



PIRC RESPONSE – 20 OCTOBER 2010

PIRC's response to the request for comments on the SEC's concept release file number: S7-14-10

INTRODUCTION

Set up by a group of pension funds in 1986, PIRC has provided institutional shareholders with advice on how to exercise their ownership responsibilities for almost 25 years. As an organization, we are longstanding advocates of the idea that institutional shareowners have responsibilities as well as rights in respect of the companies they own. PIRC is the third largest proxy advisor in the world.

Whilst PIRC is not a shareholder in its own right it works with institutional investors from the UK and elsewhere to encourage investee companies to adhere to high standards of governance and corporate responsibility.

In practical terms, PIRC provides both voting and engagement services to institutional shareowners, we do not however provide any consultancy work for issuers.

Sent via email to: rule-comments@sec.gov
File Number S7-1410 included in the subject line.

October 20, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-14-10 (Concept Release on the U.S. Proxy System)

Dear Ms. Murphy:

We support the Securities and Exchange Commission's (SEC), examination of the mechanics of proxy voting with regards to the *Concept Release on the U.S. Proxy System, Release No. 34-62495, File Number S7-14-10* and offer several comments and suggestions as follows.

To date we have found the U.S. proxy voting system to have a lot of good features, and that it works in a uniform manner and that the disclosure of material by issuers is very effective through the EDGAR platform. It is also heartening to view a system that has made improvements recently, like the removal of broker votes on board elections and the publishing of proxy results within a few working days of a company annual meeting, and is still driving to improve the proxy system further.

II. THE CURRENT PROXY DISTRIBUTION AND VOTING PROCESS

II.B.2. Distributing Proxy Materials to Beneficial Owners

Voting Instruction Forms

We hold the view that Voting Instruction Forms (VIFs) act in the role of proxies, so therefore the SEC should move to amend Rule 14a-4 to ensure VIFs have the same voting rights as those receiving a proxy. There should be the same proxy for both beneficial and registered owners; this would help simplify the voting process.

Removal of discretionary voting

We agree with James McRitchie¹ that the SEC should amend Rule 14a-4 to remove the provision that confers discretionary authority on matters where choice has not been specified by the security holder or beneficial owner.

II. D. The Roles of Third Parties in the Proxy Process

Pensions & Investment Research Consultants (PIRC Ltd) is an independent proxy advisory service providing institutional shareholders with advice on how to exercise their ownership responsibilities for almost 25 years. While we offer voting recommendations on companies worldwide, a wide selection of our client base have developed their own voting policies which we follow when producing their reports. Our clients use the research to help them form their proxy voting decisions and several use the reports to directly engage with the issuer on topics of concern, thus facilitating shareowner involvement.

In response to the financial crisis there has been a much greater focus on the roles and responsibility of institutional shareowners and their third party agents. They are increasingly expected to demonstrate real transparency and accountability in respect of their ownership activity. PIRC believes that this spirit of accountability must also be exhibited by those firms which work with institutional shareowners to address issues

¹ <http://www.sec.gov/comments/s7-14-10/s71410-98.pdf>

relating to ownership. To this end PIRC believes that firms like ours have a duty to be as transparent as possible within a commercial framework and to adhere to certain best practice principles in their day to day operations. To help facilitate this we launched the [Principles of best practice for proxy voting and corporate governance advisers](#)² in January 2010 (see the text box below) as a model that we believe could be followed by others to improve the market places awareness of third party activities, as numerous submissions to this review process seem to misinterpret the role played by Proxy service providers and advisory firms.

Principles of Best Practice for Proxy Voting and Corporate Governance Advisers

- 1. Clear voting policy guidelines should be made available to clients, the companies whom the adviser is monitoring and to the market;
- 2. Clear audit trail and explanation of the process for assessing companies and making voting recommendations should be available to clients and the companies monitored;
- 3. Possible conflicts of interest should be disclosed to clients and to companies monitored and, where necessary, to market regulators (i.e. paid consulting with companies);
- 4. Companies monitored should be given reasonable opportunity to comment on voting recommendations made and the basis of such recommendations;
- 5. Voting agencies should routinely report to clients on actions taken on their behalf; and
- 6. All voting recommendations made by a voting adviser should be publicly disclosed post-meeting.

