

## **CORPORATE GOVERNANCE PROXY VOTING ACTIVITY**

### **JUNE TO AUGUST 2006**

#### **VOTING ACTIVITY**

During the period the Fund voted at a total of 257 company meetings - 22 European, 54 US and 181 UK. In respect of these meetings (a mixture of EGMs and AGMs) the Fund abstained or opposed 542 resolutions out of a total of 2,482, representing approximately 22% of all resolutions. During this period there were only 51 meetings where the Fund supported all the resolutions put forward by companies.

The Fund has a bespoke template for voting at UK meetings, however, the Fund currently follows the voting advice of the Pensions and Investments Research Consultants Ltd (PIRC) for European, Japanese and US company meetings.

#### **CORPORATE GOVERNANCE DEVELOPMENTS**

Amendments to the Company Law Reform Bill are likely to become law by November 2006. The bill includes more than 1,250 clauses including clauses governing directors' duties, disclosure of institutional voting and derivative claims. Accompanying the bill are the EU Transparency Directive and Accounts Modernisation Directive, which require amongst other things, companies to publish periodic financial information and management reports.

Under the proposed statutory regime, investors would be able to make a claim against a company at reduced costs, if they can show that they have suffered a financial loss and that there was knowledge or recklessness on the part of one or more directors regarding a certain defect in a financial report. The difficulty and high costs involved in bringing an action against a company under the current common law system add weight to the idea that perhaps a statutory regime would work in investors' favour. However, PIRC are concerned that a statutory regime will upset the balance of investors' current rights as it eliminates the possibility of liability in a wide range of circumstances, depriving investors of their current ability to argue for damages before a court.

PIRC believe that the arguments both for and against a statutory damages regime and the existing common law system respectively, clearly indicate that a delicate balance needs to be struck. They feel that if the statutory regime is to be adopted, then it is in investors' interests that its scope be broad enough. The Treasury have now received stakeholder views on the desirability of extending the statutory liability regime, which will feed into Parliament's autumn review of the Companies' Bill.

## **VOTING ANALYSIS**

The major issues of contention that attracted a high level of shareholder opposition during the period are typically illustrated in the examples in the table below:

<b>Meeting</b>	<b>Resolutions Causing Shareholder Concern</b>	<b>Shareholders Opposing %</b>
Aegis Group plc AGM	Issue shares with pre-emption rights	42%
Aegis Group plc AGM	Issue shares for cash	41%
Aegis Group plc AGM	Authorise share repurchase	41%
Aegis Group plc AGM	Re-elect Daniel Farrar	39%
Aegis Group plc AGM	Re-elect Bernard Fournier	38%
Aegis Group plc AGM	Re-elect Brendan O'Neill	38%
British Airways plc AGM	Authorise EU political expenditure	34%
JJB Sports plc AGM	Approve 2006 LTIP	29%
Man Group plc AGM	Approve 2006 LTIP	19%
Findel plc AGM	Approve the remuneration report	17%
Cranswick plc AGM	Approve the remuneration report	14%
GCAP Media plc AGM	Approve the remuneration report	11%

Although the Fund opposed most of the resolutions referred to above it will vote for a resolution if it believes the company has followed best practice, even if there is significant opposition from other shareholders. Background details on some of these resolutions where opposition was significant are as follows:

## **VOTING REVIEW**

### **Man Group plc (AGM)**

The approval of the 2006 Long Term Incentive Plan had a significant oppose vote of 19.2%. The company proposed an LTIP with a maximum award of 1 times salary. The scheme was based on a single performance target of return on equity (ROE), but the company did not provide adequate justification for its choice of target or the introduction of another incentive scheme.

**The Fund opposed the resolution.**

### **Aegis Group Plc (AGM)**

As is obvious from the table, the meeting that received the highest level of opposition for a number of resolutions was that of advertising group Aegis. This was due solely to the voting policy of a controlling shareholder Groupe Bolloré who accounted for just over 38% of the shares voted at the meeting. For this reason, the resolutions to re-elect Messrs Farrar, Fournier and O'Neill were overturned despite there not being any apparent corporate governance concerns associated with their re-election.

In addition, the special resolutions to issue shares and to buy back shares were defeated also as a result of Groupe Bolloré's opposition and high level of representation at the meeting which exceeded the 25% required to defeat these proposals.

**The Fund supported all the resolutions.**

### **British Airways plc (AGM)**

The company required authority to donate £400,000 to EU political organisations over a period of four years. Whilst the amount was not excessive, the Fund considered that the provision of authority should not be granted for more than one calendar year and that shareholders should be able to monitor and rescind such an authority on an ongoing basis. Although 34% of shareholders opposed the resolution, 65% voted in favour.

**The Fund opposed the resolution.**

### **Findel Plc (AGM)**

The resolution to approve the Remuneration Report at this AGM received opposition votes of 17%. Contracts for two of the executive directors included a provision for damages equivalent to one year's base salary, bonus, benefits in kind and additional pension contributions which the Fund considered to be contrary to best practice. In addition, an award of options not subject to performance conditions was made to the incoming Chief Executive. While recruitment incentives have become an increasingly common aspect of companies' remuneration practices, such awards contribute to undermining companies' own stated policy of providing remuneration packages designed to "attract and retain" executive directors, and also set a negative precedent in the wider market.

**The Fund opposed the resolution.**

### **Cranswick plc AGM**

The resolution to approve the Remuneration Report at this AGM received opposition votes of 14% and a further 8% in abstentions. There were a number of reasons for this level of concern. Firstly, shareholders judged there to be insufficient disclosure of the remuneration policy. Additionally, the level of performance required for executive directors to exercise their share options was considered to be insufficiently challenging. The report also indicated that three of the executives' contracts include two year notice periods which goes against best practice.

**The Fund opposed the resolution.**

## **Overseas Issues**

### **Nabors Industries AGM (US)**

The shareholders were asked to increase the number of shares issued under the Employee Stock Plan. However, the awards were not subject to any meaningful performance criteria and the remuneration committee were allowed to determine the performance and any performance period. The Fund's guidelines outline that all long-term compensation should be subject to transparent performance criteria which clearly define the relationship between the achievement of specific performance goals and the eventual payout over a performance period of at least three years. The fact that the resolution was opposed by more than 49% of shareholders confirmed that many investors regard the lack of disclosed specific performance targets as a significant omission.

### **H J Heinz Company AGM (US)**

It was proposed that five of Heinz's non-executive directors be removed and that they should be replaced by five directors connected to Trian Group (a shareholder which owns 5.5% of the company's common shares). The reason given was that the current management had failed to increase shareholder value and failed to improve Heinz's financial results despite a number of restructuring plans. The Trian nominees claimed that they would implement a business plan to increase revenues and shareholder value. The Fund opposed the resolution as the effect on the board if five independent directors were replaced by five directors connected to Trian, was considered detrimental to the company's governance. Whilst shareholders did not approve the appointment of all five directors, two of them were elected to the board of directors. Nevertheless, the proposal seems to have forced Heinz to act as they have subsequently introduced strategies to improve both their business strategy and corporate governance arrangements.