

## CORPORATE GOVERNANCE PROXY VOTING ACTIVITY

### JUNE TO AUGUST 2009

#### VOTING ACTIVITY

During the period the Fund voted at a total of 268 company meetings – 178 UK, 21 European and 69 US. In respect of these meetings (a mixture of EGMs and AGMs) the Fund opposed, abstained or withheld\* 804 resolutions out of a total of 2,791, representing approximately 29% of all resolutions. During this period there were at least 41 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 and US company meetings.

\* It should be noted that due to a combination of US state law and individual company bye-laws, votes pertaining to individual directors cannot be cast as “oppose” but have to be cast as “withheld”.

#### UK 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 or Abstaining %</b>
Ferrexpo Plc AGM	Elect Mr Gregory Gurtovoy	89%
Ferrexpo Plc AGM	Elect Mr Gennadiy Bogolyubov	89%
Tesco Plc AGM	Shareholder resolution	83%
Marks & Spencer Plc AGM	Requisitioned resolution from LAPFF	60%
Caledonia Investments Plc AGM	Approve the waiver of the mandatory offer provisions as specified in Rule 9 of the City Code	42%
JKX Oil & Gas Plc AGM	Approve authority to increase authorised share capital	42%

Although the Fund may often oppose a resolution, it will support 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 detailed on the following page:

## **Ferrexpo PLC (EGM)**

An EGM was called by substantial shareholders Ralkon Commercial Ltd and Fayver Properties with a proposal to appoint two new directors, Gennadiy Bogolyubov and Gregory Gurtovoy . The investors believed that there was a lack of adequate representation for minority shareholders on the board of directors.

More than 50% of the company is held by a company called Fevamotinico, which is controlled by The Minco Trust. One of the main beneficiaries of this group is Chief Executive, Kostyantín Zhevago.

A further 21% of Ferrexpo's shares are in the hands of a single group, RPG Industries.

Although the Fund considers there to be insufficient independent scrutiny on the board, the appointment of two more directors with links to a substantial shareholder is not likely to improve the balance of the board.

In addition, no biographical information had been provided on either director, so it was difficult for shareholders to assess their competencies.

**The Fund opposed the resolution.**

## **Tesco PLC (AGM)**

Britain's largest trade union, Unite and West Yorkshire Pension Fund co-filed a resolution on workplace rights at Tesco. The resolution requested that Tesco demonstrate improvements to its UK meat and poultry supply chain.

Unite had serious concerns over the pay and conditions for many agency workers employed by companies in the British and Irish meat industry that supply Tesco stores.

In support of their resolution, Unite pointed to the 2007 independent study commissioned by the Ethical Trading Initiative. As a result of this study, the Equality and Human Rights Commission launched an independent inquiry into the UK's meat industry for evidence of employment abuse and discrimination.

The Tesco board considered that its existing governance structure provided an appropriate and effective approach to the management of corporate responsibility and community issues. In addition, the board noted its commitment to ensuring that suppliers adhere to its guidelines and do not discriminate in the treatment of their workers.

Tesco also argued that the EHRC inquiry was the most appropriate way of dealing with these issues and that the resolution was attempting to overrule the board's authority to run its business.

On the other hand, Unite and the West Yorkshire Fund believed that there were significant benefits that could be gained by Tesco acting ahead of the findings of the EHRC inquiry. PIRC also agreed with this argument and recommended that the Fund vote in favour. Nevertheless, an overwhelming majority of investors (83%) voted against and the resolution was defeated.

**The Fund supported the resolution.**

## **Marks & Spencer PLC (AGM)**

The Local Authority Pension Fund Forum (LAPFF) filed a resolution to address the combined Chairman and Chief Executive position at the head of the company. The position is held by Sir Stuart Rose but is contrary to the UK system of corporate governance which requires the roles to be completely separate to prevent too great a concentration of power.

The resolution requested that the board take all reasonable and practical steps to bring forward the appointment of an independent Chairman to July 2010.

However, this timetable was at odds with the company's intention to find a new Chief Executive to replace Sir Stuart next year and then an independent chairman in 2011. It was argued that the additional time was necessary to develop internal candidates and evaluate the external market

PIRC believed that the LAPFF resolution was a way of raising concerns over the breach of long-standing best practice and recommended the Fund vote in favour.

However, despite receiving a high level of support, the resolution failed to attract the necessary shareholder votes and was defeated.

### **The Fund supported the resolution**

## **Caledonia Investments PLC (AGM)**

Resolution 12 proposed a waiver of the mandatory offer provisions as specified in the City Code on Takeovers and Mergers.

Rule 9 of the Code requires a shareholder or concert group of shareholders to make a mandatory offer for a company if they have a shareholding of 30% to 50% and that holding then increases.

The Cayzer family, who have been linked to Caledonia for many years, already have a substantial shareholding. There were concerns that this shareholding could gradually exceed 50% of total share in issue.

Should this happen, under the rules of the City Code, they would be required to make a mandatory offer for the company, but this resolution sought a shareholder vote to waive this rule.

Whilst the directors had given assurances that this controlling group of shareholders would not gain control over more than 49.9% of issued share capital, a further resolution sought authority to buy back up to 10% of the shares.

As a result, there were concerns of further possible increases in the shareholding without the requirement to make an offer.

### **The Fund opposed the resolution**

## **JKX Oil & Gas PLC (AGM)**

Share price appreciation was reported as the performance condition in the Share Option Scheme. An increase in the share price is not considered to be an appropriate measure of directors' performance. In addition, salary increases for two of the directors were not identified clearly.

As a result, there was a high level of opposition to the resolution to approve the remuneration report.

**The Fund opposed the resolution**

## **OVERSEAS ISSUES**

### **Elan Corp (AGM) – US**

There were the following concerns regarding the remuneration practices at US pharmaceutical company, Elan:

- The CEO was entitled to severance payments amounting to up to three times annual salary as well as the right to maintain his participation in the company's health plan, have access to an office and a secretary and the possible reimbursement of excise tax and legal fees incurred during his employment at the company.
- A non-executive director participates in the bonus scheme.
- The company is paying consultancy fees to a former director.
- Another former executive director is receiving pension payments from the company.

As there was no separate remuneration resolution, PIRC recommended that shareholders raise any concerns in the resolution to receive the Annual Report.

**The Fund opposed the resolution.**

### **Mastercard (AGM) – US**

During the year under review, the level of non-audit fees amounted to 28.7% of total audit and audit-related fees. Over a three year period, non-audit fees were approximately 18.5% of the total fees.

This therefore, raised concerns that there was a potential conflict of interest for the auditors.

**The Fund abstained from the resolution.**

*This information is provided by PIRC in accordance with the Fund's voting template.*