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Rule-comments@sec.gov

Dear Sirs,

File Number S7-14-10

We are writing this letter following discussions held between company secretaries at a number of UK primary listed FTSE 100 companies, which also have a secondary listing on the New York Stock Exchange or NASDAQ. We have been interested to follow recent discussions following the publication of the SEC's consultation document into the US proxy process. We recognise that as Foreign Private Issuers, the consultation is not primarily aimed at us, but we also recognise that any changes which are made to the US proxy process are bound, eventually to have an impact upon the way we, as FPIs, will be required to manage the proxy process for our ADR holders.

ADR's represent les than 5% of our share holder base, but the timely and accurate collection of votes of those ADR holders are important to us, to ensure that the views of our US shareowners are properly represented in the governance of our Companies.

As we have followed the debate, we have a number of comments to make, which may be useful in your deliberations. We welcome the SEC's thorough and in-depth analysis of the current proxy process. The paper highlights a number of issues, concerns and frustrations we, as practitioners, have experienced when managing the voting process ahead of our shareholder meetings.

Accuracy of Voting

The consultation paper highlights the high level of approximation inherent in the current process, noting in a number of places that brokers are required to provide approximate numbers of underlying shareowners or to adopt their own methods for reconciling voting numbers in cases of over or under voting. A system which depends so heavily on approximation and subsequent adjustment does not give any assurance that the ultimate votes received by the issuer are accurate. It is also a concern that it is not possible to verify that the voting intentions of the ultimate shareowners are accurately translated into the votes received by the issuer. This is not satisfactory either for the issuer or for the investor.

There is currently no transparency in the collation procedure used by intermediaries and this prevents verification that votes are correctly tabulated and submitted to the issuer. Furthermore, the

consultation paper shows that brokers use a variety of bespoke methods of working out how many votes should be cast each way in the event that the number of votes does not match the number of shares cast.

We believe that further research in this area would be appropriate which could lead to a requirement for transparent disclosure of the processes undertaken by brokers to accurately reflect the voting intentions of beneficial shareowners.

Finally, the consultation paper highlights the desire by issuers to have greater flexibility in the design of VIF's, and we strongly support the ability to modify standard VIF formats. A clear and unambiguous VIF, setting out the matters to be considered and providing an easy and accessible method of casting a vote, is crucial to increasing shareholder participation.

Record Date

We are concerned that the voting date for the beneficial shareowners is typically set so far ahead of the meeting date – sometimes up to 2 months. The shareowners may change a great deal over this period of time, meaning that there is no link between those entitled to vote and those who have an economic interest in the shares at the time of the meeting. We suggest that the voting record date be set far closer to the date of the meeting. (In the UK, this is 48 hours, although changes to the register can also be handled up to 6pm the night before the meeting). Proxy materials could still be sent to shareowners on the mailing dates some weeks before, but brokers handling purchases and sales in this period should be required to pass the proxy materials onto new shareowners when the title to the shares transfers, (in the period between issue of materials and the close of voting for the meeting). In a modern electronic age, there should be no need to have to transfer physical documents, as shares could be sold with voting rights and a link to the company website where the documents may be viewed. This should also reduce some of the problems with over or under voting. It would mean that brokers would be required to keep detailed records of who buys and sells shares during the period but presumably they do this anyway. The only difference would be to link the voting rights with the shareownership.

We note the suggestion in the paper that there should be dual record dates, but find it hard to understand how this could work, particularly as it is clear that the current system finds it hard to cope with a single record date. A possible solution may be to consider the pre mailing date record date as a "soft record date" with the "hard record date" closer to the meeting.

With respect to the concept of permitting beneficial shareowners to submit voting instructions, in advance of receipt of voting materials from the issuer, we do not believe that this would promote good governance and informed voting by owners. Issuers would not wish to receive uninformed or unintended votes from shareowners, simply to increase voting "participation", and shareowners would gain little benefit from automated voting.

Electronic Processes

We believe that a number of problems with the current process could be eliminated with the greater use of modern electronic means. There should be no need to have to deliver hard copy documents, when proxy materials can be made available on websites, and many issuers do indeed take advantage of the Notice and Access provisions.

One of the reasons that the record date is set so far ahead of the meeting date, is the difficulty in making proxy materials available to shareowners that purchase shares between the mailing and meeting date. We suggest that more research could be done into whether standard messages could be designed to enable proxy materials to be forwarded electronically to new shareholders. So that that voting rights may be transferred with title to shares.

Fees

Issuers have long been concerned with the high level of fees we are charged for the distribution of our proxy documentation and we welcome the comments made in the consultation document regarding these fees. In particular, we would make the following points:

- Whilst the issuer is required to pay the distribution fees, we have no choice as to which provider to use, as the broker selects the distributor. In most cases, there is only one distributor, which means that there is no incentive to compete either on cost or service.

