payment of a fee. This would provide them with details of shareholders' names and addresses and enable them to send their own circular direct to shareholders.

The relevant provisions in the CA 2006 will, when they take effect on 1 October 2008, limit access to the company's registers by requiring the person making the request to provide certain information, including the purpose for which the information will be used. The company will be able then apply to the court for an order that the request is not made for a proper purpose. The *bona fide* dissemination of material to

shareholders in respect of resolutions to be proposed at a general meeting of a company will not, however, constitute an improper purpose.

7. Executive remuneration

Executive remuneration is often a focus of attention for activist shareholders and concerted opposition by institutional shareholders.

UK listed companies are required to publish and seek shareholder approval (by way of an ordinary resolution) of a report on directors' remuneration (Listing Rule 9.8.8). This report is included in the company's annual report and accounts and contains, among other things, details of the policies adopted by the company and its remuneration committee in relation to executive remuneration and extensive disclosure of the directors' remuneration packages (but not the remuneration packages of non-director executives). The vote on the directors' remuneration report is, however, "advisory" only and is not a vote on the actual remuneration packages themselves.

Where, for example, institutional shareholders believe that the remuneration arrangements are inappropriate and/or where it is perceived that payments to departing directors amount to "payment for failure", it is common to see a concerted media campaign to gather support for voting against the resolution to approve the directors' remuneration report. Even if the relevant resolution is not approved (because a majority of the votes are cast against it), such a "no vote" is not technically binding on the company in the sense that it does not prevent the company from proceeding with the remuneration packages and policies set out in the report. It does however generate intense media scrutiny and attracts negative publicity as companies such as GlaxoSmithkline, WPP, Shire Pharmaceuticals, BAe Systems and others have discovered in recent years. A "no vote" has generally led to a change in approach or policy by the company in question. At this year's AGM, BP suffered what has been described as its biggest shareholder protest for at least a decade when 17% of the votes cast were against the resolution to approve the directors' remuneration report. This opposition was due to concerns over the inclusion of the retiring chief executive in a long-term incentive plan that would run until 2009 and a wish to see a closer link between pay and health and safety targets following the Baker report earlier this year into the fatal Texas City refinery blast.

8. Threats and negotiating tactics

The powers described above which are available to activist shareholders under English law have been used relatively rarely in practice. However these rights and the voting requirements in relation to the appointment/reappointment of directors and the approval of the directors' remuneration report mean that when activist shareholders contact UK listed companies to complain about under-performance or to lobby for board change etc, the board is often prepared to enter into dialogue rather than risk the cost and adverse publicity of a public dispute. This would particularly be the case if the board

was concerned that the shareholders could convene an EGM and successfully pass resolutions to change the composition of the board.

As a result, the ability of shareholders to threaten to use these statutory powers can be an effective negotiating tactic. See for example the Coats Viyella situation which is described in appendix 1 to this note. In addition, in the Spirent/Sherborne situation it would appear that there were extensive discussions and attempts to reach agreement with the activist shareholders before they proceeded to requisition the EGM to change the composition of the board.

As a general rule however the examples of shareholders making use of the statutory powers described above have involved one or more significant or "professional" shareholders taking the initiative. Examples of where 100 (or more) shareholders each holding shares with an average £100 of paid up capital have sought to exercise the right to propose a resolution at an AGM are extremely rare although, as mentioned above, we are aware of situations where shareholders have sought to canvas such support.

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APPENDIX 1

EXAMPLES OF SHAREHOLDER REQUISITIONS / ACTIVISM

Set out below are a number of examples of situations involving shareholder activism and/or the requisitioning of an EGM or that resolutions be put before the AGM.

AEGIS GROUP PLC - GROUPE BOLLORÉ

Within the last 12 months, Groupe Bolloré (a 29.1% shareholder of Aegis Group plc) has proposed ordinary resolutions to appoint two of its nominees to the board both at the company's AGM and at two EGMs requisitioned by Groupe Bolloré.

Groupe Bolloré's controlling shareholder and chairman, Vincent Bolloré is also the chairman and a substantial shareholder of a competitor of Aegis Media, MPG. The proposal from Groupe Bolloré is that, as the company's largest shareholder, it should be represented on the board of Aegis. The board's objections appear to centre on concerns about the independence of Bolloré's nominees. The resolutions were defeated at all three meetings, the most recent being the EGM held on 4 April 2007.

Bolloré's protracted campaign has included various private meetings with the board and with the company's CEO. Bolloré has also made clear its intention to continue to press its cause, even suggesting it could requisition three EGMs a year until its chairman's retirement in 2022.

