

PIRC ALERTS

AGMS & NEWS

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SAVE THE DATE

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QUOTE OF THE WEEK

'The under-representation of women at the top levels of almost every area of society – business, politics, government, public sector organisations, professional services, academia and the arts – has garnered a huge amount of attention in the UK over the past three years.

After decades of glacial progress, results over this relatively short time frame show that we're finally taking the right actions to address the issue – in a sustainable way.

Improved boardroom dynamics, greater diversity of perspective, varying attitudes to risk and a better ability to connect with consumers are all acknowledged as powerful benefits of a mixed gender board – including by institutional shareholders, who simply want more successful companies.'

Helena Morrissey, founder of the 30% Club writing on board diversity in The Telegraph, 10th May 2014.

Raytheon Co

AGM 29th May Arlington Virginia

Board independence, shareholder rights, transparency and disclosure around political lobby are the significant issues for this S&P 500 aerospace and defence leader.

Board Representation: Non Executive Directors Mr James E. Cartwright and Mr Vernon E Clark have previous links to the US Army and US Navy respectively with Mr Cartwright having strong connections to the US Army and Mr Clark having been a former Chief of Naval Operations and a member of the Defence Policy Board.

Raytheon acts as a prime contractor or major subcontractor on numerous defence and related programs for the U.S. Government, which accounts for a substantial portion of the Company's sales.

Overall, there is insufficient independent representation on the Board.

An **Oppose Vote** is recommended for both Mr Cartwright and Mr Clark.

Mr Stephen J. Hadley Non-Executive Director is considered independent by the Company. However as he has had previous tenure as an advisor to the US Government between 2001 and 2009 during which time he held various advisory roles relating to security issues he is not considered independent.

An **Oppose Vote** is recommended.

Lead Director Mr Michael C. Ruettgers is considered independent by the Company, but not considered to be independent as he has served on the Board for more than nine years.

Non-Executive Directors Mr Ronald L Skates Mr William R Spivey and Ms Linda G Stuntz are considered independent by the Company, but not considered to be independent as they have served on the Board for more than nine years.

Overall, there is insufficient independent representation on the Board. Accordingly, an **Oppose Vote** is recommended for Mr Ruettgers, Mr Skates, Mr Spivey and Ms Stuntz.

An **Oppose Vote** is recommended in regard to the re-election of Mr William H. Swanson, Executive Chair, due to lack of independent representation on the Board.

A **For Vote** is recommended for newly appointed Chief Executive Mr Thomas A. Kennedy and newly appointed Independent Non Executive Director Mr. George R. Oliver.

Pay Structure: The Company has submitted a proposal for shareholder ratification of its executive compensation policy and practices. There is insufficient information to determine the specific financial and non-financial performance targets used for awarding future bonuses.

Restricted stock awards have no performance criteria beyond time-based vesting and form approximately 30% of overall compensation. There is also potential for excessive payments in the event of a change in control.

On balance an **Oppose Vote** is recommended

Appointment of Auditors: PricewaterhouseCoopers LLP is proposed. The total unacceptable non-audit fees were approximately 10% of audit and audit related fees during the year under review. Non-audit fees over a three-year period were approximately 8.3% of audit and audit related fees.

A **For Vote** is recommended.

Amend Articles, Authorise Shareholder Action by Written Consent: The Board is proposing, for approval by shareholders, an amendment to the Company's Restated Certificate of Incorporation, as amended, to allow shareholders to take action without a meeting by written consent, subject to the same approval thresholds that would be required to take the same action at a meeting of shareholders.

At the Company's 2013 Annual Meeting, a shareholder proposal calling for stockholders to be given the right to act by written consent, without any procedural safeguards, received a 42.7% affirmative vote.

It is considered that the Board should remain accountable to its shareholders, regardless of the method of communication chosen. The sanctioning of communication in writing with Directors as an option for shareholders when seeking to protect their interests in the Company would constitute an improvement in shareholder rights.

A **For Vote** is recommended.

Shareholder Proposal, Political Expenditures: The proponent requests that the Company provide a report, updated semi-annually, disclosing the Company's:

1. Policies and procedures for making, with corporate funds or assets, contributions and expenditures (direct or indirect) to (a) participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, or (b) influence the general public, or any segment thereof, with respect to an election or referendum;
2. Monetary and non-monetary contributions and expenditures (direct and indirect) used in the manner described in section 1 above, including: a) The identity of the recipient as well as the amount paid to each; and b) The title(s) of the person(s) in the Company responsible decision-making.