- Distribution fees are intended to provide broker-dealers with "reasonable reimbursement" of their costs for distribution of materials. We understand that where Broadridge distribution costs are lower than the actual distribution fees allowed by the NYSE and NASDAQ a revenue stream is created for broker-dealers. We believe that the proxy voting process should not be a source of profits to broker-dealers and that the regulatory intention of reimbursement of costs incurred should be reinforced.

- Where issuers are required to pay distribution fees, we should be able to chose our provider, have a direct relationship with the provider, negotiate the fees and have the ability to verify that the distribution has been carried out accurately and in a timely manner. This would require more open access to beneficial ownership records and the Commission's concept of a "data aggregator" should be explored further.

- Issuers have no means of verifying whether the number of documents we are required to provide is the correct number, or whether they are in fact distributed in a timely manner to the correct shareowners, as the brokers control the process and issuers have no visibility.

- In an electronic world, proxy materials should be delivered electronically rather than hard copy. This should be a minimal incremental cost per holding after initial set up and not the high fees per account that were agreed in a paper world. Furthermore, it is difficult to justify

that issuers should have to pay an additional fee for the non-distribution of materials in cases where shareowners have chosen electronic notification.

The role of proxy advisors

(i) Conflict of interests

Proxy advisors play an important role, particularly for those shareowners who do not have sufficient resources in-house to undertake their own analysis of the companies in which they invest. They are however acting as the agent of the shareowner and we believe that it is inappropriate for them also to act for issuers, as this is a potential conflict of interest. Specifically a conflict can arise where Proxy advisors give advice to an issuer on governance and issues that might be put to shareowner vote, while at the same time providing recommendations to shareowner clients of that issuer, on whether to support a resolution.

We believe that in instances where a proxy advisor advises an issuer, and also provides recommendations on voting for that issuer, that the full nature and scope of that relationship be disclosed.

(ii) Engagement

In the UK, we are accustomed to engage directly with our shareowners and to discuss with them any concerns they may have particularly relating to governance and their voting intentions. We also engage with certain proxy advisors acting on behalf of other investors.

We have however seen a tendency among some US investors to decline to engage with us advising that they leave this to their proxy advisors. When we have subsequently attempted to engage with the proxy advisors, they have either refused to engage with us as a matter of policy, or have demanded a fee for providing copies of their reports so that we can review their recommendations. In some cases they do not provide an opportunity to comment on any inaccuracies their reports before they are published.

This is not a widespread issue and we do have the means to engage constructively with responsible investors, proxy advisors and voting agents. We believe however that some of the less responsible practices could be addressed if proxy advisors were to be regulated and there were to be a prohibition on proxy advisors acting both for investors and issuers. We also believe that some of the recommendations in the UK Stewardship Code might be useful in a US context, for example a requirement for responsible investors (or their agents) to disclose their voting policies

(iii) Voting Information

We have also noted that this year, a number of issuers have even been offered the opportunity to purchase voting details prior to the proxy cut off date. There is a potential conflict of interest for proxy advisors or those agents who collate votes, to withhold that voting information until just prior to the close of voting, in order that the data collected prior to that point can be sold to an issuer as advance notice of votes cast.

We would propose that voting information should be available to issuers as soon as those votes are cast and not charged at an additional fee. A fee for the collection of votes is already paid by the issuer as part of the proxy system.

OBO/NOBO

In the UK, we are accustomed to having active engagement with our shareowners, and believe that constructive engagement can lead to better governance and better run companies. A key tenant of good governance is the ability to engage with shareowners. It is impossible to engage without being able to identify who those shareowners are. In the UK, a statutory process exists under Section 793 of the Companies Act 2006, which provides for beneficial shareowners to be identified on request by issuers or their agents. The process is used to identify larger shareowners so that engagement may take place.

The ability of shareowners to remain hidden is a barrier to shareholder engagement. Typically, in the UK, issuers engage with shareowners on matters such as "say on pay", the election of directors and other matters of corporate governance. We note that these elements are now becoming part of US governance landscape and the same drivers for engagement are likely to apply. It would be expected that shareowners would also welcome more transparency around the process, so that they could ensure that their voting intentions had been carried out.

We would therefore propose that the designation of OBO/NOBO should not continue in the future and that a mechanism to allow beneficial owners to be identified should be put in place.

We believe that shareowner identification and the correct tabulation of votes both can aid better governance.

We thank you for the opportunity to contribute to this consultation and would be happy to continue to engage with the SEC during this consultation process.

Yours faithfully,

Susan M. Henderson

Susan Henderson
Company Secretary