



ICGN

International Corporate Governance Network

Financial Services Council
Level 24
44 Market Street
Sydney
NSW 2000
Australia

Email: standards@fsc.org.au

22nd October 2012

Dear Sirs,

Re: Response regarding revisions to Standard 13 (proxy voting).

We welcome the opportunity to respond to the FSC's proposed revised standard for voting policy, records and disclosure.

We are writing on behalf of the International Corporate Governance Network (ICGN). The ICGN is a global membership organisation of over 500 institutional and private investors, corporations and advisors from 50 countries. Our investor members are responsible for global assets of US\$18 trillion.

The ICGN's mission is to raise standards of corporate governance worldwide. In doing so, the ICGN encourages cross-border dialogue at conferences and influences corporate governance public policy through its Committees. We promote best practice guidance, encourage leadership development and keep our members informed on emerging issues in corporate governance through publications and the ICGN website. Information about the ICGN, its members, and its activities is available on our website: www.icgn.org.

We take a close interest in proxy voting matters as this is the principal formal mechanism for making concrete the accountability of a company's board to its shareholders. It is important for investors to exercise their voting rights intelligently and responsibly, always bearing in mind their fiduciary responsibilities to their clients and/or beneficiaries. We welcome initiatives which encourage the intelligent exercise of voting rights throughout the world, and therefore are pleased to see the development of the FSC's standard with regard to voting matters. We have a few comments on the draft below.

Narrowness of approach

The draft standard acknowledges (most notably at 6.5) that voting is only one element of the institutional investor's important role in improving and upholding the governance of entities and markets in which they invest – and we welcome the reference to the ICGN's *Statement on Institutional Shareholder Responsibilities* in this regard. In this light it is disappointing that the standard focuses on voting to the exclusion of all other activity through which institutions can play this important role in the interests of their beneficiaries, activities which are laid out in some depth in the *Statement on Institutional Shareholder Responsibilities* and which are usually referred to as engagement or stewardship. We would welcome the FSC giving consideration to broadening the scope of this standard to encompass these activities more fully.

Principles-based not rules-driven

We have concerns that the standard is very rules-driven rather than being principles-based. In our experience around the world, the most intelligent and effective exercise of voting rights is fostered by principles-based standards. While the FSC draft does mention the key overarching principles in this respect – fiduciary duty to beneficiaries, seeking to maintain and enhance value in investments on their behalf, and the value of voting as an aspect of wider dialogue between companies and their shareholders to enhance governance and value over time – these do not appear until paragraphs 6.3, 6.4 and 6.5 of the document, well after several rules-driven standards have been set. This is of major concern to us because we fear a rules-driven approach will foster a compliance focus in voting decisions, with an associated drive simply to exercise votes rather than an emphasis on the intelligent exercise of those votes. This compliance approach risks giving greater influence to the proxy voting agencies about which the standard implicitly carries some concerns and risks diluting the decisions of those shareholders which are keen to exercise votes with genuine judgement and intelligence. As well as avoiding this rules-driven and compliance-style approach to voting matters, one way to address continuing concerns about excessive influence on voting decisions being vested in proxy voting agencies might be to encourage investment institutions to put in place sufficient internal resources to take decisions themselves, for which the agencies may provide helpful input.

We would thus welcome a far greater emphasis being given to the principles embedded within paragraphs 6.3, 6.4 and 6.5. These provide the appropriate frame for the exercise of voting rights, and giving them greater prominence in the standard is more likely to foster the right approach to these issues, leading to more effective and appropriate outcomes. Institutional investors need to approach these issues with a value rather than a compliance mindset.

We would argue also that the discussion of these principles needs to be enriched with the addition of the concepts of inter-generational fairness, genuinely long-term approaches and an obligation to consider systemic risks. For example, in the current 6.3 it might state that "Scheme Operators have inter-generational fiduciary responsibilities..."; the current 6.4 might be expanded to read "...Operators must ensure that investments are managed exclusively and impartially in the financial

interests of Scheme Members over both the short and long terms...”; 6.5 might read “The Scheme Operator should recognise that systemic integrity can influence future performance and risk exposures. Scheme Operators should contribute to improving and upholding...”. These enriching understandings of the core principles on which the standard is founded should ensure a more intelligent approach to these issues by institutions.

International obligations

We note that a principles-driven approach to this standard might lead to a different conclusion with regard to the issue of voting internationally. The standard as drafted requires institutions to vote all of their shares in Australia, even in the smallest Australian company where the value to the fund and its beneficiaries may be minimal, and yet permits institutions not to vote shares in international companies, where the value of their shareholding may be much more significant to the fund and beneficiaries. This seems to us to risk failing to respond appropriately to the demands of fiduciary duty. This analysis would again imply a principles-based rather than rules-driven approach to the issue of to which shareholdings (Australian or international, material or non-material) the standard should apply.

Disclosure model

We do not share the extent of the FSC’s desire for consistency between disclosures of policies, and would favour institutions being encouraged to design disclosures which meet the needs of their specific beneficiaries and reflect their culture and approach. Again we fear that the details provided in the model voting policy risk creating the wrong mindset of simply following the standard without applying intelligence and judgement. The provision of the model to this level of detail thus creates the significant risk that investors will not consider their duty to their beneficiaries and design a policy suitable to their needs, but will simply adopt a policy that is very close to the standard one. We note that the level of detail in the model has led the FSC to emphasise that institutions are free to use their own wording; it seems highly unfortunate that this needs to be made explicit, and we would argue that a different approach is necessary.

To the extent that consistency is necessary, this can be achieved by simply providing a list of required items for disclosure within a policy. This level of standard would be consistent with those set successfully in other markets around the world (across Europe, in North America and in South Africa, for instance) and would require a much more intelligent engagement in the development of the policy by each institution, which is most likely to drive an intelligent approach in this area.

In this regard, we note the contrast between the expected level of consideration given to and disclosure of individual voting decisions and the lack of consideration of the overarching policy which the provision of such a detailed model policy provides.

Level of detail

We are not convinced that the level of detail proposed in the standard for disclosure of voting decisions is appropriate, as we believe that it risks reducing accountability of institutions to their beneficiaries rather than increasing it. The scale of disclosure implied by this approach would be so large as to discourage most beneficiaries from assessing decisions and so calling institutions to account for any perceived failures to act in their interests. We would argue for a more streamlined approach where disclosures are made simply of those resolutions where the institution opposes a board proposal (or board position on a shareholder proposal) and that otherwise the votes as disclosed in the form of 'all for management'. We believe that this would strike a more appropriate balance between openness and ease of use – it might both reduce the costs of the approach and also add to the benefit of fuller accountability.

We attach for your interest a document produced by the ICGN which may be relevant to your consideration of this standard (as well as our *Statement on Institutional Shareholder Responsibilities*). The Model Mandate Initiative (2012) which considers, among other things, model contract terms between asset owners and fund managers in the area of proxy voting.

If you would like to discuss any of these points, please do not hesitate to contact Kerrie Waring, ICGN Acting Head of Secretariat at +44 207 612 7079 or kerrie.waring@icgn.org. Thank you for your attention and we look forward to your response on the points above.

Yours faithfully,



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