PIRC

Shropshire County Council Pension Authority

Proxy Voting Review
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UK Voting Review

British Land Plc - AGM 13th July

Remuneration and auditor independence were issues at British Land.

Under the LTIP, the performance condition used is net asset value per share (NAV) compared with the Capital Growth Component of the Investment Property Databank (IPD) Annual Index. The Company has informed us that over the previous three years, NAV out-performance of 4.5% pa would equate to upper decile performance. In view of the level of awards on offer, we do not consider these targets to be sufficiently challenging. Moreover, at the minimum vesting point, executives can receive 25% of their salary for achieving outperformance of the IPD index of less than 0.5%.

Combined potential remuneration was considered excessive. In the year under review short and long-term incentive awards, including matching shares and vested recruitment awards, amounted to 624% of base salary for the chief executive. With the exception of the finance director, directors' salaries will not rise in the current year, average salaries already compare well with the FTSE100, and are significantly higher than the other four FTSE100 real estate investment trusts (REITs).

We recommended shareholders oppose the remuneration report.

Deloitte LLP wer proposed as auditors. Consultancy related non-audit fees amounted to £0.4m, of which £0.3million was paid to Drivers Jonas Deloitte for advice and services mainly relating to the 75 acres of potential development land around Meadowhall Shopping Centre. This represents 80% of audit fees in the year under review and over 100% on a three year aggregate basis. This level of non-audit fees raised independence concerns over the external auditors.

An oppose vote was therefore recommended.

The board was proposing a dividend for the fourth quarter of 6.6 pence, bringing the total for the year to 26.1 pence per share. Although as a REIT, it is required to distribute 90% of its qualifying profits as dividends, shareholders should be afforded an annual opportunity to vote on the level of dividend distribution, whether or not there is a legal requirement to do so. In the year under review, the dividend payout ratio stood at 87.5%.

On this basis, an oppose vote on the report and accounts was recommended.

Big Yellow Group Plc - AGM 18th July

Independence was an issue at Big Yellow Group.

There are significant concerns over the governance structure of the company. The chairman has executive powers, which could potentially compromise his ability to oversee board discussions in an objective fashion and impair the ability of the chief executive to take a clear strategic lead, particularly given that the two directors co-founded the company in 1998 and have worked together since then. In addition, another co-founder of the company and former executive is a non-executive director of the company. At the same time, it is considered that there is insufficient independent representation on the board as a whole to counterbalance the excessive power concentrated in the chairman and safeguard the interests of all shareholders.

We recommended shareholders oppose the annual report.

Helical Bar Plc - AGM 24th July

Board appointments and a bonus scheme were issues at Helical Bar.

There were serious governance concerns as two directors avoided shareholder approval by joining the board immediately after the AGM though they could have been put forward for election. This could be viewed as a material omission from the proxy forms, which raises major concerns about the effectiveness of governance in practice at the Company.

We recommended that shareholders oppose the report and accounts.

The board sought shareholder approval for the codification and approval of the existing performance related cash bonus scheme – a discretionary annual bonus plan that has to date been operated for the development and investment directors of the Company – to be renamed the Helical Bar Annual Bonus Scheme 2012. The Company proposed to renew the annual bonus (Helical Bar Annual Bonus Scheme 2012). All directors except the CEO and the FD will be eligible to participate in this bonus scheme. Notable points are the maximum individual limits of 300% of salary and clawback provisions.

The Investment Bonus Award Pool and Development Bonus Award Pool will be calculated by (i) first, applying a distribution formula to the Investment Profit Pool and the Development Profit Pool as set by the committee during the relevant financial year, and (ii) by adding an amount (if any) equal to that part of the award pool not previously distributed to participants that has been deferred and carried forward under the scheme. There is a maximum cap on the award pool of the plan, which is limited to 10% of the gross profits generated by the assets allocated to the Investment Pool and the Development Pool. Any employee of the Company and its subsidiaries will be eligible to participate in the scheme at the discretion of the committee.

The award pool is capped; the scheme awards superior performance and is open to all employees (at the discretion of the remuneration committee). However, there are concerns over the excessiveness of the plan, which can award up to 300% of director's base salary. Due to the confusing nature of calculating the bonus pools, an oppose vote was recommended.

SABMiller Plc - AGM 24th July

A lack of independent representation on the board was an issue at SABMiller.

Non-executives Geoffrey Bible and Dinyar Devitre are not considered independent as they are nominees of Altria, the largest shareholder. Non-executive Howard Willard is not considered independent as he is a nominee and former CFO of Altria.

Non-executives Carlos Pérez Dávila and Cyril Ramaphosa are not considered independent as they are nominees of Santo Domingo Group - the Company's second largest shareholder. Alejandro Santo Domingo Dávila is not considered independent as he is also a nominee of the Santo Domingo group. Furthermore, he has served on the board for over nine years and there are concerns regarding his time commitments.

Senior independent director and newly appointed deputy chairman John Manser is not considered to be independent as he has served on the board for more than nine years. His promotion to deputy chairman is designed to appease fears of a concentration of power at the head of the Company, following the appointment of an executive chairman, but his length of tenure raises questions over his ability to ensure independent oversight.

There is insufficient independent representation on the board. Therefore, we recommended shareholders oppose the election of all seven directors.

Newly appointed executive chairman Graham Mackay stepped up to this position from that of chief executive, following the retirement of Meyer Kahn, who himself was a former chief executive of the Company. It is intended that he will make the transition to non-executive chairman once Alan Clark is appointed as the new chief executive in a year's time. This does little to allay fears of a concentration of power at the head of the Company. We recommended shareholders oppose his election.

We also recommended that shareholders oppose the remuneration report. The report clearly states that "a significant proportion of executive pay is variable." It fails, however, to give any realistic estimate as to the potential future payouts under the 'value share award' scheme that was instigated two years ago. The 'value share award' scheme, for which disclosure in the remuneration report is less than transparent, essentially rewards executives a cut of any increase in market capitalisation of the Company above the median over a five year period.

Combined awards under the annual bonus, share option and performance share programmes, during the year under review, are considered to be excessive, with the soon to be executive chairman, Mr Mackay, and the CFO receiving 520% and 634%, respectively, of their base salaries.