The report shall be presented to the board of directors or relevant board committee and posted on the Company's website.

The Board opposes this proposal since it calls on Raytheon unilaterally to undertake reporting different from that used in the disclosure regime followed by the Company under state and federal law.

The Board believes that shifting from the Company's existing practices to those specified in the proposal could create confusion and would also impose an unnecessary administrative burden on the Company and could complicate compliance efforts.

It is not considered that all donations by the company, as defined by the proponent, have been disclosed. The disclosure of the relevant policies, procedures, non-financial contributions and management responsible would be of benefit to shareholders. The request is considered to be a reasonable on the basis of improved disclosure is in the long-term interests of shareholders.

A **For Vote** is recommended.

Note: In 2013, approximately 42% of shareholders voted in favour of this proposal.

Shareholder Proposal, Lobbying Activities: The proponent has requested that the Board authorize the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by Raytheon used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. Raytheon's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of management's decision making process and the Board's oversight for making payments described in sections 2 and 3 above. The report shall be presented to the Audit Committee or other relevant oversight committees and posted on the company's website.

According to the proponent, Raytheon spent approximately \$14.86 million in 2011 and 2012 on direct Federal lobbying activities.

The Board recommends a vote against this proposal and states that the Company responsibly and lawfully engages in the constitutionally protected process to communicate its views on legislative and regulatory matters affecting the Company's business and its various constituencies. This activity is already publicly disclosed. On the Federal level, Raytheon currently files a publicly available Lobbying Disclosure Act (LDA) Report each quarter.

Among other things, this Report provides information on activities associated with influencing legislation through communication with any member or employee of a legislative body or with any executive branch official.

It also provides disclosure on expenditures for the quarter, describes the specific pieces of legislation and issues that were the topic of communications, and identifies the Federally registered lobbyists who lobbied on behalf of the Company.

Pursuant to the LDA, the lobbying expenditures aggregated in the Report must include any grassroots lobbying efforts.

The Company also files similar periodic and publicly available reports with state agencies, reflecting state lobbying activities according to the pertinent state's laws.

PIRC is of the view that not all lobbying activity by the company, as defined by the proponent, has been disclosed and that all shareholder funds should be accounted for.

The amounts of shareholder funds mentioned are considered to be material and that this figure may not include grassroots lobbying to directly influence legislation by mobilizing public support.

Disclosure in the Annual Report is considered a reasonable request.

A **For Vote** is recommended.

WPP

AGM 12th June London

Remuneration is the key governance issue at this FTSE100 Global media and advertising company.

Annual Report and Approval of Dividend: A **For Vote** is recommended for both resolutions.

Remuneration Report: Disclosure is adequate and changes in policies have been well documented. It is noted that many changes brought forth by the Committee is welcomed. However, the remuneration outcomes for FY 2012 have remained high.

The LEAP awards which vested in the year under review yielded an amount (£11.37million) worth close to nine times base salary for the CEO. The maximum face value of awards under the LEAP III were £17.5million, worth close to 13.5 times his salary. This is in addition to the bonus opportunity of more than four times salary.

The total CEO remuneration, as disclosed in the Annual Report, shows a single figure of £17.6m, an increase of 48% over last year. Contracts are considered adequate. No mitigation statement has been made.

On balance, an **Oppose Vote** is recommended.

Sustainability Report Environmental and social policies have been disclosed and there is environmental data provided. Gender data is available on Board/Executive Leaders, Senior Managers and group levels.

A **For Vote** is recommended.

Board Composition: Concerns exist over the aggregate time commitments of Independent Non Executive Directors, Mr Colin Day Mr Hugo Shong and Mr Ruigang Le. In these circumstances, an **Abstain Vote** is recommended.

About the re-election of Ms Esther Dyson, Mr Solomon Trujillo, Mr Roger Agnelli, Dr Jacques Aigrain, Mr Timothy Shriver, Mr Orit Garish and Ms Sally Susman, a **For Vote** is recommended.

A **For Vote** is also recommended for the re-election of Sir Martin Sorrell Chief Executive, Mr Mark Read Executive Director and Mr Paul Richardson Finance Director.