CADBURY SCHWEPPES - NORMAN PELTZ

In March 2007, Norman Peltz acquired a 2.98% stake in Cadbury Schweppes plc. Mr Peltz, a US financier / businessman has a reputation as a shareholder activist. The company's share price rose by 10% on the back of the news of Mr Peltz' interest. A few days later, Cadbury Schweppes announced the proposed demerger of its confectionery and soft drinks businesses, a move that accorded with the publicly known views of Mr Peltz.

SPIRENT COMMUNICATIONS PLC - SHERBORNE INVESTORS GP

In November 2006, a group of shareholders in Spirent Communications plc (holding approximately 25% between them) led by Sherborne Investors GP, LLC requested that the company replace three directors, including the chairman, with its own candidates. It would appear that extensive discussions and attempts to reach an agreement between the company and Sherborne resulted in the company offering Sherborne two seats on its board: one as deputy chairman and one as chairman of the audit committee. This compromise was rejected by Sherborne, who subsequently requisitioned an EGM (held on 22 December 2006), at which it successfully removed three of the existing non-executive directors and appointed four of its own nominees.

All seven of the separate ordinary resolutions were passed by a majority of votes cast at the meeting, and at the conclusion of the meeting two of the remaining three non-executive

directors resigned. This resulted in Sherborne's nominees comprising four out of the seven directors on the board following the EGM.

TESCO

According to a press report published in The Guardian newspaper on 30 April 2007, a small shareholder in Tesco plc, a major supermarket company, is trying to canvas support from other shareholders in order to be able to propose a resolution at the company's AGM (to be held in June of this year) which would oblige Tesco to adopt certain practices in its dealings with suppliers in low wage countries with a view to ensuring better working conditions for workers in its supplier factories.

The shareholder in question is seeking support from other shareholders in order to exercise the right under section 376 of the Companies Act 1985 which allows 100 (or more) shareholders who each hold shares on which there has been paid up an average sum per member of not less than £100 (this is based on the nominal value not the market value, of the shares in question) to propose a resolution at an AGM.

According to the newspaper article, the shareholder had previously written to Tesco to ask if the directors would back this resolution but the company had declined to do so.

BRITISH ENERGY PLC - POLYGON

During the course of the long running restructuring of British Energy plc, two groups of shareholders (Polygon and Brandes) together holding 10.22% of the company's ordinary shares requisitioned an EGM on 3 September 2004 and proposed three special resolutions and two ordinary resolutions. The proposed resolutions would have prevented British Energy from taking certain actions which might have been required in order to implement the agreed restructuring which the company was otherwise committed to implement pursuant to a creditor restructuring agreement entered into in October 2003.

The three proposed special resolutions would have prevented the company from (i) de-listing its shares without first seeking shareholder approval; (ii) amending or extending the creditor restructuring agreement; and (iii) selling its business or issuing shares in any of its subsidiaries. If passed, these special resolutions would have had the effect of limiting the powers of the directors to manage the business and affairs of the company and, potentially, to perform the credit restructuring agreement. The directors of British Energy opposed the resolutions on the basis that they endangered the continued viability of the company and the interests of creditors and shareholders.

The two proposed ordinary resolutions were advisory only in that they advised the board as to shareholders wishes in respect of certain matters related to the restructuring rather than requiring it to act in a particular way.

As required by the Companies Act 1985, British Energy issued a circular to shareholders on 24 September 2004 convening the EGM for 22 October 2004 and setting out the resolutions in the notice of meeting. That circular also set out details of the requisitioning shareholders'

alternative restructuring proposal and the reasons why the board of British Energy opposed the resolutions.

As a result of British Energy proceeding with certain steps to give effect to the creditor restructuring agreement (including the de-listing of British Energy's shares), Polygon announced on 30 September 2004 that it had decided to withdraw its support for the requisitioned EGM. Polygon stated that, having considered the steps taken by the company, there was no longer commercial logic for supporting the resolutions to be considered at the requisitioned EGM and confirmed that they would vote against those resolutions. Brandes also announced that it too would no longer seek to have the resolutions passed at the requisitioned EGM.

At the EGM on 22 October 2007 all of the resolutions were defeated.

REDBUS INTERHOUSE

Cliff Stanford, a 29.9% individual shareholder who was involved in establishing the company, requisitioned an EGM to consider the removal of three of the company's six directors and the appointment of replacements. The requisition proposed three resolutions, each for the removal of a named director and his replacement with a person "to be identified prior to the date of the [EGM]". Press reports indicate that Mr Stanford wrote to shareholders of his own volition setting out the reasons for his requisition (citing inadequacies in the board's strategy, vision and technical experience) and also set up a website dedicated to his disagreement with the company. At the EGM held on 5 August 2002, shareholders voted against all of the proposed changes to the board and the resolutions were defeated.