We would suggest that a similar set of best practice principles are developed for the U.S. market place and that proxy advisory firms adopt a similar approach to transparency and place their vote recommendations in the public domain. We have already implemented all aspects of the Principles in the U.K. and are working towards full adherence with them with regards to the U.S. and European market places. Of particular note is our progress on Principle 6:

- “All voting recommendations made by a voting adviser should be publicly disclosed post-meeting.”

PIRC has been considering for some time how it can exhibit the same openness and accountability it expects of both companies and investors. We have always made our shareholder voting guidelines available for comment by both clients and companies. In addition in January 2009 PIRC became the first voting advisory service to make its UK recommendations publicly available, and these can be viewed on our website: <http://www.pirc.co.uk/public-voting-disclosure>

We have now extended this policy to include, publically disclosing all our voting recommendations, for all Countries, from the 3rd November of this year. For the UK this also includes all the supporting voting analysis text as well as the vote recommendations. This will be extended to include all the supporting analysis for all the meetings we report upon early in 2011.

III. ACCURACY, TRANSPARENCY, AND EFFICIENCY OF THE VOTING PROCESS

The common theme for whole of section III would seem to us to be that, the system would work much better for investors if all accounts were designated and nominee accounts comprising multiple beneficial owner holdings were unbundled throughout the proxy chain.

III. A. 1. a. Securities lending

SEC question: Should brokers be required to disclose the effect of share lending programs on the ability of retail investors to cast votes?

² Available at: <http://www.pirc.co.uk/sites/default/files/Best%20Practice%20Principles.pdf>

Yes. We also take the view that there should be no stock lending without the shareowner's explicit consent and there should be transparency for all parts of the process, including issuers. As per the suggestion of Carl T. Hagberg³ "Securities custodians must establish firm rules as to when, exactly, a client is entitled to *have* voting rights – and the rules must be clearly *communicated* to their clients – and followed faithfully." He goes on to suggest that if a client loses their voting rights because the shares have been loaned, they need to know it, as well as if a custodian gets paid for lending, or vote-selling arrangements, the client needs to know this as well.

III. A. 2. a. Pre-reconciliation

There should be a strengthened pre-reconciliation before proxies or Voting Instruction Forms (VIFs) are distributed to improve the integrity of the voting systems and make the process auditable, and assurance reports for clients more feasible.

III. B. Vote confirmation

The proxy voting system should provide for end-to-end confirmation enabling both companies and shareowners to confirm that votes properly cast were included in the final tally as directed.

Shareowners should receive a full vote confirmation process, and that a simpler and more transparent proxy system that has a standardized audit trail will increase shareowner participation. The confirming of how votes were cast would improve the integrity of the process and make the compiling of voting record reports. We provide our customers with quarterly aggregated voting records for clients and any improvements that will assist this audit process would be welcome. The voting confirmation process would also improve the potential for auditing the issuers' proxy intermediaries and facilitate the accurate tabulation of votes. As an interim stage prior to full vote confirmation there could be at least a delivery confirmation and receipt of shares and voting instructions system.

PIRC supports further exploration of the advantages and disadvantages of creating unique identifiers for each beneficial owner, which help form an audit trail. We would recommend following the suggestion of the International Corporate Governance Network (ICGN) and repeated by EuropeanIssuers.eu⁴ that there should be a system of unique indentifying codes set up internationally "to allow for cross-border voting confirmation."

III. C. Proxy Voting by Institutional Securities Lenders

The SEC should adopt regulatory reform that allows proxy statements to be disclosed before the record date passes, whenever possible.