Senior Independent Director. Mr **Jeffrey Rosen** is considered independent by the company but not considered independent as he was a bank advisor to WPP, advising on the groups' financial restructuring in 2002, when he was at Wasserstein Parella. However, there is sufficient independence on the Board.

A **For Vote** is recommended.

Auditors Appointment and Remuneration: Deloitte LLP is proposed. The total non-audit fees were approximately 43.13% of audit fees during the year under review, and the three-year average is 45.81%. There are concerns that this level of non-audit fees creates a potential for conflict of interest on the part of the independent auditor.

An **Abstain Vote** is recommended.

Long Term Incentive Plan: It is proposed to approve the new Executive Performance Share Plan (EPSP). As opposed to the LEAP, which had its last awards made in 2012, the plan will adopt three performance measures: relative TSR, EPS and Return on Equity (ROE). Threshold vesting will reduce from 30% to 20%. The individual limits are set at 9.75 times gross salary. Performance conditions have been disclosed.

While there are certain ameliorations compared to the LEAP, this new proposal still makes for an excessive remuneration package.

At nearly 10 times base salary, it is surprising that the Remuneration Committee has put forward such an equally excessive pay structure, despite widespread shareholder and community concerns over excessive remuneration.

PIRC generally recommends a vote against all new long term incentive plans, on the grounds that they are inherently flawed and do not serve their intended purpose.

An **Oppose Vote** is recommended.

On other resolutions including Share Issues and Special Resolutions, a **For Vote** is recommended.

It's just not tennis

A Delaware Supreme Court decision has cast aside the 'American Rule' on legal costs for shareholder action, if a Companies By-Laws so specify, but there is a remedy.

The Association of Tennis Professionals (ATP) which operates the professional men's [tennis circuit](#) is incorporated in the US state of Delaware.

The company bylaws adopt a fee-shifting provision. Under this provision a member initiated or asserted claim against ATP which, "does not obtain a judgment on the merits that substantially achieves, in substance and amount, the full remedy sought," creates an obligation on the member to reimburse the fees, costs, and expenses incurred by ATP.

Two ATP member organisations recently challenged a decision made by ATP, naming the company and six of its directors as defendants. The members lost their action and ATP moved to recover its fees, costs, and expenses. After some preliminary skirmishes, the case finally ended up in the Delaware Supreme Court which [found in favour](#) of ATP on May 8th this year.

The Judgement read in part, “...we hold that fee-shifting provisions in a non-stock corporation’s bylaws can be valid and enforceable under Delaware law. In addition, bylaws normally apply to all members of a non-stock corporation regardless of whether the bylaw was adopted before or after the member in question became a member.”

In other words, Delaware now has a legal precedent by which shareholders foot the bill for unsuccessful legal action against a Delaware company.

“I think it’s a disaster,” said prominent shareholder attorney Stuart Grant of Grant & Eisenhofer in Wilmington [told Reuters](#). ‘A shareholder with 1 percent of a company’s stock - a large holding for a typical plaintiff - would never sue if they stood to get 1 percent of the benefit but risked bearing 100 percent of the cost if they lost. Investor lawsuits can cost millions of dollars to litigate.’

The large majority of companies on which PIRC reports in the US reside in Delaware, which provides for one of the most hostile legal regimes towards shareholder accountability anywhere in the world.

For those Delaware companies where the power to amend by-laws is already given to the board via the certificate of incorporation, shareholders are faced with the prospect of adverse changes which they cannot resist.

Shareholders wishing to fight potential changes, yet stay invested with a company, really only have one choice. Delaware law also provides shareholders the power to adopt a substitute set of by-laws.

The decision aimed at resolving a wrangle over men’s tennis has now put the ball firmly back in the shareholders court.

US case may see limits on class actions by investors

Halliburton seeks to overturn shareholder ability to act collectively on securities fraud

Leading US securities law firm [Robbins Geller Rudman & Dowd](#) has pointed PIRC Alerts to this developing story from the litigation dominated US scene.

An upcoming US Supreme Court decision is expected in June 2014 in the [Halliburton Co. v Erica P. John Fund](#) proceedings which centre on whether to overturn the long standing “fraud-on-the-market” theory. This is a case that may be of interest for institutional shareholders with transatlantic exposure.

