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David Stubbs
Primary Markets Policy
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Sent by email to cp19-07@fca.org.uk

Dear Mr Stubbs,

27th March 2019

Consultation on proposals to improve shareholder engagement

I am writing to respond to the consultation on proposals to improve shareholder engagement on behalf of ShareAction, a registered charity established to promote transparency and responsible investment practices, including stewardship, by pension funds and other institutional investors. We are a member organisation and count amongst our members well-known NGOs and charitable foundations, as well as over 26,000 individual supporters.

We work with institutional investors to promote stewardship and engagement. We conduct annual industry-wide surveys to rank them on these activities. We have ranked asset owners and asset managers on compliance with key elements of the Stewardship Code since its inception, and published these rankings. We have extensive experience of research and policy development on barriers to long-termism, and fed into the 2012 Kay Review, the related BIS Select Committee inquiry, both Law Commission reviews of trustees' fiduciary duty and the BEIS Select Committee inquiry on corporate governance.

We have responded to questions 1 to 5 and 9 below, as we felt these were the areas most relevant to our expertise. In this consultation response, we are calling for voting disclosure to be made mandatory under SRD II: the FCA should require asset managers to publish voting decisions (including rationales for votes against management and for 'controversial' votes with management where a significant number of shareholders voted against or abstained).

Q1: Do you agree that the territorial scope of the rules framework should extend beyond that envisaged by the Directive?

Yes, we support the proposal for these rules to apply to shares held by regulated firms in companies listed in markets outside the UK. Effective stewardship of companies listed outside the UK is no less important to the ultimate beneficiaries than it is for UK companies. Indeed, given the lower levels of regulation in some markets (for example, in relation to worker rights and protections), it may be more so. There are also countless ESG risks and opportunities that have a reach beyond national boundaries, such as climate change and water pollution.

We also agree that firms should not have a uniform way of engaging with investee companies in all different markets, but should think strategically about how they engage with companies in different markets. Overall, the goal of engagement may be the same, but investors may need to adapt the steps they take to achieve it.

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Q2: Do you agree with our proposed amendments to the Handbook to implement the Directive requirements around engagement policies? If not, please explain what alternative approach you would like us to take.

We broadly agree. However, we **strongly disagree** that voting disclosure under the UK's implementation of SRDII should be on a comply-or-explain basis. The Government already has the necessary powers to make voting disclosure mandatory (s1277, Companies Act 2006). The FCA should require asset managers to publish voting decisions (including rationales for votes against management and for votes with management where a significant number of shareholders voted against). There should not be an option to 'explain' non-compliance with disclosure. Furthermore, asset owners should be required to publish this information or provide links to it on their own websites, regardless of whether they exercise their own votes or delegate to managers.

Such disclosure is appropriate in principle given these assets are held on behalf of clients and beneficiaries. There is a concerning lack of transparency and agency in this relationship, which is unlikely to benefit the beneficiary's long-term interests. The process of giving rationales and having to publish voting records would help increase the emphasis placed on these votes by institutional investors and increase transparency for the media, civil society and individual savers.

Voting decisions by large investors are also a matter of public interest. One only needs to think of the huge range of companies whose failures have led to substantial job losses and economic collapse. Asset owners and managers' voting decisions are one of their most powerful tools in holding companies to account but we have seen a poor level of accountability in cases such as the collapse of Carillion.[1] The Pensions Minister recently spoke of the need for assets to drive investment 'to deliver the sustainable employment, communities and environment which all of use wish to enjoy'.[2] As stewards of these companies, investors must be more accountable, which is in the interests of savers, investors and wider society, and something mandatory voting disclosure would be one step towards achieving.

We have long monitored voting and have found it hugely time-consuming and complex. Currently, voting disclosures are often opaque and inaccessible, listing resolutions by number without setting out the actual resolution text, and lacking explanations of controversial votes. Managers disclose in different ways and at different times: there can be a significant time-lag between the votes happening and disclosures being made. New rules for occupational pension schemes will require them to develop their own policies on stewardship, including reporting on how they have sought to implement those policies from October 2020. A disjointed approach to stewardship reporting across the investment chain will not only mean less transparency but also result in poorer outcomes for savers and investors and hamper the ability of asset owners to meet their fiduciary duty. A more joined-up approach is required.

[1] ShareAction, *Assessing and engaging asset managers on proxy voting,* 2018 available at https://shareaction.org/wp-content/uploads/2018/05/CRIN-ProxyVotingReport2018.pdf
[2] DWP: Investment Innovation and future consolidation, February 2019 available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776181/consultation-investment-innovation-and-future-consolidation.pdf

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Our past reports on asset manager practices have found the following:

- 2015 report: 18% of managers do not disclose votes, indicating greater action is needed to require all managers to publicly disclose their voting records.[3]
- 2017 report: 67% of pension providers publish voting records but only 22% include voting proposal descriptions and rationales for key decisions.[4]

We are concerned that, in some cases, asset management firms may have conflicts of interest inherent in their business models resulting in pressure to vote with company management, even if it may not be in the long-term interests of their clients and beneficiaries. Our 2017 report found only 68% of asset managers with a published policy have a "robust" one that includes examples of conflicts and arrangements to manage them. For those without one, there was no accompanying explanation of why a "robust" policy (as required by the Stewardship Code) is not publicly disclosed. Furthermore, 15% of managers did not even have a publicly available policy, despite stating that they complied with the Stewardship Code[5]. The increased transparency and scrutiny provided by voting disclosure should shine a light on any conflicts within asset management firms and prompt them to improve processes where necessary.

We would recommend the following on voting disclosure:

- Working with the FRC and/or industry on a binding template setting out what high quality voting disclosure should cover. Providing a template would mean that asset owners, consumers and consumer groups would be able to find, understand and compare this information. It would also help to drive performance and efficiency in the fund market. The template should cover:
    - A full list of AGMs and resolutions where they were able to vote.
    - Votes cast for/against/abstained/did not vote at individual resolution level.
    - Rationales for votes against management and for votes with management where a significant number of shareholders voted against the resolution. Where the number of rationales to be disclosed is considered excessive, the investor could instead give explanations for a number of votes considered to be significant and state that rationales for other votes are available on request.
- Setting a clear expectation of the timeframe for disclosure, preferably within one month of an AGM.

Q3: Do you agree with our proposed approach to implementing article 3h of the Directive? If not, please explain what alternative approach you would like us to take?

Yes, we support this approach.

[3] https://shareaction.org/wp-content/uploads/2016/01/AssetManagerSurvey2015.pdf
[4] https://shareaction.org/wp-content/uploads/2017/03/Survey-LiftingTheLid.pdf
[5] https://shareaction.org/wp-content/uploads/2017/03/Survey-LiftingTheLid.pdf

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Q4: Do you agree with our proposed amendments to implement the Directive requirements on asset managers reporting to asset owners? If not, please explain what alternative approach you would like us to take.

Yes, we support this approach.

Q5: Are there any other points we should address in the Handbook in relation to the SRDII, for example by adding clarificatory rules or providing further guidance?

We would recommend including guidance on the following:

- A template setting out what good voting disclosure should cover (as discussed in more detail in Q2).
- The meaning of 'long term' and 'medium term' in the context of the SRDII. These terms will have different meanings for different individuals and entities. Asset managers should be required to specify in their reports the approximate time frames they are considering.

Q6-8 Not answered.

Q9: Do you agree with the conclusion and analysis set out in our cost benefit analysis?

We agree with the outlined benefits of implementing these rule changes and believe that they significantly outweigh the anticipated costs.

Yours sincerely,

Rachel Haworth
Policy Manager, ShareAction