National Association of Pension Funds

Corporate Governance Policy

2009/10 Policy Updates

Introduction

The NAPF has approved a small number of amendments to its Corporate Governance Policy, which it is intended should apply during the 2010 AGM voting season.
We expect that the outcome of the FRC Review of the Combined Code will result in more wide-ranging changes to the Policy, which we plan to re-issue in the autumn of 2010.
In addition, the recently-published Institutional Shareholders' Committee (ISC) Code on Shareholder Engagement, which clarifies the responsibilities of institutional investors, has been incorporated into the NAPF Policy, albeit that it is subject to revision following the FRC consultation. We believe it is important that institutional investors begin to consider how to apply its provisions in advance of the FRC's report.

Policy Updates

Short-notice general meetings

The NAPF welcomes the introduction of the Shareholder Rights Directive, which provides important protections for investors in Europe.
The ability for companies to hold meetings at short notice is important and commercially desirable in certain circumstances. However, we expect that companies will give as much notice as is practicable when calling a general meeting. Therefore, the additional flexibility afforded by the Directive to call a meeting at 14 days' notice should only be used in limited circumstances where it would clearly be to the advantage of shareholders as a whole. If the proposals at a given meeting are not time-sensitive a company should not normally use the shorter notice period.
Companies are encouraged to outline the circumstances in which a short-notice meeting may be called when tabling the enabling resolution.

Voting sanction: Shareholders will normally support an enabling authority proposal. However, shareholders should consider voting against resolutions tabled at a short-notice meeting where the use of the shorter notice period has not been adequately justified by the company or the proposals are of such complexity that shareholders require more time to consider their voting decision.

Director Independence

There has been some uncertainty around the independence of a director who has been nominated by a dissenting significant shareholder, but who is not associated with that shareholder. While it is reasonable to assume a connection and therefore the onus is on the nominee to demonstrate his/her independence, it is important that independence criteria are applied consistently across all directors.

Therefore the independence of the dissident nominee should be based on the independence criteria applying in the UK, as set out in the NAPF Policy, with particular attention to the assessment of ‘significant links’ between the nominee and the dissident.

Voting Sanction: If the dissident nominee is deemed non-independent and his/her election would result in the balance of the board or its committees being inconsistent with the provisions of the Combined Code, shareholders will normally vote against his/her election.

Director Suitability

Boards and shareholders should consider the history of a director when contemplating support for his/her re-election. Particular care is required where a director has had significant involvement, whether as an executive director or non-executive director in material failures of governance, stewardship or fiduciary responsibilities at a company. Shareholders rely heavily on the board’s recommendation and directors should ensure that re-election proposals take into account not just the individual’s performance on the board in question but also any external factors which may be relevant to that judgement.

Voting Sanction: Shareholders may choose to vote against the re-election of a director where there is strong evidence of poor stewardship at this or another company.

Director Re-election

This policy has been amended to reflect the ABI policy which was put in place in early 2009 as a part of several steps taken to improve the efficiency of the rights issue process. The NAPF supports the pre-emption principle and welcomes the changes made to speed up the process and make it more attractive to issuers. However, investors are concerned that issuers should be accountable to shareholders where they have undertaken a rights issue of more than one-third of their issued share capital under a general authority, rather than following specific shareholder approval, and therefore recommend that the whole board should stand for re-election at the next AGM of the company.

Voting Sanction: Shareholders may choose to vote against the re-election of the chairman, or the SID when the whole board is not subject to re-election at the next AGM after a general authority rights issue that exceeds 33% of the issued share capital,

Termination Payments

In February 2008, the ABI and NAPF published an update of their “Joint Statement on Executive Contracts and Severance”. Although this is an NAPF Policy it has not been incorporated into the Corporate Governance Policy until now. It is also noticeable that its requirements seem not been widely adopted. We encourage companies to take steps to limit contractual payments to base pay and benefits and to explain more fully the reasons for any payments in excess of that amount, including what steps have been taken to mitigate the cost to the company.

Voting Sanction: Shareholders may choose to vote against the resolution to approve the remuneration report and in cases of extreme abuse, the chairman of the remuneration committee.

Investors' Responsibilities

In November 2009, the Institutional Shareholders' Committee (ISC) published its "Code on the Responsibilities of Institutional Investors". As a member of the ISC, the NAPF fully supports the Code and, despite the likelihood of changes to it following the FRC consultation on its provisions, we have decided to incorporate it into the Corporate Governance Policy with immediate effect. It replaces the references to the ISC Principles. We note that the FRC plans to establish a new "Stewardship Code" encompassing most if not all of the ISC's Code and any other relevant material, following on from its consultation in early 2010.
Investors are encouraged to review how they apply the Code. Pension funds and their advisers should likewise review their approach to the Code and decide how they would apply it as well as monitor its application by their investment managers.