In March this year, the Court heard oral arguments by Halliburton for the principle established in [Basic Inc. v Levinson](#) (*Basic*), a 1988 U.S. Supreme Court case, to be limited so that in future class-wide shareholder actions alleging securities fraud, shareholders would have to individually prove they directly relied on a defendant’s alleged misstatement.

In its 1988 decision the Court found in *Basic* that a requirement of actual reliance was too high an evidentiary burden on plaintiffs and they need not prove they individually or directly relied on a defendant’s alleged misstatements.

In establishing the “fraud-on-the-market” principle, the Court considered that all relevant information concerning a security is reflected in its price. This means that investors buy stock relying on the integrity of that stock. They are therefore defrauded as material misstatements by the issuer distort the share price and investors are deemed to have relied on that misstatement as they relied on the share price.

In simple terms if Halliburton succeeds in their action and *Basic* is overturned, shareholders ability to pursue investment losses via securities fraud class actions could be limited and they may need to participate in such litigation through individual actions directly.

Interest in the case has been high with a number of amicus briefs submitted, including from the U.S Solicitor General. The US Congress, while having had the opportunity to create legislation on the issue, has to date declined to do so.

From 1996, U.S. listed public companies have recovered up to \$US 80 billion in [settlements](#) for securities fraud litigation.

One to watch.

Japanese Index Still a Low Return Bet

Ito Review examines a host of issues around performance, short-termism, shareholder engagement and capital reform

The Japanese reporting season is just around the corner. Ahead of this intensive flurry of voting opportunities, a well-timed [report](#) from Japan’s Ministry of Economy, Trade and Industry ([METI](#)) has just been published.

The interim report, entitled “[Building Favourable Relationships between Companies and Investors](#)” or Ito Review includes a candid analysis of Japanese corporate underperformance and includes discussion of short termism, the reasons for poor return on equity, ideas for better shareholder engagement and ideas for capital market reform.

PIRCs Japanese service covers the 1600 companies in the 1st section of the **Tokyo** Stock Exchange Tokyo Price Index ([TOPIX](#)).

The METI [report](#) concludes that only 200 of these 1600 companies for which data was available over the entire period of the last twenty years, exhibited positive total returns (inclusive of dividends).

One of the key characteristics identified amongst companies that displayed strong performance during this period was 'fearlessness' towards change and an ability to carry out reforms as part of that change.

This is a timely reminder of the need to improve governance standards. Of the companies PIRC covers around 30% still have no outside directors on the board.

Interestingly the paper also rehearses some of the arguments around enlightened shareholder value and the stakeholder model which were debated in the UK ahead of the overhaul of UK Company Law in 2006.

There is a clear indication here by METI towards increasing value for all stakeholders.

This paper follows on from the January release by the [Financial Services Authority](#) for a draft Japanese [Stewardship Code for Responsible Investors](#) (see PIRC_Alerts22012014) in part modelled on the UK Stewardship Code.

One of the initiatives being considered by METI to address a perceived lack of long term thinking amongst companies and investors is an examination of the corporate governance codes adopted in other markets and the possibility of introducing similar goals and content in Japan.

As the market with the longest track record of 'comply or explain', the UK experience will be salutary here.

The Japanese market will want to take note of comply or explain elements which appear to have reached the end of their initial shelf life.

For example, much of the remuneration disclosure initially required by the UK Code has now been superseded by legal disclosure requirements.

In examining some of the differences between Japan and other markets to shed light on perceived underperformance, one statistic stands out. Only 8-16% of household financial assets in Japan are invested in equities and bonds whereas savings and deposits account for over 50% of these assets.

The Government is clearly keen for some of the 800 trillion yen of uninvested savings to help pull corporate Japan out of its 20 years of complacency.

However unless the typical return on equity recorded by domestic companies improves, METI has a hard sell on its hands to persuade the public to switch from savings to investment.

A final report is due out in June.

Glencore wins Wooden Spoon on Diversity

Mining giant Glencore has recorded the dubious distinction of being the last FTSE100 Company with an all male Board. They are still searching...

30th November 2012: [The Guardian](#) A [Glencore] spokesman said: 'A search process for a female non-executive director was initiated in 2011, for which a number of potential leading female business leaders were identified. However, this process was put on hold due to the merger with Xstrata.'