The lower vesting thresholds for EPS growth attached to the share option scheme (based on real EPS growth) and performance share awards (compound annual EPS growth) are not challenging against brokers' forecasts. Moreover, the EPS vesting scale for these schemes are not sufficiently wide to encourage outperformance.

Town Centre Securities Plc - EGM 9th August

The board was seeking authority to purchase the entire issued share capital of Apperley Bridge Limited.

As announced on 10 July 2012, the Town Centre Securities PLC, a Real Estate Investment Trust (REIT), has agreed to terms on a proposed transaction (the "Transaction") to acquire the entire issued share capital of Apperley Bridge Limited ("Apperley"). Apperley owns a 6.8 acre site and associated buildings at Apperley Bridge, Bradford (the "Property"), which is comprised of office buildings, ancillary storage and a bungalow. The space is currently occupied by the head office of Barratts Trading Limited, which operates the Barratts and Priceless shoe chains. The Company will pay £1,316,000 in cash to purchase the entire share capital of Apperley. The cash consideration will be adjusted based on the net asset position of Apperley as at the date of completion, with the maximum consideration being capped at £1,341,000. In addition, the Company will advance a loan of £1,000,000 to Apperley in order for it to repay an outstanding loan on its balance sheet (the "Barratts Loan").

The transaction constituted a substantial property transaction under the Act as the entire issued share capital in Apperley Bridge was held by Mr E M Ziff and Mr M A Ziff, who are the combined chairman/chief executive and non-executive director of Town Centre Securities plc, respectively. Mr E M Ziff and Mr M A Ziff will receive the initial sum of £1,316,000 (subject to an upward or downward adjustment to reflect a discount of £130,000 to net assets on completion).

Mr E M Ziff has been chairman and chief executive of the Company since 2004 and was appointed to the company board in 1985. Mr M A Ziff is a non-executive director of the Company. They are both part of the Ziff family concert party, which in total owns 54.06% of the share capital of the Company. Mr E M Ziff and Mr M A Ziff, independent of their other interests, own, equally and beneficially, Apperley Bridge. The Property was previously leased to Barratts Priceless Limited as the corporate headquarters and warehouse and since administration of that company has been occupied by Barratts, which purchased certain assets originally owned by Barratts Priceless Limited from the administrator. Mr E M Ziff and Mr M A Ziff together with their respective families are significant shareholders in the group that owns Barratts with Mr M A Ziff also acting as chairman and chief executive and Mr E M Ziff as a non-executive director of Barratts.

The Property has been independently valued by Sanderson Weatherall LLP as having a market value of £2,350,000.

The Company provided sufficient disclosure, including discussion of the assumed risks and uncertainties, such that shareholders are able to make an informed and reliable assessment of the proposed transaction. However, there was insufficient independent representation on the board, with only two of the six directors considered independent, according to PIRC guidelines. This raised governance concerns insofar as it failed to provide shareholders with assurance that the proposal had been subject to an acceptable level of objective scrutiny. On this basis, we recommended shareholders abstain.

Vedanta Resources Plc - AGM 28th August

We had a number of concerns at Vedanta Resources.

During the year, the group made political donations in India of U.S. $2.01 million (2011: U.S. $0.02 million) either through a trust or directly in respect of the Indian general election. The board states that it believes that supporting the political process in India will encourage and strengthen the democratic process. However, there are concerns with the amount involved. This is at least 100 times more than what was donated in 2011. Further, the use of shareholder funds as a donation for political parties is a questionable use of shareholders money. Therefore, a withhold vote was recommended on the report and accounts.

We recommended that shareholders oppose the election of executive chair Anil Agrawal. The appointment of an executive chairman is not supported as it is not considered to be best practice. While it may be argued that the Company has clearly stated the division of responsibilities, there are still doubts that in practice the management power lies much more with the current executive chairman. This can be justified by his previous role as CEO and that he currently owns the majority of the Company. In addition, he missed two board meetings.

We also recommended that shareholders oppose the election of newly appointed non-executive director Geoffrey Green. He is not considered to be independent as he is a partner at one of the Company's two firms of solicitors. There are insufficient independent directors on the board.

We also recommended that shareholders oppose the appointment of Deloitte LLP as auditors. Non-audit fees of approximately $5.2m were more than the statutory fees paid both for the year under review and on a three year aggregate. This level raised significant concerns about the auditor's independence.

Essar Energy Plc - AGM 4th September

We had a number of concerns at Essar Energy.

Chairman and non-executive director Prashant Ruia, and nephew of Ravi Ruia, was not considered independent upon appointment by PIRC as he has an indirect interest in 76.72% of the Company's issued share capital through Essar Global. As he was the chairman facing election for first time and not independent on appointment an abstain vote would normally be recommended; however, he has connections with the controlling shareholding so an oppose vote was recommended. The Company views that his lack of independence is mitigated by the level of non-executives on the board, however, this statement did not adjust the vote recommendation for a new chairman standing for the first time, but will be considered in future vote recommendations.

Non-executive director and former chairman as well as founder and vice chairman of Essar Group Ravi Ruia is not considered independent as he has an indirect interest in 76.72% of the company's issued share capital through Essar Global. However, there are sufficient independent directors on the board. There is a concern about his internal time commitments as he has also missed two of the five scheduled board meetings during the fiscal year ending 2012, with no apparent explanation having been made. Therefore, an abstain vote was recommended.

We also recommended that shareholders oppose the appointment of Deloitte LLP as auditors. Consultancy-related non-audit fees amounted to USD 2,400,000, and exceed the audit fees for the year under review. These fees are in part related to the Stanlow acquisition. However, there are concerns that this level of non-audit fees creates a potential for conflict of interest on the part of the independent auditor. Therefore, an oppose vote on the resolution was recommended.

Approval was also sought to make donations to EU political organisations and incur EU political expenditure not exceeding $225,000 in total, the same maximum as the previous year. It is the Company's policy not to make political donations as expressed in general terms. However, the aggregate total exceeds recommended limits. We recommended shareholders abstain.

Darty Plc - AGM 7th September

Disclosure relating to remuneration policy was a concern at Darty (formerly Kesa).

Despite the fact the remuneration report clearly states that no awards made under the PSP between 2005 and 2009 vested as the minimum performance conditions had not been achieved, Thierry Falque-Pierrotin’s 2009 award vested in full.

