

Proxi nvest

From: Pierre-Henri Leroy [p.h.leroy@proxinvest.fr]
Sent: 02 April 2010 17:42
To: Stewardship Code
Cc: Loïc DESSAINT
Subject: Proxi nvest contribution to the Consultation on a Stewardship Code for Institutional Investors

Susannah Haan

Financial Reporting Council

Fifth Floor

Aldwych House

71-91 Aldwych

London WC2B 4HN

Friday, 2 April 2010

Dear Ms Haan

Re: Financial Reporting Council – Consultation on a Stewardship Code for Institutional Investors

I am writing on behalf of Proxi nvest a French proxy firm advising investors on shareholder value and how to cast their votes.

Proxi nvest, an independent consulting firm, serving only and ALL shareholders, offers proxy voting research and solutions tailored to the specific investors needs. Information about our company and its activities is available on our website <http://www.proxi nvest.com/>

We believe in view of the confusion of interest generated in the financial world by the universal banking model and the end of the old mixed business prohibitions, that institutional investors could benefit greatly from clear guidance on their responsibilities as shareholders.

In line with the ICGN submission to the Combined Code consultation in 2009, we support the need for a clear and comprehensive code of best practice in relation to the fiduciary duties of institutional investors, both asset owners and asset managers, setting out their responsibilities and proposing ways to meet them in spirit and in letter. We are pleased that a Stewardship Code for institutional investors has been developed in the UK.

We believe that it is entirely appropriate for the FRC to assume responsibility for the Stewardship Code for institutional investors.

In addition to the matter addressed in the ICGN Statement of Principles of the Institutional Shareholder Responsibilities (2007), which we mostly support, we would insist for the consideration of the following points

· While we believe appropriate to promote and improve two-way communication between 1) companies and their investors and 2) institutional investor agents and their clients (the investors) it appears certainly acceptable that in line with the normal agency services direction some disclosure or reporting duties be imposed on investors or their agents for the benefit and on request of their clients (investors or end investors). On the other hand we consider inappropriate and dangerous, because of the confusion potentially generated, to create on the buy side (institutional investor agents and their investors clients) any type of duty to report privately to companies.

For instance if unregulated asset owners were obliged to disclose about their voting policy or engagement this should be done for the benefit of all shareholders on a public web site and failure to do so should never become an excuse for any issuer to disenfranchise their vote...

We however do not consider that the Stewardship Code should also apply to the crowd of investment consultants and proxy research providers, for the final

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stewardship duty of care and decisions must rely on the institutional investors : however it should be clear that institutional investors should be authorized to mention and quote their service providers within their disclosure process.

* Concerning now the content of the Stewardship Code*//

o We agree that the Stewardship Code should require institutional investor agents to disclose all known potential conflicts of interest and should take steps to avoid situations where conflicts of interest arise, such as with respect to fee arrangements.

o We also consider important that the public and private discussions among investors in publicly listed companies on their temporary vote intents at a company AGM should be clearly stated in the Stewardship code as not constituting any concert action, even when nominating external directors, when no agreement exists as to the future control of the company, its strategy or management appointment passed the date of the AGM..

o We believe that it is extremely important that escalation " or "menu of engagement options" available to shareholders be not limited to voting or tabling a resolution but also take court action to redress any breach of the shareholders rights that the investor might witness and which hurts or threatens to hurt the long term value of the investment. We consider that one of the very weak point of the "comply or explain" proceeding is that the investors do not date to enforce their rights and that very little collective repair proceedings are in fact supported by big institutional investors. Accordingly the tendency for some companies to live well while breaching disclosure or normal company law is sadly quite common.

To face the free-rider problems we believe that the Stewardship code should consider to mention the benefits of the "a posteriori" coverage of the successful engagement costs under the approval of shareholders as a perfectly lawful and appropriate tool for the engagement of investors : this would, we believe, solve part of *the free-riders problems, as their companies would have to repay for part of the active investors diligences following their approval by the AGM. A mention of this process within the Stewardship code would certainly legitimate its use by engaged investors.

We do also support the possible and recommended disclosure of the name of a companies under engagement at the risks of the engaged party in full due respect of the integrity of the information and not only after the engagement but also during the engagement : for instance we consider that the "shame on you " risk for having tables resolutions which appear clearly against the interest of all shareholders and recognized as such by big institution should help a more efficient process of due diligence and generally better stewardship.

Yours sincerely

Pierre-Henri Leroy

President