

PIRC ALERTS

UPCOMING MEETINGS

1. WPP plc AGM
2. Weatherford International Ltd AGM
3. Is the grass always greener
4. Aussie Rules
5. Diversity in Sweden
6. GPIF backs Stewardship Code
7. PIRC Conference-Last Chance

QUOTE OF THE WEEK

'The trend is in the right direction. But there is still much to do in accelerating the rate of this increase and better utilizing all available competence.'

'Stakeholders and nomination committees share a particular responsibility here. We are determined to shoulder ours and hope that many others will elect to follow the same path.'

'Recruiting from a fact-based and broadened pool of talent that embraces competent candidates found beyond the nomination committees' normal networks of contacts offers companies the best hope of developing in an optimal way.'

'This is why it is such an important question for us from an investment perspective.'

Eva Halvarsson, CEO of Swedish Pension Fund/AP2 speaking on board diversity 4th June 2014.

WPP plc

AGM 25TH June London

Executive remuneration is the key governance issue at this dual listed, FTSE100 global advertising and communications company.

Receive the Annual Report: Environmental and employment policies are in place and some quantifiable environmental reporting is disclosed. Gender balance at all levels of the Company is disclosed.

A **For Vote** is recommended.

Approval of dividend: A final dividend of 23.65 pence per share is proposed. Together with the interim dividend, this brings the total dividend for the year to 34.21 pence per share.

A **For Vote** is recommended.

Remuneration Report: All elements of each director's cash remuneration disclosed. All share incentive awards are also stated with award dates and prices. Pension contributions and entitlements are provided.

However, rewards made to the Executive Directors for the year are considered excessive in comparison with their base salaries. Variable remuneration equated to 24 times base salary for the CEO. Additionally the balance of CEO realised pay with financial performance is considered unacceptable. The change in CEO total pay over five years is not commensurate with the TSR performance over the same period.

PIRC recommends an **Abstain Vote**.

Remuneration Policy: The Company operates one long-term incentive plan, an Executive Performance Share Plan (EPSP), although it has others left as legacy. In total, there are six variable pay plans available to directors. The EPSP awards vest subject to three conditions: the TSR relative to a Peer Group, headline EPS growth and the average ROE.

These performance conditions work independently of each other, which are not considered best practice. These Conditions should operate in a concurrent fashion, so no awards vest unless all conditions and targets have been met.

Awards are not subject to non-financial KPIs which is not considered best practice. It is noted that the performance period is five years. The Executive Directors' total potential rewards under all incentive schemes are considered to be excessive.

The CEO potential awards under the variable pay may amount to 1410% of his base salary.

This does not take into account the investment matching share awards under the Leadership Equity Acquisition Plan III (LEAP III).

This plan, which closed in 2012 can award up to 500% of the Director's investment. Whilst no further award can be made under LEAP III, awards are still vesting under the plan.

The ratio of CEO pay to employee average pay is not disclosed.

However, analysis by PIRC leads us to conclude that it is excessive and dividends continue to accrue over the performance period (five years) on the number of shares that vest.

This practice is not acceptable; a dividend should not be backdated to include the performance period.

The Company's recruitment policy allows for the replication of new appointees' forfeited schemes at their previous employers. This is considered an inappropriate practice that undermines the rationale behind the remuneration policy to retain Executive Directors. There is no evidence that upside discretion cannot be used while determining severance.

There are significant exceptions to contracts policy (for the Current Group CEO) that apply from the effective date of the binding vote policy.

As a result of these critical issues PIRC recommends an **Oppose Vote**.

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: For the re-election of independent Non Executive Directors Mr Roger Agnelli, Dr Jacques Aigrain, Mr Colin Day, Chair Mr Philip Lader, Mr Ruigang Li, Mr Hugo Shong, Mr Timothy Shriver, Ms Sally Susman and Mr Solomon Trujillo a **For Vote** is recommended.

For the election of newly appointed independent Non Executive Directors, Dr John Hood, Ms Charlene Begley Ms, Nicole Seligman and Ms Daniela Ricardi a **For Vote** is recommended.

A **For Vote** is also recommended for Mr Mark Read Executive Director, Mr Paul Roasen Finance Director and Mr Martin Sorrell CEO.