18th February 2013. [Correspondence](#) to Vince Cable, Minister for Innovation, Business & Skills from then Glencore Chair Simon Murray:

'I can assure you of Glencore's commitment to diversity throughout its business including the broadening of the composition of our Board. A search process for a female Non-Executive Director was initiated for which a number of potential leading female business leaders were identified. However, this process was put on hold due to the merger with Xstrata. The appointment of a female Board director is a significant consideration and will be an important area of focus for the new nominations committee.'

June 2013: [Glencore announces](#) Mr Peter Grauer and Mr John Mack appointed to [Board](#) as independent Non-Executive Directors. Mr Peter Coates appointed as Executive Director.

Interim Chair Anthony Hayward [comments](#) 'The board is extremely pleased to be able to move forward with the appointment of three additional Directors. Each of them has an excellent business track record and extensive international experience, which we believe will prove invaluable in continuing the strength of debate and challenge which has typified the operation of the Company's board since its IPO two years ago.'

28th March 2014 [Financial Times](#) 'Glencore values and promotes diversity across its business. The appointment of a female board member is a significant consideration and our nominations committee is working to identify the right female candidates.'

8th May 2014 [Reuters](#) "Glencore values and promotes diversity across its [business](#). The appointment of a female board member is a significant consideration and our nominations committee is working to identify appropriate female candidates," a Glencore spokesperson said in a statement.

20th May 2014 [Reuters](#) 'Glencore values and promotes diversity across the company.' Chair Anthony Hayward at the Glencore AGM commits to appointing a female Board member by the end of 2014.

PIRC Annual Corporate Governance Conference

Shareholder Engagement: Influencing Change

PIRC Annual Corporate Governance Conference:
Friday 13th June, Central London.

As the focus on shareholder engagement intensifies, PIRC's Annual Corporate Governance conference explores the content and diversity of engagement and what role it now plays in asset owner and asset manager strategies.

The day to day pressures on asset owners from funding levels, regulatory changes and investment return volatility, mean that engagement activities are often at the back of the queue for trustee attention.

The relentless short term pressures of performance and competition often pressurise asset managers to seek simple answers to difficult issues of company governance and adding long term value for clients.

Our Annual CG Conference explores the issues and the strategies that comprise the current agenda of shareowner activism in different arenas.

PRI CEO Fiona Reynolds leads the largest collective engagement body in the capital market today.

Evaluating the challenges facing PRI on engagement will set the scene for our deliberations. Other speakers will bring their unique views to the debate.

Two sessions on the day will bring new perspectives to how asset owners can engage with two of the most difficult public policy questions of the day: impact investing and options for the UK's housing crisis.

Many contributors and beneficiaries are asking what their savings vehicles bring to solving these intractable dilemmas.

More companies are beginning to grow their implementation and experiences of board diversity, we ask what next for engagement on this most prescient of investment issues.

Helena Morrissey of Newton reflects on what has been achieved and what is still to be done.

With the 'cost of living crisis' mantra seeping further into the public consciousness, we discuss what can workplace democracy add to the debate about raising all boats at work, and how should asset owners respond to the implications for how company governance might change?

In addition, we identify employee share ownership as a key criterion for improving company performance and enhancing corporate governance in UK companies.

Another fundamental shift in the landscape of modern capital markets is the rise and rise of DC retirement provision.

We debate the implications for scheme governance and corporate governance of this landmark development.

Finally, PIRC has been at the forefront of highlighting the important implications for shareowners of the so-called 'Hacking scandals'.

We provide the latest analysis asset owners need to know and debate the implications for not only 'press freedom' and trust and ethical behaviour at our largest listed media companies.

Speakers include:

Deborah Hargreaves, Director, High Pay Centre,
Fiona Reynolds, CEO, PRI
Annie Healy, Head of Business Development, BESTrustees
Harlan Zimmerman, Cevian Capital

Janet Williamson, TUC
Helena Morrissey, Newton Investments
Cllr Kieran Quinn, Chair, LAPFF
Cllr Richard Greening, Chair, Islington Pension Fund

Leon Boros, WorkMatters Consulting
Henry Tapper, First Actuarial
Evan Harris, Hacked Off

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PIRC advises institutional investors with assets in excess of £1.5 trillion.

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