In correspondence, the Company informed PIRC that “the 2008/9 Annual Report we published in July

2009, incorrectly indicated that the award was subject to a TSR condition." The Company also provided PIRC with a copy of the briefing note it used at the time of the grant in January 2009, in which it explains that the award was "intended to replace the value of the options he was losing as a result of moving from PPR to Kesa and was a key part of the negotiations at the time."

Darty further informed PIRC that the "then chairman of the remuneration committee didn't want to compensate [Thierry Falque-Pierrotin] in cash, and felt at that time [it] needed to keep him with the business for at least 3 years and this would be a good way to bind him in."

While we accepted that the RNS released at the time made no reference to TSR either, it did state that the awards vest provided that the performance conditions have been satisfied.

On the 31st August 2012, the Company issued a RNS statement correcting the error in the 2008/09 report and making it clear that the share award was intended to replace awards forfeited from his previous employer and clarifies that the only performance condition attached was his continued employment at the Company.

This clarification is welcome. However, we continued to recommend opposition to the remuneration report as PIRC does not support the payment of 'golden hellos' as they only serve to undermine the retention aspect of all bonus schemes.

This recommendation would normally be made at the time the payment was made, however, as it was originally disclosed as a payment under the PSP subject to TSR performance this was not possible. We are therefore expressed our concern on the matter on this year's remuneration report.

NOTE: There was a majority vote against remuneration report at the company's AGM.

SuperGroup Plc - AGM 20th September

We had a number of concerns at smallcap SuperGroup.

Looking at remuneration, for the 2012 awards and in connection with their respective recruitment arrangements, Susanne Given and Shaun Wills will be granted awards of 300% and 200% of base salary, respectively, in the form of a guaranteed PSP award. This practice is not in the Company or investors' long-term interests as it contributes to a general tendency to grant such replacement awards, which in turn devalues the retentive effect of share schemes. The Company has a long-term incentive scheme (PSP) with EPS and TSR as targets. The EPS targets are not considered sufficiently challenging given broker forecasts, although the upper TSR targets are considered challenging. Contracts provide for 12-months' notice and termination payment in lieu not exceeding basic salaries. However, no mitigation statement is made. Given the above-mentioned concerns, a vote against the remuneration report was recommended.

We recommend that shareholders oppose the election of two directors. Chief executive Julian Dunkerton owns 32.52% of the Company's issued share capital. As he is considered a controlling shareholder, a vote against his re-election was recommended. James Holder owns 14.77% of the Company's issued share capital and has co-founded Superdry with Julian Dunkerton. As he has links to the controlling shareholder, a vote against his re-election is recommended.

We also recommended that shareholders oppose the appointment of the auditors where PricewaterhouseCoopers LLP was proposed. Non-audit fees represented 500% of audit fees during the year under review and 651% on a three-year aggregate basis. This raises concerns about the independence of the external auditors.

Blinkx Plc - AGM 21st September

We had a number of concerns at Blinkx.

The remuneration report was not put forward for shareholder approval. This is considered a material omission. Moreover, there were concerns over the level of independence on the board. All the NEDs have worked at Autonomy, which is the largest shareholder.

Chairman Anthony Bettencourt is not considered independent on appointment as he was the former

CEO of Autonomy, the largest shareholder, which was founded by Michael Lynch who sits on the Blinkx board and controls a further 6% of shares. We recommended shareholders oppose his re-election.

We also recommended shareholders oppose the appointment of the auditors where Deloitte LLP is proposed. Non-audit fees of approximately U.S.$ 0.9m represent more than 4.5 times the statutory audit fee for the year under review. This ratio exceeds 100% on a three year aggregate. This raises significant concerns on the independence of the auditor.

Micro Focus Plc - AGM 26th September

Combined roles and remuneration were concerns at Micro Focus.

There is no de-facto division of responsibilities as executive chair Kevin Loosemore assumes both the role of the Chairman and of a CEO. His service contract provides him with possible termination payments in excess of one year. We recommended shareholders oppose his re-election.

In terms of remuneration policy, General termination provisions amount to 12 months base salary however, in the case of Mr Loosemore his termination provisions provides for 150% of salary pay out. In addition, if he is dismissed other than for cause (or if his role is diminished), the recruitment share awards will vest and he may be entitled to a pro-rated bonus for any period worked but, not for any part of the notice period worked. An oppose vote was recommended.

UK Corporate Governance Review

The long and the short of it

The publication of the final report of the Kay Review in July signalled a potentially important shift in the discussion about the nature and function of financial markets. But will its recommendations bite?

Before we look at the specifics of the report it's worth reflecting on the broad picture that emerges. In fact, if you stand back and look at the full picture the Review has outlined, it is clear that the investment chain as currently structured is not working effectively. The Review suggests that in almost every link in the chain there is a bias in favour of activity, regardless of whether this can be proven to be in the interests of either issuers or savers.

This bias in favour of transactions is underpinned by a set of ideas that fetishise certain aspects of the operation of equity markets to the exclusion of any discussion of their over-riding function. The Review is particularly strong on these points, arguing that there has been plenty of talk about liquidity, efficient price discovery and so on, but these are seen as ends in their own right, rather than features of a market that serves issuers and savers well. In fact, there might even be tension between different objectives.

The Review states: "Measures to make the market more 'efficient,' in the technical sense implied by the efficient market hypothesis, may have the effect of making the market less efficient in the broader and more important sense of achieving better resource allocation through better corporate decisions."

This kind of disconnect between the operation of markets in themselves, separate from the interests of either users or providers of capital, is a significant theme of the report. The two threads that weave through the Review's 17 reform proposals seem to us to be the need for disintermediation on the one hand and the re-establishment of trust and professional standards in the investment industry on the other.

This is most explicit in the Review's recommendation that both directors and shareholders (whether asset managers or asset owners) should adopt Good Practice Statements that promote stewardship and long-term decision making. This isn't a million miles away from the approach floated by the Tomorrow's Company report *Restoring Trust* issued back in 2004. Sir Richard Sykes, who led the project, even suggested that the financial services sector needed the equivalent of a Hippocratic Oath. To state the obvious, trust in financial services is rather lower now even than when that recommendation was put forward.

It's not just a question of best practice. The Review rightly highlights the need for fiduciary duty to be embedded throughout the system. Once again, it's indicative of how little trust there is in the system at present that we need a set of basic ideas such as that intermediaries should act in their client's interest.