Mr Jeffrey Rosen, the Senior Independent Director is not considered independent as he was previously a bank advisor at Wasserstein Parella involved in the WPP financial restructuring of 1992. In addition, he has been on the Board for over nine years.

Overall, there is a sufficient level of independence on the Board.

Mr Rosen missed one of the six Audit Committee meetings held during the year.

On this basis, an **Abstain Vote** is recommended.

Appointment of Auditors and board determination of remuneration: Deloitte LLP are proposed and the total non-audit fees were approximately 44.24% of audit fees during the year under review.

The three-year average is 44.09%. 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.

Approval of increase in non-executives fees: It is proposed that the aggregate fees payable to the Non-Executive Directors be increased from £2,000,000 to £3,000,000. The Board states that the increase is due to the increase in regulatory requirements, responsibilities and the new appointments to the Board and its Committees.

In our view, the increase in fees has not been adequately justified.

In addition, the aggregate NED fees are not already within 20% of the existing fee limit. This provides sufficient headroom, even when fee increases are accounted for.

PIRC recommends an **Oppose Vote**.

On the three remaining resolutions concerning **Share Issues and Repurchase**, PIRC recommends a **For Vote**.

Weatherford International Ltd

AGM 16 June Zug, Switzerland

Jurisdiction hopping to avoid shareholder disclosure is the governance issue at this oil and gas services company.

Adoption of Merger agreement: The Board is seeking shareholder approval for a corporate reorganization which will merge the current company (“Weatherford Switzerland”) into its newly formed subsidiary, Weatherford International Limited (“Weatherford Ireland”).

After the merger, Weatherford Ireland will be the parent company of the Weatherford group of companies.

As a result of the merger, all of the assets and liabilities of Weatherford Switzerland will be transferred to Weatherford Ireland and as such economic interests in the company are unaffected.

The main reason for the proposed change appears to be the Boards desire to avoid new Swiss legislation which explicitly makes the board accountable to shareholders for the quantum of executive pay.

Accountability to shareholders for the amounts distributed to management is appropriate. Management is paid from shareholder funds. Avoidance of a regulatory regime where this accountability is enforced is not therefore in shareholder interests.

PIRC recommends an **Oppose Vote**.

Approve the distributable profits proposal: The board seeks approval for the creation of distributable profits of Weatherford Ireland under Irish law by reducing the entire share premium of Weatherford Ireland (or such lesser amount as may be determined by the Board of Directors of Weatherford Ireland) resulting from the allotment and issue of Weatherford Ireland ordinary shares pursuant to the Merger Agreement.

The authority is a consequence of re-incorporation in Ireland. It is necessary and desirable for the new entity to have distributable profits from which dividend distribution may be made.

On its own merits the resolution should be supported.

PIRC governance concerns with regard to the decision to re-incorporate are registered in advice on the first resolution which seeks approval for the re-organisation.

A **For Vote** is recommended.

Is the Grass Always Greener?

Weatherford makes another move, all in search of stability...

Weatherford International has announced plans to re-domicile from Switzerland to Ireland ostensibly following the introduction of legislation by the Swiss government enabling shareholders to limit executive pay.

The oil and gas services giant had relocated its corporate headquarters from sunny Bermuda to the snowy Alps in 2009, all the while retaining its main operational office in the somewhat less salubrious surrounds of Houston, Texas.

The original shift from the USA to Bermuda occurred in the early naughtiest with corporate tax benefits cited as the main driver.

The official view from the company is that the move will “strengthen Weatherford’s steady course allowing us to operate at the lowest possible cost.”

The benefits of the Swiss shift according to the 2009 [Proxy Statement](#) included that ‘Switzerland is more centrally located than our current executive offices to our worldwide operations, in terms of both time zone overlap and travel time. Switzerland has established standards of corporate governance, including provisions for the rights of shareholders. Switzerland also has numerous tax treaties with many taxing jurisdictions throughout the world and a developed and stable tax regime.’

Fast forward to 2014 and the allure is fading. One of the main reasons the Board now gives for their re-domicile to Ireland is that it requires ‘a stable regulatory environment in order to effectively manage our company.’

‘After careful consideration, our board of directors has determined that Switzerland has become restrictive in this regard, while Ireland is more attractive in terms of allowing us to achieve the right balance on these important matters.’