Every shareholder should be allowed to vote using a standardized proxy card and not generic voter instruction forms. The meeting agenda should be issued to investors in advance of the record date, this could facilitate more informed voting and recall shares if out on loan.

III. C. 3. Disclosure of Voting by Funds

One item that we would support is the increased disclosure of voting activities by mutual funds. We support additional form N-PX disclosure and more education of investment companies' members and shareholders of the availability of the voting records of their agents. Mutual's funds disclosure through the N-PX should include the number of shares voted for each option and how many were not voted, and for what reason, e.g. being out on loan.

³ <http://www.sec.gov/comments/s7-14-10/s71410-68.pdf>

⁴ <http://www.sec.gov/comments/s7-14-10/s71410-240.pdf>

We also argue that all collective investment vehicles (i.e. pooled funds) should be subject to an N-PX regime, thus encompassing equity held by overseas investors in similar vehicles.

As mutual funds are *issuers* and have shareholders of their own (and that as of July 2010, mutual funds had approximately \$10.9 trillion in assets), it is only reasonable that the increased levels of transparency being sought by this review should be applicable to such a sizeable part of the process.⁵

Section general comments

The issue of confirmation has been intensively discussed by the and the conclusion reached has always been that it is not possible to get confirmation that a vote has been cast, or not, in time for the voter to re-cast the vote, if a failure has occurred. It stands to reason that the vote cannot be said to have failed until the point when it is brought to bear on the matter being approved and by the time of the Annual Meeting it is too late to re-vote. This is why we push for confirmation that instructions have been delivered rather than conformation that voting intentions have been carried out as an initial practical improvement.

IV. COMMUNICATIONS AND SHAREHOLDER PARTICIPATION

IV. A. Issuer Communication with Shareholders

The interests of shareowners and companies would both be better served by more effective communications and greater transparency. There should be a move towards removing the objecting and non-objecting beneficial owners' distinction (OBO/NOBO) which would be of great benefit to issuers who would be able to engage with a large segment of their retail investor base. This should be carefully balanced against the potential loss of privacy and explosion in the number of communiqués as some of our clients hold substantial numbers of stocks.

There should be improvements in the ability of companies and shareowners to distribute proxy materials. This could also be extended by following the suggestion of the CII response to S7-14-10⁶ comment numbered IV.A. 2 (page 3) which states the SEC should:

“Relax restrictions on the ability of companies and shareowners to distribute proxy materials and solicit proxies directly, and streamline the process for both companies and shareowners to obtain shareowner lists.”

If direct contact is allowed from the issuers to all shareholders to provide timely communications, this option should also be available to the shareholder proponents of resolutions (either directly, or indirectly through the issuer), in order to balance the communications process. All communications sent to shareholders should be made public records on the companies EDGAR filing platform where practicable.

If communications' with shareowners are made they should be done so on an equitable basis i.e. all shareholders receive the same materials when they are distributed by the issuer. However, there should be an optional element for shareholders who do not want to be inundated by communications. Shareholders should have a choice to engage or not and should be able to unsubscribe from notifications, renewable on an annual basis.

Emerging tools can help facilitate the engagement and communication process like educational resources; virtual shareholder meetings (outside the Annual Meeting); investor networks; and shareholder forums. The option of having a third party

⁵ *Inv. Co. Inst., Trends in Mutual Fund Investing*, July 2010 (2010), available at http://www.ici.org/research/stats/trends/trends_07_10 quoted in Harvard Law School Forum: <http://blogs.law.harvard.edu/corpgov/2010/09/22/access-to-the-mutual-fund-proxy/#more-12746>

⁶ CII Response to S7-14-10 <http://www.sec.gov/comments/s7-14-10/s71410-80.pdf>

intermediary facilitate communications, so anonymity can be preserved but communications enabled, should also be explored.

We would like to propose that discretion should be exercised at beneficial owner level. Our problem with U.K. Statutory Instruments, which give information rights to beneficial owners, was that they have to seek permission from the legal owner. We would not want the custodians to assume the role of gatekeeper for important information rights.