Kay's call for the establishment of a new investor forum to facilitate collective engagement is helpful. Regular PIRC Alerts readers will be aware of our scepticism about the value of the existing lash-up of trade bodies, now going under the name of the Institutional Investor Committee. If stewardship is going to be effective and command public confidence a new start is needed, and that requires a genuinely independent body. The mainstream of the investment industry makes the valid point that any body needs senior practitioners involved. We agree, but these cannot just be positions – how often has the IIC's advisory council met, for instance? In addition, such a body needs at least some radical voices. It is, after all, senior practitioners who have been in place whilst the events of the last few years have taken place.

Finally, the emphasis on allowing companies to shift away from the need to manage short-term earnings announcements ought to be widely welcomed. Moving the focus to truly informative narrative reporting and away from quarterly updates should enable directors to focus on the needs of the business, rather than short-term pressures.

Of course, the big unanswered question is, will all this work? The Review steers largely clear of direct regulatory intervention. This must raise a question about the extent to which the reforms will have force. But if the industry doesn't start to put its house in order will Government be able to resist a more direct approach?

New investor body is an old idea

The Kay Review's suggestion that a new body needs to be created to facilitate stewardship activities is a good one. It's also been floated before.

Governance geeks may want to have a look at a speech Lord Myners gave when he was a Treasury minister back in October 2009. In it he said: "I question the absence of an organisation in the UK that speaks solely on behalf of institutional investors without a commercial interest, as opposed to a tangential activity of trade associations. The most appropriate arena for this to take place would surely be an industry-wide institute operating with close ties to the academic institutions also engaging in the debate. I have in mind something similar to the Council of Institutional Investors. But no such organisation exists in the UK. Such a body would focus exclusively on promoting understanding and best practices in stewardship and good governance, unfettered by any other loyalties or priorities."

Compliance and annual elections

Following the end of the UK AGM season approaches, we thought it would be interesting to look at those companies that are still lagging behind in terms of best practice.

We focused on companies in the FTSE350 (ex-Investment Trusts) that are still not allowing shareholders to approve all directors on an annual basis [Code B.7.1]. At the end of June 2011, 125 companies had not sought shareholder approval for all directors at the most recent AGM. Since the turn of the year, this number has fallen to 14: Bellway PLC; Electrocomponents PLC; Grainger PLC; Elementis PLC; Jardine Lloyd Thompson Group; Millennium & Copthorne Hotels; KCom Group PLC; Schroders PLC; Shanks Group PLC; Aegis Group PLC; Ip Group PLC; London & Stamford Ppty Ltd; Kentz Corp; and International Consolidated Airlines Group SA.

Company compliance statements on this point make for interesting reading. For example, Millennium & Copthorne Hotels offers no explanation of its non-compliance, or Shanks where the board "does not believe it is necessary to require executive directors to stand for annual re-election as the Chairman and non-executives have an existing accountability to shareholders for ensuring executives perform effectively and a responsibility if necessary to remove them from their post if they fail to do so."

A similar stance is taken at London & Stamford, where the board states that it "has not followed the provisions of the UK Corporate Governance Code, which requires all Directors to retire and offer themselves for re-election, as the Board believes this provision to be potentially detrimental to the effective and ongoing management of the Company." We considered this to be a statement rather than a suitable explanation, as it does not provide any clear evidence in support of such claims.

Haldane backs 'pluralistic' boards

Input from various stakeholders on company boards would lessen the risk of catastrophic errors, according to a senior Bank of England official.[6]

The case for pluralistic boards is "very strong," said Andy Haldane, executive director of financial stability at the Bank of England in an interview with openDemocracy. He said institutions could benefit from moving away from the corporate governance model of singular, non-plural decision-making, particularly in countries like the UK where company law makes the primary responsibility of managers to its shareholders. Haldane notes that this singular focus is reinforced through remuneration policies based around equity or equity-like instruments. He said that within the banking and financial sectors this has led to a corporate governance structure that allows those owning around 5% of the balance sheet to have the primary, and in some instances exclusive power, over the firm. While he suggests that pluralistic boards might be, on average, slightly "inefficient" decision-making, this is off-set by the decline in "group think" and avoidance of catastrophic errors that can arise from too homogeneous boards.

UK 2012 half-year voting trends

Remuneration continues to be the most controversial issue at UK AGMs, according to PIRC voting analysis.

We looked at a sample of just over 300 AGM results for FTSE All-Share companies in the first two quarters of 2012. The average vote against a remuneration report is 7.64%. The figure for the same period in 2011 was 6.1%. Defeats this year include Aviva, Cairn Energy, Centamin, Central Rand Gold, Pendragon and WPP.

If we compare individual companies directly between 2011 and 2012 there are some further interesting findings. Looking at a sample of 234 directly comparable results, we can see that the average change in the absolute level of opposition is 1.5%, or an average oppose vote of 7.9% in 2012 versus 6.4 in 2011. In contrast, the average level of abstention is down by 0.5%, which reflects anecdotal feedback that some investors are choosing to oppose rather than abstain on pay votes more often this season.

What is really striking is that the four highest year-on-year increases in opposition to remuneration policy came at companies that were defeated on their reports – Pendragon, Centamin, Cairn and Aviva. All four received oppose votes on their remuneration reports last year of less than 3%. In contrast, both Robert Walters and Afren, which were both defeated last year, saw very large reductions in the level of opposition compared to last year. Robert Walters saw the largest fall in the sample with a 38%.

Looking at director elections, the average vote against is virtually unchanged for the first half of 2012 at 1.88%, compared to 1.7% in 2011. easyJet saw four of its directors receive 42% votes against their re-election, although this is explained by the poor relationship with its controlling shareholder Sir Stelios Haji-Ioannou. Notably, a number of companies that received large votes against their remuneration reports also saw large votes against directors, including Pendragon, WPP, UTV and Barclays.

The average vote against an auditor appointment so far in 2012 is 1.1%, similar to 1.05% for the same period in 2011. The most notable votes against were at Grainger (17.8%) and Shaftesbury (16.5%). Both votes appear to have resulted from concerns about non-audit work being undertaken by the audit firm.