Shareholder rights seem to have fallen by the wayside as well. ‘Additionally, recent changes in Swiss law subject our directors to potential criminal liability for certain compensation decisions considered routine in other jurisdictions, and impose additional shareholder voting requirements that are inconsistent with SEC requirements’

‘We believe that these factors unnecessarily complicate governance and shareholder voting matters.’

With four different domiciles in just over a decade, it is reasonable for shareholders to ask is long-term value creation being put aside for shorter [tax or debt driven](#) decision making by the board.

The wider question revolves around jurisdiction shopping and the trend for base erosion and profit shifting (BEPS) amongst global companies. Institutional shareholders are increasingly seeking disclosure and transparency around opaque accounts as part of the ESG based moves to better understand the fundamental drivers behind profits and growth. National governments are seeking a fairer share of the tax pie and closing of various loopholes.

Rightfully, the issue remains on the international reform agenda. For companies like Weatherford, the next flight may well be home.

Aussie Rules – Three steps forward, five steps back

Rule changes see a mix of setbacks and advances for shareholder rights in one of the Southern Hemisphere's biggest exchanges.

The Australian Stock Exchange ([ASX](#)) released the [final version](#) of its proposed governance-related amendments to the ASX Listing Rules on 6 May 2014. The changes follow a consultation process commenced in August 2013, with a further round of comments sought in February 2014.

The changes are not all for the best.

It is disappointing to note that some information which must currently be disclosed in the Annual Report will no longer be required. For example, listed entities will no longer be required to include their Corporate Governance Statement disclosing the extent to which it has followed the Principals and Recommendations in the Annual Report. Publication of a simple link to the corporate website will suffice.

The changes switch responsibilities from companies to investors creating obstacles to effective stewardship.

Of particular concern is the impetus this change gives to the gradual weakening of the link between voting rights and the disclosures which inform those rights.

Although, the online corporate governance statement still has to state a date at which the information posted is current, Australian boards still need not sign off on governance arrangements at the same date as signing off on financial statements.

In confirmation of a worrying trend for shareholders the ASX have now added a note to the rules confirming that where employee incentive schemes allow participation by external consultants and contractors this does not prevent them from being an employee incentive scheme for the purposes of Listing Rules.

Most new schemes in the US and Australia now allow share awards to consultants.

Higher dilution limits for truly all-employee schemes are usually waved through by shareholders but in general, PIRC believes employee share schemes should be just that.

Increased participation by consultants with short-term interests and with remuneration that typically compensates for relative lack of employment security should now make shareholders think twice about tolerating higher levels of dilution.

In another regressive step, the proposed rules now rule out disclosure to the ASX of provisions in directors' contracts which indemnify them from liability.

This is surely an area of legitimate shareholder interest. Shareholders should take no comfort from the caveat that provisions which don't comply with laws in the jurisdiction where an entity is established still need to be disclosed.

It seems highly unlikely that there will be any exceptional disclosures.

A related change redefines 'related entity' away from the legal definition contained in [Section 9 of the Corporations Act](#). Currently a CEO's contractual agreement with an entity related to the company must be disclosed. This seems sensible. The new rules only require such disclosure where the entity is a 'child' to the company.

The narrower definition creates a disclosure loophole. Elsewhere in the proposed changes, the ASX abandons the Corporations Act definition of 'associate' in favour of its own definition.

This unhelpful divergence from legal definitions muddies the regulatory waters and tends towards regulation by bodies which are themselves less accountable to the public interest than legislators.

In a surprising move away from the principle of subjecting board pay to shareholder approval the proposed change to the rule dealing with directors' fees sets up the possibility that direct shareholder approval will no longer be needed for a proportion of fees.

Any 'special exertion' fees and out-of-pocket expenses are not included in the aggregate limit to be approved by shareholders.

This new 'special exertion' definition strangely includes attendance at certain board committee meetings. 'Out of pocket' expenses are no longer limited to those relating to attendance at board or committee meetings. Shareholders can expect the proportion of unapproved board fees to rise.

Not all of the changes are negative.

Some helpful clarifications have been added to the existing rules. In future there should be no confusion over the validity of an instruction to abstain in the Australian market.