IV. B. Means to Facilitate Retail Investor Participation

It would be a beneficial step for the SEC to ensure issuers provide a much clearer primary contact for investors. Issuers have a vested interest to solicit votes, especially if there is an 'always vote with management option', but for many investors it is still a challenge to engage with U.S. based companies with regards to proxy and governance issues. There should be a named responsible individual with phone and email contact details provided to facilitate the communication process. These should be located in a standardized place within the proxy materials distributed. In comparison to the U.K. (where there is a named company secretary to deal with enquiries) our engagement activities in the U.S. have been more labor intensive. As we wish to engage with issuers in greater depth on materials relating to them, this channel of communications for third parties should also be strengthened and included in the review.

Investor Education

We are in favor of increased investor education particularly the convincing of retail beneficial owners of the importance of their vote. Retail market education programs should be put into action to assist with explaining how the new proxy voting process works in general, when amendments have been made, and specifically how a new advanced voting instruction system operates, if one is recommended by the SEC.

Advanced Voting Instructions

In particular we share the concern that the CII expresses well:

"we are concerned that a rigid form of client-directed voting, in which shareowners must choose among always voting with management, always voting against management, always abstaining, or always voting in accordance with a third-party, may not be able to fully capture shareowners' preferences."

In particular we would prefer the above options to be available to broader categories of resolutions i.e. separation of votes for directors; auditors; compensation related proposals; and shareholder resolutions as we believe the voting results are so differentiated from each other that they cannot be aggregated.

We would certainly not like to see an option of always voting with management, which leads to 'for' votes for management sponsored proposals, but 'oppose' to shareholder sponsored proposals. We also echo the sentiments of the Comptroller's Office of The City of New York, who are also concerned that automatically voting retail shares "will merely seek to increase the number of shares cast, not the number of retail investors making informed voting decisions."⁷

A robust voting system should accommodate shareowner's true preferences, allow for the revocation of advance instructions, and involve periodic reaffirmation of advance instructions, at least on an annual basis. This could be facilitated by the standardized tagging of resolution types through the proxy system allowing customers to have a more detailed menu of advanced voting options.

In some of the submissions there seems to be a basic contradiction that maintains that proxy advisor firms over utilize 'boiler plate' templates and one size fits all approaches, but the allowing of advanced voting instructions that follow management recommendations would be overly simplified and uninformed voting instructions.

One of the main obstacles to retail investor participation, in our opinion, is that nominees are the legal owner and have no economic interest in providing mechanisms

⁷ <http://www.sec.gov/comments/s7-14-10/s71410-187.pdf>

for collating the voting intentions of those owners within their nominee accounts. The market has not thus far provided an incentive for this to happen, and regulation is the only alternative if the integrity of the audit trail is considered important.

IV. C. Data Tagging

The ability to use standardized data-tagging for proxy materials and voting results is of great interest to us and could even speed up the production of proxy voting reports over the next few years. It could be an efficient means of increasing transparency and expanding shareowners' ability to track governance practices and even tailor their advanced voting instructions with more precision. It is potentially true that the usage of XBRL files on EDGAR has been low to date, and that companies have had new expenses to meet the filing requirements. However, in the long-term the ability to interrogate lots of data will provide new opportunities' for products that review issuers' filings, and may even facilitate the market entry of new proxy advisory firms.

Utilization will be low for a while, but we take the view that the opportunities afforded by selected and not overly burdensome requirements for tagging could be of benefit to the marketplace as a whole. An initial list of the items that are of particular interest to us for tagging are: the proxy card/ballot paper (all resolutions, including shareholder proposals); directors and job/position codes; board changes (8-k § Item 5.02 Departure of Directors or Certain Officers; Election of Directors...); compensation data from the Summary Compensation Table (SCT); and voting results (8-k § Item 5.07. Submission of Matters to a Vote of Security Holders).