Votes against share issue authorities are also little changed with an average vote against of 2.98% for the first half of 2012, compared with 2.89% in 2011. There were a number of defeats, as often such authorities are special resolutions and as such require 75% in favour to pass. Defeated companies include easyJet, Anglo Pacific Group and Mondi. Notably, in Mondia’s case, its AGM statement refers directly to the influence of South African shareholders. Lonmin, which also registered a large vote against a resolution relating to share authorities, made a similar statement.

One resolution type where the vote against is up are those where companies are seeking authority to hold meetings on short notice. The average vote against in 2012 so far is 5.47%, compared to 4.52% in the same period last year. As such, they are also the second most controversial issue for shareholders, if we use levels of voting dissent as an indicator. These are special resolutions, so they require 75% in favour to pass. At easyJet it was defeated though this was again largely the result of its controlling shareholder voting against. However, Unite Group came close to losing its vote too, with a 24.43% vote against.

Once again, it seems that overseas investors are having an impact. Our analysis of shareholder voting records suggests that resolutions relating to notice for holding general meetings are rarely opposed by UK institutional investors. This means that the level of opposition we are picking up in the figures is likely driven by overseas investors.

Vedanta suffers pay upset

Controversial Indian miner Vedanta saw a 12% vote against its remuneration policy in August, as its AGM was again targeted by human rights campaigners.

Given that the majority of Vedanta shares are controlled by Volcan Investments, representing the interests of the executive chairman and his immediate family, this denotes a significant vote against by minority shareholders. According to reports, inside the company's AGM human rights campaigner Bianca Jagger once again attacked Vedanta's record on human rights and environmental issues. Some investors also challenged the board.

Asil Nadir jailed for ten years

Having dodged criminal charges for years, in August Asil Nadir was jailed for 10 years for stealing millions from Polly Peck, his former business.

Nadir was found guilty of 10 counts of theft from the company totalling £29m. The former FTSE100 constituent collapsed in 1990 with significant debts and the company that controlled the Nadir family interests was raided by the Serious Fraud Office.

In one sense Nadir was one of the fathers of UK corporate governance. His behaviour at Polly Peck added to the momentum for reform of British boardrooms. The collapse of the company was, along with that of Coloroll, one of the factors that led to the Financial Reporting Council setting up the Cadbury committee. The scandal also convinced mainstream investors that governance was not just an abstract concern.

The jailing of Nadir has also exposed the problem of corporate funding of political parties. Nadir was a major Conservative Party donor and his conviction has led to calls, including from some senior Conservatives, for his donations to be returned.

Sports Direct bonus bungle

Sports Direct was another victim of the so-called 'shareholder spring' in September when its proposed bonus plan for Mike Ashley was defeated.

The company had proposed a new scheme to benefit executive chair Ashley, which, if approved, would have given him the option to acquire eight million shares in the company at no cost, if four "Super Stretch Targets" were met. However, in a RNS release the company stated that the resolution failed to pass.

It's interesting to note that it was a special resolution proposing the new scheme, meaning that it required 75% in favour to pass. The vote is also binding on the company, rather than advisory. PIRC Alerts readers may remember that much energy was expended by business lobbyists arguing that the introduction of binding votes on remuneration combined with a higher voting threshold to pass would lead to chaos. This, then, is a perfect test case of that proposition.

The extent of the crisis at Sports Direct caused by this vote can be seen in the company's response to the defeat: "[A] new Super Stretch Share Scheme with further performance criteria will be proposed to shareholders at a future meeting."

Still, not everyone was happy with the result. One 'top ten' Sports Direct shareholder said that each shareholder should be asked how they voted and why. This call for accountability was rather compromised by the fact that the investor concerned would only comment anonymously.

UK directors' pensions: enormous

Figures from the TUC's tenth annual PensionsWatch survey reveals a growing disparity between the pension pots of directors at top UK companies compared to the rest of the workforce.

An analysis of the pension arrangements of 351 directors from the FTSE100 found that the average transfer value for a director's defined benefit (DB) pension is now £4.33 million. This represents an average annual pension of £240,191, or 24.4 times the size of the average occupational pension (£9,828).

The survey also revealed that the average company contribution to directors' defined contribution (DC) pension is £144,508. The average contribution rate to a director's DC scheme is 22%, nearly four times the size of the average employer contribution rate of six percent in DC pensions. It is over seven times the size of the maximum employer contribution required under the new automatic enrolment regime. Payment methods are also changing with an increasing number of executives receiving cash payments instead of participating in company pension schemes.

The TUC said that although executive pay and bonuses have come under major scrutiny, the confusing and sometimes misleading reporting of directors' pensions has escaped shareholder and media scrutiny. So far the most notable attempt by investors to improve disclosure of directors' pension entitlements was a joint letter by the National Association of Pension Funds and the Local Authority Pension Fund Forum. But to date shareholders in general have not tackled this issue.

More pay vote defeats

Darty and AEA Technology were the latest companies to lose the votes on their remuneration reports in September, as shareholder opposition to high pay continued.

The resignation of Darty's chief executive, Thierry Falque-Pierrontin, failed to prevent major investor revolt at its AGM. Irritated by the company's announcement last month that it erroneously stated stock options awarded to Falque-Pierrontin in 2009 were linked to performance targets, 58% of shareholders voted against Europe's third-largest retailer's remuneration report. PIRC had advised shareholders to vote against the remuneration report.

According to the AEA's RNS statement, the vote against its remuneration report was an enormous 71.32%. PIRC had recommended that shareholders vote against. Only Central Rand Gold has recorded a worse defeat this year, with a 74.36% vote against its remuneration report.[3] AEA's defeat makes the total nine so far this season, well ahead of any previous year.

Ofcom clears Sky, mauls Murdoch

As expected, in September broadcasting regulator Ofcom ruled that BSkyB was 'fit and proper' to hold a broadcasting licence. But it also fired a broadside at former chair James Murdoch.

Essentially Ofcom's decision can be distilled down to two important points. First, there is little in Sky's own behaviour to suggest that it is not 'fit and proper'. Second, that James Murdoch's influence is not significant enough for his presence as a non-executive director on the board to count against the company. So far, for Sky, so good.

However, the language used by Ofcom in respect of James Murdoch's role at News International is extremely harsh. One might even argue that it has criticised him personally more severely than even the Department of Culture, Media and Sport (DCMS) select committee's report into phone-hacking did. Ofcom points out that Murdoch had a number of opportunities to dig deeper into practices at The News of the World (NOTW).

