

PIRC ALERTS

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QUOTE OF THE WEEK

'I want to start with a simple observation: successful economies cannot exist if suppliers take advantage of their customers and do not act in their best interest. We must call on those who manage our funds to do so with our interests ahead of their own. At the core of every decision they take should be the saver's interest because it is our money, not theirs, for which they have responsibility.'

'That is why fiduciary duties, transparency and accountability are important, and that is why I wish to bring in this Bill.'

Phil Wilson, Member for Sedgfield, 5/02/2014 speaking in the House of Commons on the Investment Managers Fiduciary Duties Bill

Twenty-First Century Fox

AGM 21ST March 2014, New York

General governance standards, board independence and the fit and proper status of key board representatives remain serious issues at this global media and entertainment giant.

De-listing from the Australian Securities Exchange:

The Board is proposing the Company is delisted from the Australian Securities Exchange (ASX).

Whilst the Company was originally domiciled in Australia in 1922 and listed in the ASX in 1923, the group re-domiciled in Delaware in 2004 when it was listed on the NYSE in 2004 and later the NASDAQ in 2008.

At the time, News Corp determined it would not request removal of its full foreign listing on the ASX without stockholder approval, despite the ASX not requiring such approval.

In June 2013, the Company separated its publishing and media and entertainment businesses, and following the separation the Company only retained limited operations in Australia - 2% of its revenues and less than 1% of its assets and employees.

There are a number of governance concerns regarding the Board of the Company that led PIRC to conclude that an **Oppose** vote on the delisting proposal is recommended.

Only five of the twelve directors are deemed to be independent; there is a combined Chairman and Chief Executive, Rupert Murdoch, at the head of the Company which is considered to be non compliant with best practice.

There are concerns regarding the deputy Chairman and Chief Executive, James Murdoch, and his fitness to serve in view of the OFCOM report on the "phone hacking" scandal and subsequent enquiries and legal proceedings.

There is also concern that the former Columbian president, Mr. Uribe, who has been accused by prosecutors of ordering illegal wiretaps against Supreme Court magistrates, journalists, human rights organizations and opposition politicians, continues to be a member of the Board.

The lead director Mr R I Eddington is not considered to be independent having served on the board for more than nine years.

Due to these various longstanding concerns over general governance standards, fit and proper status and the continuing lack of independent representation of the board of Twenty First Century Fox it is not considered appropriate to support the Board.

Shareholders up for extra billions as forex probe grows

New day, new scandal, new round of fines and impairment costs set to be borne by institutional investors

Institutional investors may be facing a new round of multi billion dollar losses to fines and impairment costs arising out the current Forex probes into a host of global banks. As reported in PIRC Alerts (11th Feb) investigations led by FCA and involving a host of other international regulators are beginning to gather pace with up to 15 banks coming under scrutiny for rate rigging in the £5.3 trillion a day forex market.

Early estimates of potential fines are beginning to appear with the [Financial Times reporting](#) Barclays, Deutsche Bank, UBS, Royal Bank of Scotland and HSBC will need to set aside an estimated eye watering €8.5bn-€10.6bn to cover potential litigation costs, fines and penalties in 2014 and 2015. Costs to shareholders could go even higher.

"This feels like a \$20bn-\$30bn dollar issue," said Christopher Wheeler, analyst at Mediobanca, [to the FT](#). He estimates €9bn in litigation costs for the five European banks this year and next. "It is the fact that the FX market is so broad and wide."

High profile US banks including Goldman Sachs, Bank of America JPMorgan, Citigroup, are also in the regulators sights with speculation that the costs of fines on the other side of the Atlantic could be in the billions as well.

To place these numbers in perspective the London School of Economics [Cost of Conduct](#) report estimated between 2008 and 2012, ten leading Banks across the UK, Europe and America have cost their shareholders nearly £150bn fines and provisions for litigation and financial penalties due to misconduct of various kinds.

This figure does not take into account the existing large fines levied from the Libor and ongoing miss selling scandals.

While focus in the headlines tends to be on the big hits to bank balance sheets it is institutional shareholders and the members of pensions schemes as well as retail investors they represent who end up paying through lower dividends or drags on share prices.

Banks do not seem to be short of coin when it comes to executive performance and bonus payments. Nor are the jails busting with incarcerated bankers serving penance for the previous scandals.

There may come a time after the dust settles around the nature of prosecutions, custodial sentences and the size of fines that cost recovery efforts on behalf of shareholders are aimed directly at bonus payments.

Now that's a clawback that may begin to leave a mark,

Proxy firms settle on Code of Conduct

Transparency, disclosure and governance principles apply to the watchers to as well as the watched.