Generally speaking we view a standardized format for data publishing as a good thing. Although XBRL has a reputation for being over-engineered, and some users find it difficult to work with, we have no recommendation for alternatives.

If there is a gradual and not overly burdensome level of tagging this should help reduce issuers associated costs, which could be balanced with new opportunities to engage with retail customers' though platforms utilizing the tagged data, thus reducing costs of distributing materials.

We would recommend that the responsibility for the correct tagging of items within proxy materials rests with the issuer (including shareholder proposals), and that the proxy access rule would help with this as even contesting directors can be tagged in the companies proxy submissions to the SEC's EDGAR platform.

V. RELATIONSHIP BETWEEN VOTING POWER AND ECONOMIC INTEREST

V.A. Proxy Advisory Firms

In our view proxy advisory firms have enhanced and informed the voting process of many investors and provided a useful source of independent information available to investors other than the materials provided by the company. We have also campaigned to extend the range of issues that shareowners can vote on, which have been relatively few in the U.S. compared to other jurisdictions'. As a proxy advisor firm we acknowledge we have a business interest on this subject, and would like to echo the sentiments of the CII with regards to this issue:

“Proxy advisory firms play an important role in helping pension fund managers fulfill their fiduciary duties with respect to proxy voting by providing an analysis of issues on the ballot, executing votes and maintaining voting records. Without proxy advisers, many pension plans—particularly smaller funds with limited resources—would have difficulty managing their highly seasonal proxy voting responsibilities for the thousands of companies in their portfolios.”

Due to some submissions being of a particularly combative nature with regards to advisory firms we would like to offer an extended reference to how we do not perceive ourselves to act without our clients input, and how we have been adapting to the market place without regulation to date in many of our core markets.

Since 1986 PIRC has been the pioneer and champion of good corporate governance, initially within the UK, but now covering a wide range of jurisdictions, including all our clients U.S. based holdings. Our international team of researchers provides detailed analyses on a company case-by-case basis with regards to voting recommendations. We also provide a vote enactment service, for which we provide regular vote confirmation reports for our clients recording when PIRC submits voting instructions and the nature of those instructions. We would like to move towards a full audit trail of the voting process and for any future voting receipts to be tagged, and for us to be able to receive copies of these with the required client permission.

More specifically we would like to state that:

- We do not think the industry has too much influence on the outcome of voting at U.S. public companies. Although we produce a PIRC ‘standard’ report which is a baseline set of voting recommendations, a large proportion of our client base have their own policies and guidelines which we overlay for the report and change the votes accordingly. Our clients are not a unified block of voters and many have ideas of corporate governance best practice which are considered to be much more stringent in their interpretation and implementation than our ‘standard’ voting policies. The reports are often compared to other providers as part of our clients due diligence processes, and also used as the basis for engaging with companies on issues;
- Our clients’ use of our services, does not equate to the “outsourcing” of voting decisions as they retain the ability to amend their voting recommendations and voting templates when they wish. Many others review meetings, particularly contentious ones like mergers, on a case-by-case basis, using the summary of the resolution as a starting point into their research process on the voting issue;
- When developing voting best practice recommendations we do look for evidence of materiality and long-term shareowner benefit. Where there might be a lack of academic analysis we have been involved in programs to research the subject, such as our evidencing of the benefits of a say-on-pay vote in the U.K. market place⁸;
- We review our clients’ and issuers views regularly, and adjust our guidelines on some issues as a result of this engagement process;
- We currently send all UK issuers a copy of their meeting voting report for comments and corrections prior to publication. We are extending this engagement process to other Countries and are considering this process for our U.S. reports for the 2011 season;
- There is a concern that if we have to make all research on an issuer publically available this could compromise our independence and the efficiency of the services provided to clients;
- All our clients and the issuers reported upon receive a free copy of our shareowner voting guidelines for the market in which they are based. These include the rationale for vote recommendations and an invite to become involved in the policy development process for the next edition; and
- We are currently registered in the U.K. as investment advisors, and would seek clarification of how this may be an effective requirement for an overseas based advisory firm covering U.S stocks, or not.