Even where there is no abstention tick box on the proxy form the new rules make clear that proxy forms may include a general statement that a proxy is authorised to abstain at their discretion.

It is also pleasing to see that the ASX has resisted corporate lobbying which sought to defer shareholder approval of option grants until the company had decided to satisfy the grant by issuing new shares rather than acquiring them on-market.

Finally, some help is on its way for hard pressed governance researchers struggling to locate each of the governance disclosures required by the ASX Corporate Governance Council Recommendations.

The current rules only prescribe a location for disclosure of non-compliance. Companies will now be required to complete a new Appendix 4G for the ASX which is far more prescriptive about location of the information needed to judge compliance with the ASX recommendations.

Subject to receipt of the necessary regulatory approvals under the Corporations Act, the changes to the Listing Rules will come into effect from 1 July 2014.

AP2 reports increase in number of women on boards

Survey by Sweden's second national pension fund shows improvements in gender diversity

The Swedish state pension fund [Andra AP-fonden](#) (AP2), has [reported](#) that the number of women on boards of listed companies in the country has risen for the first time in three years: so says a survey conducted with [Nordic Investor Services](#) that examined 252 firms on the Stockholm Stock Exchange.

As reported by [Responsible Investor](#), AP2's [Female Representation Index for 2014](#) shows that representation has increased from 22.3% to 24.7%. The figures for executive positions have also increased with 18.4% of senior positions now being filled by women.

These numbers compare favourably to those in the UK where it was announced by [Professional Boards Forum BoardWatch](#) in May that women now make up 21.6% of FTSE 100 directors.

Large Cap companies led the way in Sweden with female representation at board level, rising by 3.9 % to 29.1%. They also account for the highest number of women in executive positions with just over 19%.

The survey also showed a marked difference in industries. The services and consumer staples sectors had the highest proportion of female representation with 30.5% and 29.9% respectively.

At the other end of the spectrum the commodities sector lagged behind with just 13.6% of its board members being female.

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'Stakeholders and nomination committees share a particular responsibility here.'

'We are determined to shoulder ours and hope that many others will elect to follow the same path,' Eva Halvarsson CEO of AP2 said.

The pace of change remains a concern for AP2. It was noted that if change continues at the current rate it will take 30 years until women hold 50% representation on boards and at least another 48 years on until half of senior executive positions are held by women.

GPIF gets behind governance reform

Japans largest pension fund the lead in supporting new Stewardship Code

The [decision](#) by GPIF, the \$1.3tr national pension fund to sign the newly minted Japanese Stewardship Code is a welcome development in the push to reform aspects of the Japanese economy and improve corporate governance.

GPIF occupies a dominant position amongst local institutional investors and signing onto the code will place increasing pressure on its traditionally moribund outsourced asset managers to become more active around engagement and share voting issues.

As reported in the January 22nd PIRC Alerts, the Financial Services Authority (FSA) released a draft [Stewardship Code](#) built around seven core governance principles designed to 'promote sustainable growth of the investee company and enhance the medium and long term investment return of clients and beneficiaries.'

Modelled in part on the 'comply or explain' regime of the UK Code, asset owners and managers are being encouraged by the FSA to undertake 'purposeful dialogue' with underlying companies.

Given the recent [interim report](#) of the 'Ito Review' from the Ministry of Economy, Trade and Industry (METI) concluded that only 200 of 1600 domestic companies surveyed had exhibited positive returns (including dividends) in the last 20 years, the exhortation for 'purposeful dialogue' is more than reasonable.

The US based Council of Institutional Investors has added their support with a [letter](#) direct to PM Shinzo Abe supporting governance reform.

Keen eyed observers will be looking for more signs of change when Japanese AGMs peak in late June

Last Chance to Register

PIRC Governance Conference adds additional speakers

David Pitt-Watson and Anne Richards have been added to the speakers list for the PIRC Governance Conference.

David is a thought leader and practitioner in the field of responsible investment and business practice will be joining us to discuss DC schemes.

Anne is CIO of Aberdeen Asset Management and a member of the [Board of Leaders | 2020 Women on Boards](#). She will be providing participants her unique insights on very topical subject of board diversity.

The conference will be held on Friday 13th June, [central London](#).

Register [here](#) or email Janice Hayward at janice.hayward@pirc.co.uk.

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

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