Leading global proxy advisers including PIRC have officially [launched](#) the [Best Practice Principles for Shareholder Voting Research and Analysis](#). The principles cover three main areas: service quality; conflicts of interest management and market communications and is supported by related guidance and background information. The principles apply to signatories on a 'comply or explain' basis.

An independent Best Practice Principles Group (BPPG) chaired by Prof. Dr. Dirk Andreas Zetsche formulated the guidelines during a yearlong development phase.

They arose in response to a European Securities and Markets Authority (ESMA) [consultation paper](#) of March 2012 into the state and structure of the market for shareholder voting research and suppliers' methodologies.

Despite calls from some corporate interests for regulatory limitations on advisory firms, ESMA concluded in its [final report](#) that development of a Code of Conduct was an appropriate response.

The BPPG will perform ongoing monitoring of the implementation of the principles and will review the principles and guidance no later than two years following their launch. ESMA will also perform a separate review of the implementation of the principles and the monitoring efforts by the BPPG at the beginning of 2016.

A report by the Chair on the consultation, as well as a feedback statement on the consultation responses and process will be made available on the [BPPG website](#) during March 2014. Questions, comments and feedback regarding the principles by all market participants can be directed to: committee@bppgrp.info

Famine or feast?

Shareholder resolution could see nothing on the table

Shareholders who regularly attend AGMs are sometimes incentivised to do so by the knowledge that their vote will be counted regardless of whether votes are taken on a show of hands, (this practice is still widespread) or whether postal votes are brought to bear on the business being decided.

An added incentive is of course the chance of some sandwiches, maybe finger hot meal, possibly a goody bag and the chance to chat with the directors (not necessarily in that order).

However if certain shareholders at Danish transport company [DSV](#) get their way AGM attendance is about to become a little less attractive.

A resolution put forward by shareholders at the forthcoming AGM proposes that the refreshments served at future AGMs are in line with company expectations for the coming year.

In the event that losses are foreseen, no meal would be served. The resolution does not go into further detail so it would be left to company discretion to decide if foie gras or turkey twizzlers is more appropriate. If the proposal is passed this of course raises the possibility that the contents of a shareholders dinner plate would constitute a forward earnings forecast and that some kind of legal disclaimer would need to be provided.

Perhaps it could be printed on the napkins and served with a pinch of salt?

Every Link in the Chain Counts

Fiduciary duty should extend to all intermediaries in investment management

With submissions now closed to the [consultation](#) into [Fiduciary Duties of Investment Intermediaries](#), the [UK Law Commission](#) will now be pondering various views, prior to reporting in June this year.

One proposal already out of the starting gate that has attracted PIRC Alerts eye is the [Investment Managers Fiduciary Duties Bill](#) introduced to the House of Commons by Labour MP [Phil Wilson](#).

The Bill is summarised as follows: A bill to place a fiduciary duty on those involved in managing an investment to act in the best interests of investors, including pension savers, in a transparent and accountable way; and for connected purposes.

In effect, for fiduciary duty obligations to be extended to all parts of the investment chain.

[Speaking in the House of Commons](#) Wilson argued that, while trustees are bound by their responsibility as fiduciaries, the responsibility should not be lost if the management of assets is 'delegated to someone else.'

'I want to start with a simple observation: successful economies cannot exist if suppliers take advantage of their customers and do not act in their best interest. Competition helps to ensure that suppliers do the right thing, but when a service or product is complex, and when the customer cannot know whether he or she is receiving a good service or buying the right product, the onus has to be on the supplier to act in good faith.'

'We must call on those who manage our funds to do so with our interests ahead of their own,' he said. 'At the core of every decision they take should be the saver's interest because it is our money, not theirs, for which they have responsibility.'

'That is why fiduciary duties, transparency and accountability are important, and that is why I wish to bring in this Bill.'

'That is why fiduciary duties, transparency and accountability are important, and that is why I wish to bring in this Bill. For pensioners, sustainable financial performance is what counts. I agree with [Share Action](#) that, just as [section 172](#) of the Companies Act 2006 requires company directors to have regard for the consequences of any decision in the long term, we should require investors in charge of our pension savings to be similarly enlightened.'

The Bill would also ensure that fees paid to pension managers and other intermediaries should be transparent, including an explanation of how much they are and why they are necessary.

'Those investors should also have regard for the impact of decisions on the financial system, on the real economy, and also take stock of social and environmental considerations, as well as the implications of any investment activity on the beneficiary.'

While passage of the Bill through to finality may best be described as problematic, the basic thrust has merit. As the UK moves further down the defined contribution path the rationale for ensuring decisions made, votes taken, fees imposed and other steps in the intermediation chain are transparent and disclosed are all becoming stronger.