It should be recognized that the U.S. proxy advisor market is a construct of the economics of the market place and not purely under the influence of an oligopoly. The costs associated with a more European method of engagement dialogue will add value to all participants, but costs time and money. The combined effect of a lean towards voting as part of a pension fund trustees fiduciary duty (ERISA) and the absence of a unified code for investors setting out expectations of their behavior may compound this. The recommendation to explore a version of an investor Stewardship Code for the US market may help to help financial market differentiation.

⁸ Say on Pay: Six Years On. Railpen Investments and PIRC Ltd. Pdf available at:
<http://www.pirc.co.uk/sites/default/files/documents/SayonPay.pdf>

In summary we refute a lot of the comments made about proxy advisory firms and this may be because within the U.S. market there is a provider with a large market share, which undertakes consultancy services for issuers, and owns one of the two main voting platforms. As a relatively new market entrant into the U.S. we are concerned that excessive regulation would drive up costs and raise the barriers to entry in the industry, thus having the effect of entrenching the current system.

V.A.2. Concerns About the Role of Proxy Advisory Firms

a) Conflicts of interest

There are justifiable concerns about conflict of interests that arise from advisory firms providing services to both an issuer and to shareholders, and there is insufficient disclosure with regards to this matter in the industry.

With this in mind we have prohibited ourselves from working for issuers (and this has always been the case) and we follow our Best Practice Principle 3 – “Possible conflicts of interest should be disclosed to clients and to companies monitored and, where necessary, to market regulators (i.e. paid consulting with companies).”

Additionally, PIRC has agreed with U.K. regulators that voting and engagement advisers should be subject to the U.K. Stewardship Code for Institutional Investors. We also believe that there is a need for further transparency and accountability and we have taken the step that we consider that we are subject to the U.K.’s Stewardship Code in its entirety.⁹ Principle number two of the Code is that:

“Institutional investors should have a robust policy on managing conflicts of interest in relation to stewardship and this policy should be publicly disclosed.”

As stated above, one of our principles of best practice is the disclosure of conflicts of interest. PIRC has taken the business decision that, given the inherent conflict of interest, we should not seek to provide service to both issuers and shareowners. Therefore PIRC only provides services to shareowners and view that this should be the case for other proxy advisory firms.

V.A.2. Concerns about the Role of Proxy Advisory Firms

b) Lack of Accuracy and Transparency in Formulating Voting Recommendations

PIRC are increasingly expected to be able to evidence our correspondence with the companies we report on. Demand is coming from two directions, from our clients and it is now standard for us to be asked to produce evidence of engagement when making a tender or legislative submission following a “Request for Proposals”.

One concern we have had is that any process that involves us engaging with companies and their reviewing our draft voting recommendations, should not lead us into an additional conflict of interest. For us this might arise as we substantiate and evidence our position, and how we believe it is in shareholder interests, whilst at the same time not becoming consultants to the company (albeit, unpaid ones).

Although there are concerns about the level of transparency of advisory firms, our experience is that our clients and the issuers with which we engage, receive all relevant documentation. Additionally, we open up our policy discussions for the forthcoming proxy seasons with clients and other interested parties like issuers, as well as incorporating comments made during engagement sessions throughout the year.

V.B. Dual record date

There are concerns about the separation of the record and voting dates which may create unnecessary confusion as to whether an owner had voting rights or not. If the priority is to enhance participation then additional confusion should be avoided, although moving both record and voting date closer to the meeting date may be of benefit and also allow for the increased voting of shares out on loan.

⁹ In the following link we state how we believe that we meet the aims of the Stewardship Code, and work with clients to do so. Please follow: <http://www.pirc.co.uk/sites/default/files/Stewardship%20Code.pdf>

The announcing of meeting dates by issuers should be made much further in advance to assist proxy season planning.