EASYJET PLC

At easyJet's March 2002 AGM, the Cooperative Insurance Society and a small number of other institutional investors voted against the re-appointment of Stelios Haji-Ioannou as the company's chairman. The resolution was passed despite this but on 18 April 2002, Mr Haji-Ioannou announced his intention to resign. The company also announced the appointment of a deputy chairman and the resignation of three executive directors. While Mr Haji-Ioannou maintained that his decision to resign was taken before the AGM was held, it seems clear that pressure from investors (including the votes against his reappointment at the AGM) played a role bringing about the changes to the board.

CAPITAL & REGIONAL PLC

On 1 February 2002, Capital & Regional convened an EGM at which it proposed a resolution approving the company's entry into the joint venture. On that same day, the company received an EGM requisition from a group of four of its shareholders holding in aggregate 12.2% of the company's shares, led by Dawnay, Day Properties Limited. The requisitionists proposed various resolutions inconsistent with the company's intention of entering into the joint venture. The company wrote to shareholders to notify them that the requisition had been received but stated that it would go ahead with the currently convened EGM to see if shareholders were in support of the proposed joint venture before convening the requisitioned

EGM. Dawnay, Day Properties also wrote to shareholders explaining why it was opposed to the joint venture and asking shareholders to vote against the joint venture at the company convened EGM. At the company convened EGM, the resolution approving the joint venture was passed. Dawnay, Day Properties then withdrew its requisition.

BP AMOCO PLC

In March 2001, shareholders of BP Amoco plc proposed four social and environmental resolutions for the company's AGM. These were initially rejected as they were inappropriately filed at Companies House (the UK company registry). Two of the original resolutions were re-filed correctly and were proposed at BP's AGM on 19 April 2001. Each of the resolutions was proposed as a special resolution as BP's articles provided that the directors' power to manage the business could be subject to regulations made by way of special resolution. One of the resolutions related to BP's investment in PetroChina and the second related to the company's production of fossil fuel products. BP's AGM circular contained statements from the requisitioning shareholders in support of their proposed resolutions notwithstanding the fact that these exceeded the maximum number of words prescribed by statute. The circular also contained extensive statements from BP as to why shareholders should vote against those two resolutions. Each of these resolutions was defeated at the AGM but a total of 7.4% of shareholders voted in favour of the resolution calling for the company to move away from fossil fuels in order to reduce climate change and 5.2% of shareholders voted in favour of the company divesting its interest in PetroChina.

NOVAR PLC

In January 2001, Novar plc (formerly Caradon plc) held an EGM requisitioned by a shareholder owing approximately 10% of the ordinary shares in the company (believed by the board to be a nominee for Active Value). Novar had disposed of a major plumbing business in 2000 and retained three other main (and, it was argued, unrelated) businesses. The company's managing director had been reported as intending to use the sale proceeds from the plumbing business for further acquisitions. The requisitioned meeting was called to discuss issues relating to the various divisions of the company's business (identifying a core business area and proposing the disposal of the company's other businesses and assets) and a return of capital to shareholders by way of a share buy back. The following resolutions were proposed at the EGM:

- That the board should identify one of its divisions as the company's core business;
- That the board should dispose of non-core businesses as soon as possible;
- That in the coming year the company should not make any acquisitions over a certain level without shareholder approval; and
- That the company should make a tender offer for 15% of the company's share capital.

Each of these resolutions was proposed as an ordinary resolution as Novar's articles provided that the directors' powers to manage the business could be made subject to regulations made by way of ordinary resolutions. It would appear that the requisitioning shareholders did not

circulate or require the company to circulate a statement to shareholders setting out information in support of the resolutions. In its circular to shareholders convening the EGM and containing the notice of meeting setting out the proposed resolutions, the board of Novar set out its reasons for recommending that shareholders vote against each of the resolutions.

The resolutions were defeated at the meeting.

COATS VIYELLA PLC

On 7 December 2000, Coats Viyella plc issued a statement that a requisition had been made under section 376 of the Companies Act 1985 by four shareholders (Lord Rothschild, Guinness Peat (an investment group), Chapman Investments (a South African investment vehicle) and Finance and Trading Group), who between them held 35% of the company's shares, requiring the company to convene an EGM. The requisition sought the appointment of four non-executive directors, representing the three corporate bodies amongst them, and that pending their appointment the company should refrain from disposing of any assets. A statement issued by the Guinness Peat group on the same day criticised Coats Viyella's underperformance and argued that its proposed directors were expected to make a "real and immediate contribution" to the company. The company issued a statement that it would "consider carefully the proposals being made".