First there was the famous 2008 meeting, and email exchanges, involving then NOTW editor Colin Myler and legal manager Tom Crone. Then there was The Guardian's 2009 story alleging that the Gordon Taylor settlement had been used to cover up the extent of phone-hacking. Finally, there was the first report of the DCMS committee which accused News International of "collective amnesia" in respect of wrongdoing.

Ofcom concludes: "We consider James Murdoch's conduct, including his failure to initiate action on his own account on a number of occasions, to be both difficult to comprehend and ill-judged. In respect of the matters set out above, in our view, James Murdoch's conduct in relation to events at NGN repeatedly fell short of the exercise of responsibility to be expected of him as CEO and chairman."

Of course, criticism from an industry regulator alone isn't sufficient to have any impact on Murdoch. In both News Corp and Sky he is protected by his own family's dominant shareholding. So, despite Murdoch having been criticised by both the select committee and Ofcom, the FT reported last week that James Murdoch was likely to gain an expanded role at News Corp.

However, this isn't the end of the story. For one, Ofcom clearly leaves the door open, saying it will look at what comes out of the Leveson Inquiry and what gets disclosed in criminal proceedings. Perhaps this will come to nothing. But then some market participants confidently predicted that James Murdoch had passed the worst last July. Since then he has lost the BSkyB chair and stood down from other companies' boards. The hacking scandal has not played out in its entirety yet, and it's possible that Ofcom may need to revisit its decision.

Second, as a number of news reports picked up last week, there is an implication in the Ofcom report that had Murdoch remained as chair of Sky then things might have been different. Yet the BSkyB board unanimously backed him, and recommended shareholders re-elect him as chair. That now looks to have been a very risky gamble. In light of this, does leaving him on the board, rather than removing him entirely, look to be sensible?

Bumi faces probe into finances

UK-listed Indonesian miner Bumi has launched an investigation into alleged financial irregularities in one of its affiliates.

According to reports, a probe has been ordered into to potentially suspect transactions at PT Bumi Resources. This follows evidence being presented to the board by non-executive directors. The reports states that PT Bumi Resources, in which Bumi has a 29% holding. is controlled by the Bakrie family. The Bakries in turn are one of the largest shareholders in Bumi.

In a formal statement Bumi said: "An independent investigation has been commissioned to investigate the allegations on an urgent basis, and is to report to the Board. The Company also intends to contact relevant authorities in the UK and Indonesia, as appropriate, in respect of some of the allegations. "

Bumi is one of a number of recently listed companies that, whilst traded on the UK market, are essentially overseas businesses. In addition, a number of such companies in the extractives industries have a very limited free float, meaning that minority shareholders can struggle to have their voices heard, and unusual governance practices are difficult to challenge.

UK Voting Analysis

Table 1: Top Oppose Votes

	Company	Type	Date	Resolution	Proposal	Funds Vote	Oppose %
1	BABCOCK INTERNATIONAL GROUP PLC	AGM	05 Jul 12	15	Approve a new Deferred Bonus Matching Plan	Oppose	40.78
2	SSE PLC	AGM	26 Jul 12	15	Issue shares with pre-emption rights	For	21.24
3	NATIONAL GRID PLC	AGM	30 Jul 12	19	Issue shares with pre-emption rights	For	20.22
4	HOME RETAIL GROUP PLC	AGM	04 Jul 12	12	Issue shares with pre-emption rights	For	19.94
5	LAND SECURITIES GROUP PLC	AGM	19 Jul 12	20	Meeting notification related proposal	For	18.43
6	BRITISH LAND CO PLC	AGM	13 Jul 12	22	Meeting notification related proposal	For	18.36
7	HOME RETAIL GROUP PLC	AGM	04 Jul 12	13	Issue shares for cash	For	16.80
8	BRITISH LAND CO PLC	AGM	13 Jul 12	20	Issue shares for cash	For	14.08
9	MARKS & SPENCER GROUP PLC	AGM	10 Jul 12	22	Meeting notification related proposal	For	13.82
10	FIRSTGROUP PLC	AGM	25 Jul 12	15	Approve Political Donations	For	12.96

Note: Levels of opposition percentage represent opposition votes cast as a percentage of all votes cast either in favour or against a resolution.

Table 2: Votes by Resolution

Resolution Type	For	%	Abstain	%	Oppose	%	Withdrawn	%	Total
All Employee Schemes	1	100	0	0	0	0	0	0	1
Annual Reports	12	40	7	23	11	36	0	0	30
Articles of Association	1	100	0	0	0	0	0	0	1
Auditors	20	68	6	20	3	10	0	0	29
Corporate Actions	0	0	0	0	0	0	0	0	0
Corporate Donations	8	80	1	10	1	10	0	0	10
Debt & Loans	0	0	0	0	0	0	0	0	0
Directors	123	88	10	7	6	4	0	0	139
Dividend	13	100	0	0	0	0	0	0	13
Executive Pay Schemes	1	20	0	0	4	80	0	0	5
Miscellaneous	15	100	0	0	0	0	0	0	15
NED Fees	0	0	0	0	0	0	0	0	0
Non Voting	0	0	0	0	0	0	0	0	0
Say On Pay	0	0	0	0	0	0	0	0	0
Share Capital Restructuring	0	0	0	0	0	0	0	0	0
Share Issue/Re-purchase	35	77	10	22	0	0	0	0	45
Shareholder Resolution	0	0	0	0	0	0	0	0	0
Undefined	0	0	0	0	0	0	0	0	0

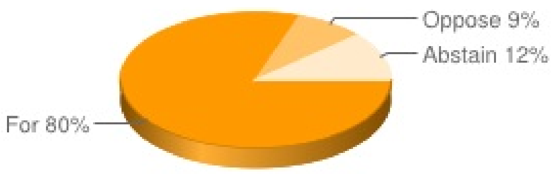
UK Voting Charts

These graphs include meetings where the client held a voting entitlement exercisable by PIRC according to portfolio details communicated to PIRC prior to execution of the vote.

Total Resolutions	
For	229
Oppose	25
Abstain	34
Withdrawn	0
Total	288

Meetings	AGM	EGM	Total
Total Meetings	15	0	15
1 (or more) oppose or abstain vote	15	0	15

UK Voting Record



UK AGM Record

UK EGM Record

There where no EGMs during the last period in the clients portfolio.

