

news

Corporate governance and shareholder activism – the role of trustees

Corporate governance and shareholder activism are becoming increasingly hot topics. There are a number of voluntary initiatives for achieving good corporate governance, including the NAPF 2004 Corporate Governance Policy¹. A new report by Paul Myners² has also helped to spark renewed speculation that the Government will legislate in this area. Here we briefly consider the current position and offer some thoughts of our own.

Background

- There has been an increasing focus on good governance of companies in recent years, with the Cadbury and Higgs reports and the Combined Code on corporate governance (issued in July 2003).
- A debate about the extent to which investors should take an active role in voting and engaging with companies has followed.

Government's position

Where are we now?

- The Government is keen for trustees of occupational pension schemes (and their investment managers) to become more active shareholders.
- It was originally proposed (following Paul Myners' first report) to impose a duty on trustees to embrace activism. But the Government decided to assess how trustees and managers would fare on a voluntary basis first.
- The DWP's summary of findings from its case study research on the implementation of Myners (published November 2003) suggests that the Government feels that trustees need to do more on this.

NAPF Policy

Background

- The NAPF Policy covers corporate governance in general and gives more detailed guidance on voting.
- It brings together existing guidance into a single publication, setting out its views on good practice for both company boards and investors.

NAPF Policy

Summary of NAPF views

- The informed use of votes is an implicit fiduciary duty of trustees (and of the investment managers to whom they delegate).
- Trustees should become actively engaged with the companies in which they invest (this includes monitoring the management of the company and exercising voting rights).
- Active voting should be used in support of management wherever possible, but trustees should be prepared to vote against.

1 The NAPF's 2004 Corporate Governance Policy dated 1 December 2003

2 Report by Paul Myners to the Shareholder Voting Working Group "Review of the impediments to voting UK shares" dated January 2004

Myners report

Barriers to voting

In his most recent report, Paul Myners identifies several practical barriers to shareholder activism. These include that:

- the process is manually intensive;
- there is a lack of transparency;
- there are a large number of participants, each of whom may give a different priority to voting.

Myners report

A quick look at some recommendations

Myners recommends that trustees:

- determine a voting policy and ensure it is implemented;
- review arrangements with investment managers and custodians to make sure that responsibilities are clear and that any practical barriers to voting are minimised;
- require those responsible for voting to report back to the trustees, and consider setting out appropriate service standards.

Conclusions

Some thoughts from us

- Trustees should consider what policy to adopt on voting and active investing. Most trustees will not have the resources to get involved in the detail of implementing a policy, so they will wish to delegate this to their fund manager.
- The first step may be to ask for details of each fund manager's standard policy on corporate governance and consider whether the trustees can adopt this.
- Trustees may also wish to ask fund managers to confirm whether they adopt or consider any voluntary codes like the NAPF Policy or the Institutional Shareholders' Committee's code.
- Investment management agreements need to reflect the trustees' policy adequately and make clear who is responsible for voting.
- Trustees should liaise with fund manager, custodians and any proxy voting service they use to check whether any changes are needed to make it easier to vote.

If you would like further information about how we can help trustees implement the recommendations set out above or on corporate governance or shareholder activism generally, please contact Paul Phillips or Andrew Bradshaw, members of our Investment Unit.

Paul Phillips Partner

paul.phillips@sacker-partners.co.uk

Andrew Bradshaw Assistant Solicitor

andrew.bradshaw@sacker-partners.co.uk

SACKER^S
& PARTNERS

Solicitors specialising in pensions law

29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sacker-partners.co.uk
www.sacker-partners.co.uk

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners April 2004