V.C. “Empty Voting” and Related “Decoupling” issues

The potential for and reality of decoupling transactions that can generate empty or negative voting can present significant challenges to existing shareowner and creditor governance practices.

A report¹⁰ commissioned by the Investor Responsibility Research Center (IRRC) Institute and conducted by the Rock Center for Corporate Governance at Stanford University has found that the financial markets ability to divorce economic interests from ownership rights via derivatives and other means has outpaced the existing corporate governance and legal frameworks.

Jon Lukomnik of the IRRC Institute program director said, "We are increasingly concerned that the fundamental philosophic basis of corporate governance - that the owners of the company who can determine its fundamental fate are incented to want it to thrive - is eroding."

And they summarize a key concern:

“if those who control ownership rights can be incentivized towards value destruction rather than value creation, it is only a matter of time until the real economy is affected due to a large-scale impact on corporations.”

We would encourage the SEC to find ways to bring the economic and voting elements of shareholders rights into more of a balance as our concern is that if voting and economic interests become more separated, that those utilising the voting power element of the shareholder rights will have the ability to tarnish the proxy process.

VI. CONCLUSION

We would like to thank the SEC for the thorough nature of their Concept Release document File Number S7-14-10 which comprehensively reviews the U.S. proxy system. The opportunity to comment on the many issues related the proxy process is most welcome.

In PIRC’s view many of the suggestions for comments outlined in S7-1410 will help build a more transparent and efficient proxy system. However, we do not think that moves to regulate proxy advisory firms or voting recommendation processes are required, other than to improve the transparency of the process and organization’s voting recommendations, which we already make publicly available.

We hope we have helped understand the problems and offered some sound ideas for solutions. We look forward to more involvement in the process as recommendations begin to take shape and offer support for the changes that need to be made.

For more information contact: Adam.rose@pirc.co.uk

Drafted by Adam B. Rose and Paul Marsland

*Approved by Alan MacDougall
Founder and Managing Director
PIRC Limited*

¹⁰ Investor Responsibility Research Center Institute and conducted by the Rock Center for Corporate Governance at Stanford University report entitled: *Identifying the Legal Contours of the Separation of Economic Rights and Voting Rights in Publicly Held Companies*. The full report is available at www.irrcinstitute.org and www.law.stanford.edu/program/centers/rcfcg/

APPENDICES

Appendix A - PIRC and The Stewardship Code

Principle 1 – Institutional investors should publicly disclose their policy on how they will discharge their stewardship responsibilities.

At the beginning of 2010 PIRC published a set of best practice principles.¹¹ These are intended to provide a framework for how we operate our business, based on feedback we have received from both clients and the wider market.

The principles are as follows:

- Clear voting policy guidelines should be made available to clients, the companies whom the adviser is monitoring and to the market;
- Clear audit trail and explanation of the process for assessing companies and making voting recommendations should be available to clients and the companies monitored;
- Possible conflicts of interest should be disclosed to clients and to companies monitored and, where necessary, to market regulators (i.e. paid consulting with companies);
- Companies monitored should be given reasonable opportunity to comment on voting recommendations made and the basis of such recommendations;
- Voting agencies should routinely report to clients on actions taken on their behalf;
- All voting recommendations made by a voting adviser should be publicly disclosed post-meeting.

More specifically, every year PIRC publishes shareowner voting guidelines for the various markets that we cover. These guidelines set out clearly our views on issues such as board structure, remuneration policy and management of social and environmental issues. We believe that the guidelines give both our clients and the companies we analyze a clear understanding of our view of best practice and, by extension, how we are likely to recommend shareowners vote on particular issues.

Principle 2 - Institutional investors should have a robust policy on managing conflicts of interest in relation to stewardship and this policy should be publicly disclosed.

As stated above, one of our principles of best practice is the disclosure of conflicts of interest. PIRC has taken the business decision that, given the inherent conflict of interest, we should not seek to provide service to both issuers and shareowners. Therefore PIRC only provides services to shareowners.