UK Voting Timetable Q3 2012

List of meetings held throughout the period in the fund's portfolio.

Voted Meetings

Table 3: Meetings voted in the quarter

	Company	Meeting Date	Type	Date Voted
1	HOME RETAIL GROUP PLC	04 Jul 12	AGM	2012-06-22
2	BABCOCK INTERNATIONAL GROUP PLC	05 Jul 12	AGM	2012-06-22
3	MARKS & SPENCER GROUP PLC	10 Jul 12	AGM	2012-06-28
4	BT GROUP PLC	11 Jul 12	AGM	2012-06-28
5	MITIE GROUP PLC	11 Jul 12	AGM	2012-06-28
6	INVENSYS PLC	13 Jul 12	AGM	2012-07-02
7	ELECTROCOMPONENTS PLC	13 Jul 12	AGM	2012-07-02
8	BRITISH LAND CO PLC	13 Jul 12	AGM	2012-07-02
9	LAND SECURITIES GROUP PLC	19 Jul 12	AGM	2012-07-09
10	VODAFONE GROUP PLC	24 Jul 12	AGM	2012-07-12
11	FIRSTGROUP PLC	25 Jul 12	AGM	2012-07-16
12	SSE PLC	26 Jul 12	AGM	2012-07-16
13	PHOENIX IT GROUP PLC	26 Jul 12	AGM	2012-07-16
14	NATIONAL GRID PLC	30 Jul 12	AGM	2012-07-18
15	HALFORDS GROUP PLC	31 Jul 12	AGM	2012-07-17

UK Upcoming Meetings Q4 2012

There are no upcoming meetings for this region.

US Corporate Governance Review

ICCR reports engaging behaviour

Could this proxy season be the start of a new era in US corporate dialogue?

Poor engagement on the part of US companies has often been cited as a leading cause for shareholders with investments in these companies to file a much higher number of resolutions than here in the UK where corporate dialogue is commonplace. Yet, for the first time in 40 years, the Interfaith Center on Corporate Responsibility (ICCR) has done the reverse. During the current proxy season, ICCR has filed 160 resolutions and engaged in 170 dialogues with companies, Social Funds reported. ICCR offers a twofold explanation for this change: an increase in mainstream investors voting in line with shareholders like ICCR on environmental, social and governance issues and a growing recognition of the business case for sustainability by corporate America.

Splitting top roles is key US issue

The separation of the roles of CEO and chair at S&P500 companies remained a major concern for investors this season, according to analysis by Sullivan & Cromwell.

Shareholder proposals calling for the separation of top roles or that the chairperson be an independent director increased by 50% compared to last year. Though they received strong shareholder backing (35% on average), just two actually passed at S&P500 companies. Other governance related shareholder proposals that received significant investor support include those that sought to declassify the board, adopt majority voting, eliminate supermajority provisions and cumulative voting. In particular, board declassification proposals showed a significant increase compared to 2012. Turning to social policy issues, the law firm noted a marked increase in both the number of proposals and shareholder support compared to recent years. Of these, the most notable were requests for additional disclosure on political expenditure and/or lobbying costs. However, none of the proposals on political issues passed this proxy season.

Smucker's agrees to climate plan

Two major U.S. sustainable investment houses pulled a climate-related risk shareholder proposal after American food conglomerate Smucker's agreed to their demands.

Trillium Asset Management and Calvert Asset Management announced in a joint statement that the 115 year old Ohio-based manufacturer agreed to a goal for certified coffee to reach 10% of its total retail purchase by 2016. The company has also agreed to a partnership with the sustainable development Hanns R. Neumann Stiftung Foundation and a partnership with the World Coffee Research. Shareholders applauded the move but cautioned that this is just a first step, and that the company "must do more to address investor concerns through greater disclosure, performance improvements, and accountability mechanisms."

The two investment firms submitted a similar proposal at last year's AGM, which received 30% of shareholder votes. PIRC had advised shareholders to support the pair's proposal to adopt an expanded green coffee stability plan.

CII targets banks over Libor

The Council of Institutional Investors (CII) has written to 18 banks about the integrity of Libor.

The U.S. shareholder activist group is calling on the banks to undertake reviews, led by independent directors, of how they set Libor, Euribor and other rates. The CII also wants full disclosure of potential losses related to Libor misreporting. Recipients of the CII letter included all Libor-reporting banks: Bank of America, Barclays, BNP Paribas, Citibank, Credit Agricole, Credit Suisse, Deutsche Bank, HSBC, JPMorgan Chase, Lloyds Banking Group, Norinchukin Bank, Rabobank, Royal Bank of Canada, Royal Bank of Scotland, Societe Generale, Sumitomo Mitsui, Tokyo-Mitsubishi UFJ and UBS.

CalPERS dual class boycott threat

The U.S.' largest pension fund announced in August it is considering boycotting initial public offerings (IPOs) of companies that have a dual-class ownership structure.

According to the California Public Employees' Retirement System's (CalPERS) Global Governance Program Update, the $238 billion of assets under management giant has decided to throw its weight behind the removal of the ill received dual-class structure by developing an IPO governance strategic plan that will address core governance standards of accountability and transparency such as removing dual class, classified or plurality voting structures. The decision was based on a number of significant events in 2012 such as Facebook and Manchester United where a minority of shareholders control a majority of votes.

Withhold votes reveal concerns

Withhold votes for board nominees may offer a better insight into investor perceptions of a company than previously thought, according to new research.

The Investor Responsibility Research Center Institute (IRRCi), which commissioned the study, said that their findings strongly suggest higher withhold votes for board nominees are often indicative of investor concern for oversight, and should be taken seriously. In the study, *The Election of Corporate Directors: What Happens When Shareholders Withhold a Majority of Votes from Director Nominee?*, which reviewed the cause and effects of shareholder opposition to 175 director nominees at Russell 3000 companies between 2009 and 2012, IRRCi found that 50% of withheld votes can be attributed to company specific issues and that over 75% of withhold votes are attributed to six main factors. The first four of these issues are considered violations of governance practices: poison pill adoption without shareholder approval, failed attendance, related party transactions and overboarding, while the last two relate to company specific remuneration and discontent with the board's oversight of the company's affairs. The study also found that only 5% of majority withheld votes led to the removal of a director nominee among the sample.