In turn, the case against clarification of the fiduciary responsibility of all participants in that chain becomes correspondingly weaker.

Creating tomorrows value

Pushing ESG and long-term decision through the investment chain will help make better fiduciary outcomes

London based global think tank [Tomorrows Company](#) has launched a new guide to assist pension fund trustees improve integration of ESG thinking into investment mandates. [Tomorrow's Value - Achieving long-term financial returns](#) is a practical tool aimed squarely at supporting trustees and boards strengthen their capacity to build long term and sustainable value creation in their investment decisions.

Tomorrows Company contends that the current understanding of value is no longer fit for purpose and from a strategic risk perspective; it is becoming paramount that fund trustees need to take wider environmental, social and governance factors into consideration when making investment decisions.

The report acknowledges the implicit pressures around short term decision making that exists throughout the investment chain and supports a wider dialogue between boards and the 'supply side' of asset managers and advisers. A range of resources is provided, firstly for boards to shift their internal agenda planning and meeting focus towards long-term value and secondly to open more direct discussions with asset managers, consultants and advisers on achieving a better balance between short and long-term considerations in investment directions and decisions.

Trustees are urged to take a stronger role in strategic decision making and implement a mandatory comply-and-explain requirement in setting their mandates and disclose which factors they have taken into account when formulating their mandates.

In a signal to both boards and investment managers of how mainstream new thinking around sustainable investment practices is becoming the report has gained a bevy of high profile endorsements including governance authority Professor Mervyn E. King SC, chair of the [International Integrated Reporting Council](#), Fiona Reynolds head of the global [PRI Association](#) and Joanne Segars chief of the UK peak pensions body [NAPE](#).

A formal launch will take place at PwC in London on the 29th of April 2014. For more information or trustee invitations please contact antonios@tomorrowscompany.com

Search firms in the spotlight

The longer-term debate around diversity is how we move to halfway.

Having flagged up progress and obstacles to the holy grail of 25% female representation on UK boards (see PIRC alerts 18/02/14), we note Vince Cable and Lord Davies' continued efforts to push for further progress.

Together they have now published an independent [review](#) of the [Voluntary Code for Executive Search Firms](#), initially drawn up in 2011. Conducted by Charlotte Sweeney, under the auspices of the Department for Business Innovation and Skills ([BIS](#)) the [review](#) concludes the voluntary code should now be seen as the 'new normal' and sets out a further stretching set of recommendations for search firms.

The code now includes both companies and investors in its sights. Investors are called on to play a more active role and to challenge business further on plans and actions to create more gender-balanced boards.

Some institutional investors are already well down the path of active challenge to company boards. L&G Investment Management have [announced](#) a voting strategy for the 2015 proxy season aimed at FTSE companies. Aviva and Aberdeen Asset Management will be putting pressure on boards in 2014, with Aviva focussing particularly on the FTSE 250.

The Local Authority Pension Fund Forum ([LAPFF](#)) is also entering the 2014 proxy season with a focus on FTSE 100 laggards All three will target the chair of the nomination committee.

Vince Cable has emphasised one particular recommendation of the BIS report, which is for the Equalities and Human Rights commission ([EHRC](#)) to create the appropriate legal guidance for women only shortlists.

Such shortlists are likely to be drawn up based on gender, which would appear to contravene existing EU law prohibiting sex discrimination. However, it is clear they are used in practice. An un-named search firm in the BIS report is quoted as saying 'Clients do ask for all female shortlists and we have done it in the past.'

The Cable/Davies Foreword to the BIS report says 'we are entering the home straight'. Certainly, there are encouraging signs that during 2015, the Davies targets may be achieved, but this will need a doubling in the current rate of increase of throughout 2014. As Charlotte Sweeney notes 'a true measure of success will be the continued positive trend of creating more diverse boards in the FTSE 350, long past 2015'.

Put simply the objective will be not only to increase the proportion of female executive directors to boards but also to alter the perception that aiming for 25 or 30% representation is the ultimate goal.

Looking at the trajectory in terms of numbers rather than targets could help re-frame the debate. As one commentator has [noted](#) 'rather than setting an arbitrary and aspirational target, we should be asking ourselves: 'Given that the correct figure for women at senior levels is 50%, why haven't we reached it?'

Save the Date

**Impact Investing Opportunities for Pension Funds
27th March. Central London**

Learn more about linking institutional investment with long-term environmental social and economic benefits to communities. This all day seminar will profile a diverse range of new impact investing options and initiatives. Come and hear the latest developments and discuss emerging opportunities for pension funds.

Presented with the support of Cheyne Capital Management and Threadneedle Investments. For information and registration please contact janiceh@pirc.co.uk

PIRC advises institutional shareholders with assets in excess of £1.5 trillion

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