Principle 3 - Institutional investors should monitor their investee companies.

Monitoring of companies on behalf of institutional shareowners is the core of PIRC's business and function as an organization. We provide global research and voting recommendations, based on companies' disclosures and other sources of information. In practice we undertake a daily trawl for information that could inform our view of a given company, ranging from RNS statements to media coverage. This is supplemented with information derived from meeting with companies and their representatives.

Increasingly we are working with clients to help them take an ongoing view on corporate governance and social responsibility at companies, rather than considering a snapshot at the time of a given company meeting. We have recently developed a quantitative tool to assist shareowners to more identify clearly where potential risks lie in their portfolios, to enable them to undertake focused engagement.

Principle 4 - Institutional investors should establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value.

In PIRC's case, we do not undertake the decision of whether and how to escalate engagement with companies, rather this is a decision for our clients. We have a number of clients who delegate much responsibility to us for developing and implementing an engagement strategy. In such cases we typically provide advice on which companies in their portfolio might be most in need of focus, and on the type of engagement that might be undertaken. Such advice will be based on our own

¹¹ <http://www.pirc.co.uk/sites/default/files/Best%20Practice%20Principles.pdf>

proprietary research into both the company concerned and the market as a whole, and we will explain to the client the process by which we reached our conclusions. Where companies are recalcitrant we might also suggest how the client could escalate the engagement process. Once again, we will explain the process behind the advice we have provided. However ultimately the decision on what action, if any, to take lies with the client.

Principle 5 - Institutional investors should be willing to act collectively with other investors where appropriate.

PIRC has a long-standing relationship with the Local Authority Pension Fund Forum (LAPFF), to which it was reappointed as research and engagement partner in the summer of 2010. Since its formation in 1990, LAPFF has been an exemplar of collaborative engagement, and, in our role as research and engagement partner, PIRC has played a central part in this.

PIRC regularly facilitates and/or participates in collaborative engagement with companies on behalf of clients over a range of governance and social responsibility issues. PIRC is also a signatory of the UN Principles for Responsible Investment, and participates in activity organized through the PRI clearinghouse.

Principle 6 - Institutional investors should have a clear policy on voting and disclosure of voting activity.

As stated previously, PIRC produced shareowner voting guidelines on an annual basis in order that both clients and companies understand how we reach decisions on voting recommendations.

In terms of disclosure, PIRC publicly reports its voting recommendations, post-meeting, via its website.¹² In practical terms we disclose our 'house' recommendations, not those where clients have their own voting guidelines. There is a link to our voting disclosure direct from the front page in order to make it easy for the user to access. Our disclosure also provides a brief rationale behind recommendations to abstain on or vote against a particular proposal.

PIRC discloses its recommendations because we believe that organizations' which provide advice on ownership issues must demonstrate the same level of accountability that we expect of others. In practice we have found this to be a very straightforward process, so we believe that it could be easily adopted as standard industry practice. PIRC is also developing a service to help our clients who wish to publicly disclose their voting records to do so. As noted above, a number of clients have developed their own voting policies, which PIRC assists them in implementing. We believe that we are therefore well placed to assist these clients in disclosing their voting record, if they choose to do so, thus further increasing market transparency.

Principle 7 - Institutional investors should report periodically on their stewardship and voting activities.

As stated above, PIRC publicly discloses its voting recommendations, post-meeting, via its website. We also provide detailed updates to clients of our research and voting services on activity undertaken on their behalf on a regular basis, typically in the form of a quarterly report. This includes highlights of our voting advice at particular companies, and statistics on actual voting outcomes at company meetings.

For clients of our engagement services we also provide a regular update on activity, outlining the objectives behind particular initiatives and the results achieved. Once again, detailed reports to clients on a quarterly basis, however these are supplemented for some clients with more regular updates.

Contact

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¹² <http://www.pirc.co.uk/public-voting-disclosure>

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