Aetna political spending probe

Pressure is building against U.S. health care giant Aetna to disclose information about multi-million dollar donations in political spending found in the company's Political Contributions and Related Activity report.

Institutional investors began questioning Aetna about the "voter education initiatives" that had appeared only in the company's footnotes. The coalition wrote to Aetna's CEO Mark Bertolini asking for further disclosure but he has refused to provide specific details of the contributions, claiming that they were for "educational activities." Separate regulatory findings revealed that the company had previously made payments to two conservative "think tanks" – the American Action Network and the U.S. Chamber of Commerce, in the amount of $3 million and $4 million, respectively. The $922 billion in assets investor coalition has kept the pressure on Aetna despite the company's reluctance to cooperate. The group's request has also been supported by investors outside of the U.S. New York State Comptroller Thomas DiNapoli said that "this episode should serve as a wake-up call that disclosure of political spending is an issue about which shareholders should be deeply concerned."

PIRC believes that all political contributions should be disclosed in the annual report for the benefit of shareholders. Therefore, in May, PIRC backed the shareholder proposal put forward at the company's AGM that sought greater disclosure.

News Corp reshuffles its board

Rupert Murdoch has reshuffled the News Corp board by nominating the former President of Colombia Alvaro Uribe and former U.S. Secretary of Labor Elaine L. Chao.

Long time directors Andrew Knight and John Thornton will retire after the company's October 16 AGM in Los Angeles and board member Arthur Siskind will serve as director emeritus. Mr Uribe has been accredited with improving the cities and highways in Colombia during his 2002-2010 presidency, while Ms Chao served as Secretary of Labor under the Bush administration. The board change up comes after New Corp announced plans to separate its publishing business from its entertainment division.

The appointment of Uribe in particular has already been questioned by some commentators. On the surface it appears indicative of News Corp's fascination with well-connected members of the political elite, rather than its respect for the need for independent oversight on board. As such, it looks as though once again the AGM will see the company pushed to reform further. The company's filing ahead of the AGM reveals that this year it faces three shareholder resolutions.

Christian Brothers Investment Services and members of the Local Authority Pension Fund Forum have jointly filed a resolution seeking the appointment of an independent chair. Nathan Cummings Foundation has filed a resolution seeking to eliminate News Corp's controversial dual class share structure. Finally, a small shareholder has filed a resolution calling for the introduction of simple majority voting.

It's also likely that the company will face criticism over executive remuneration. Although both Rupert and James Murdoch have seen their bonuses reduced to take account of the hacking scandal, they still received $10.4m and $5m, respectively. This is despite both being severely criticised in the Department of Culture, Media and Sport select committee's report into phone-hacking. In particular, James Murdoch was criticised for not taking action for addressing phone-hacking earlier, which could have prevented Parliament from being misled in 2009.

The scandal is far from over. It has emerged in September that News Corp is set to face a further wave of civil claims. According to reports, a further 230 claims could be in the works. In addition, it has been reported that Labour MP Siobhain McDonagh has launched a legal action against both News International and The Sun relating to the theft of her mobile phone. According to reports, the MP is seeking damages for alleged invasion of privacy and breach of confidence. This follows the arrest of a journalist in July.

Arrests related to hacking continue, with a number being made as part of Operation Tuleta, the probe into computer hacking. In addition, a senior counter-terrorism detective has been charged with breaching the Official Secrets Act in relation to information allegedly sent to the News of the World about the Scotland Yard probe into phone hacking.

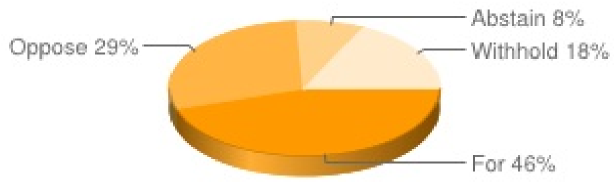
US Voting Charts

These graphs include meetings where the client held a voting entitlement exercisable by PIRC according to portfolio details communicated to PIRC prior to execution of the vote.

Total Resolutions	
For	37
Oppose	23
Abstain	6
Withhold	14
Withdrawn	0
Total	80

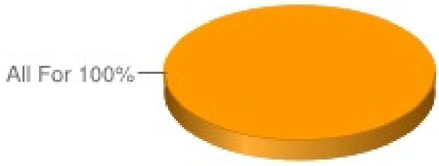
Meetings	AGM	EGM	Total
Total Meetings	6	1	7
1 (or more) oppose or abstain vote	6	0	6

US Voting Record



US AGM Record

US EGM Record



US Voting Timetable Q3 2012

List of meetings held throughout the period in the fund's portfolio.

Voted Meetings

Table 4: Meetings voted in the quarter

	Company	Meeting Date	Type	Date Voted
1	COCA-COLA CO.	10 Jul 12	**EGM**	2012-06-26
2	DELL INC.	13 Jul 12	AGM	2012-06-27
3	MCKESSON CORP.	25 Jul 12	AGM	2012-07-17
4	CONSTELLATION BRANDS, INC.	27 Jul 12	AGM	2012-07-24
5	COMPUTER SCIENCES CORP.	07 Aug 12	AGM	2012-07-27
6	NETAPP INC	31 Aug 12	AGM	2012-08-22

Not Voted Meetings

Table 5: Meetings not voted in quarter

	Company	Meeting Date	Type	Reason Not Voted
1	AIRGAS INC	14 Aug 12	AGM	No ballot

US Upcoming Meetings Q4 2012

List of meetings scheduled to be held throughout the period by US companies currently in the fund's portfolio.

Table 6: Upcoming Meetings

	Company	Meeting Date	Type
1	CAREFUSION CORP.	01 Nov 12	AGM
2	ARCHER DANIELS MIDLAND CO.	01 Nov 12	AGM
3	CARDINAL HEALTH INC.	02 Nov 12	AGM
4	WESTERN DIGITAL CORP	08 Nov 12	AGM

PIRC Summary Report Appendices

UK

Analysis and final proxy results on "Oppose" and "Abstain" votes for resolutions at UK meetings for companies held by the fund during the period.

US

Analysis for "Oppose", "Withhold" and "Abstain" votes for resolutions at US meetings for companies held by the fund during the period.

For Private Circulation only

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