Subsequent negotiations between the company and the requisionists led to the appointment of three of the four prospective directors. The shareholders therefore withdrew their requisition before any circular convening the proposed EGM or any other proxy materials were sent to shareholders and, as a result, the EGM was not held. In a statement issued by Coats Viyella on 29 December 2000 confirming the appointments, the company's financial director explained, "We had extensive discussions and were pleased to reach an amicable resolution, as the disruption and cost of holding an EGM were not in the interest of our shareholders as a whole. We were also confident that the strategy the company is currently pursuing is acceptable to our shareholders in general."

ACTIVE VALUE

In the 1990s/early 2000s an investment fund called Active Value run by Brian Myerson and Julian Treger developed a reputation as an activist investor in the UK with an aggressive investment style pushing for change in a number of publicly listed companies including Novar (see above), Liberty, Pilkington and Cordiant.

In December 1998, certain shareholders in the holding company of the luxury department store Liberty were successful in their bid to oust the chairman, Dennis Cassidy and replace him with their own candidate and to appoint a further candidate to the board. Mr Cassidy's radical plans to restructure the tudor-style flagship store attracted opposition from Active Value, who joined forces with another major shareholder, Elizabeth Stewart-Liberty, to requisition an EGM of Liberty and to seek to remove Mr Cassidy from office.

As required by statute, the board of Liberty sent a circular to shareholders convening the EGM and setting out the proposed resolutions in the notice of meeting (this was accompanied

a form of proxy for use in connection with the AGM). The board of Liberty set out in that circular their arguments as to why shareholders should vote against the proposed resolutions. Following the dispatch of that circular, the requisitioning shareholders sent their own circular (also accompanied by a form of proxy for use at the EGM) direct to Liberty shareholders setting out the reasons why they believed that shareholders should vote in favour of the proposed board changes.

At the time of convening the EGM, Mrs Stewart-Liberty and Active Value together held approximately 44% of Liberty's share capital. Each of the three ordinary resolutions to effect the board changes proposed by them at the EGM only required the support of a simple majority of the votes cast in person or by proxy at the meeting and the relevant resolutions were duly passed with the support of approximately 55% of the votes cast at the meeting (the votes cast by Mrs Stewart-Liberty and Active Value together represented approximately 54% of the total votes cast at the meeting or, put another way, approximately 97% of the votes cast in favour of the resolutions).

STARMIN PLC (PREVIOUSLY CALLED WATER HALL GROUP PLC)

On 2 January 1996 Water Hall Group plc convened an EGM for 25 January 1996 in accordance with a requisition from three shareholders holding in aggregate 10.37% of the company's shares. The three shareholders were all connected with Mr Raschid Abdullah (one of the four existing directors of the company) and his two brothers.

Two ordinary resolutions were to be considered at the EGM - to remove the company's chairman as a director of the company and to appoint a Mr Anthony Smith as a director. The EGM requisition was made after Mr Abdullah's proposals, presented at an earlier board meeting, to dispose of the company's main trading asset were rejected by the board.

The notice of meeting was accompanied by a circular from the company including a letter from the company's chairman explaining why the members of the board, other than Mr Abdullah, were opposed to the resolution. On 16 January 1996, Mr Abdullah wrote to shareholders by way of a separate circular in support of his proposed resolutions and setting out his concerns about the board's strategic direction. The chairman wrote to shareholders for a second time on 19 January 1996 again setting out reasons why shareholders should vote against the resolutions.

At the EGM on 25 January 1996 the two resolutions were passed.

APPENDIX 2

(i) Extract from the articles of association of BP Amoco plc at the time of its AGM in April 2001.

"The business and affairs of the Company shall be managed by the Directors, who may exercise all such powers of the Company as are not by the Statutes or by these presents required to be exercised by the Company in General Meeting, subject nevertheless to any regulations of these presents, to the provisions of the Statutes and to such regulations or provisions as may be prescribed by Special Resolution of the Company, but no regulation so made by the Company shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made. The general powers given by this Article shall not be limited or restricted by any special authority or power given to the Directors by any other Article."

(ii) Extract from the articles of association of Novar plc at the time of its EGM in January 2001.

"The business of the Company shall be managed by the Directors who may exercise all the powers of the Company to the extent that the same are not required by the Statutes, these Articles or any Ordinary Resolution of the Company, to be exercised by the Company in General Meeting. Any exercise of such powers by the Directors shall be in accordance with the provisions of the Statutes, these Articles and any Ordinary Resolution of the Company. No Ordinary Resolution or alteration of these Articles shall invalidate any prior act of the Directors which would have been valid if the same had not been passed or made."