



Element Investment Managers (Pty) Ltd

Voting and Proxy Policy

TABLE OF CONTENTS

	Page
SECTION A	5
SECTION B – Agenda issues at Annual General Meetings	8
Ordinary Business	8
1. "Approval" of Annual Financial Statements	8
2. Re-Election of directors	8
2.1 Policy	8
2.1.1 Responsibility	8
2.1.2 Balance	8
2.1.3 Independence	9
2.1.4 No concentration of power	9
2.1.5 Separate CEO and Chair positions	10
2.1.6 Capability & Performance	10
2.1.7 Size of boards	11
2.2 Considerations with respect to the election of directors	11
3. Remuneration of Directors	12
3.1 Voting where there is a lack of transparency and/or appropriate institutional structure for the determination of directors' fees	13
3.2 Voting on directors' and committee fees that are proposed to shareholders	13
3.3 Voting on remuneration reports for companies that are required to submit them to shareholder advisory vote	14
3.3.1 Basic Salary Component	14
3.3.2 Pension Contributions	15
3.3.3 Fringe Benefits	15
3.3.4 Service Contracts	15
3.3.5 Short-term performance incentives	15
3.3.6 Long-term performance incentives and share ownership schemes	16
3.4 Strategic voting in the case of executive remuneration issues	17
3.4.1 Principles relating to disclosure	18
3.4.2 Principles relating to alignment of interests	18
3.4.3 Principles relating to the allocation of share options	18
3.5 Further issues	19
4. Payment of Dividends/Capitalisation issues, Confirmation of Reductions in Capital by way of special dividends, odd lot offers, share splits and consolidations	19
4.1. The Payment of Dividends	19
4.2 Capitalisation issues	19
4.3 Reductions in capital by way of special dividends	19
4.4 Odd-lot offers	19
4.5 Share splits and consolidations	20
5. Re-Appointment of auditors	20

6.	Remuneration of Auditors	21
7.	Placing unissued ordinary shares under the control of the directors	21
8.	Renouncement of Pre-emptive rights	22
	Extraordinary Majority Resolutions	22
9.	Providing the directors the authority to issue shares for cash	22
	Special Resolutions	23
10.	Changes to the Articles of Association	23
10.1	Introduction of new share classes and debt instruments	23
10.2	The facilitation of dematerialisation	23
10.3	Changes to the articles that enable share repurchases	23
10.4	Changes in the board size, and eligibility of directors	24
10.5	Initiatives to improve board functioning	24
10.6	Initiatives to improve shareholder consultation and voting	24
10.7	Directors' Indemnification	24
10.8	Amendment of clauses relating to the borrowing powers of directors	25
10.9	Opposition to clauses that release executive directors from re-election by rotation	25
10.10	Clauses that enable electronic communication and voting	25
11.	Introduction of share option schemes	26
12	Authority to repurchase shares	27
13.	Corporate Actions	28
	 SECTION C - Issues that are not placed before shareholders	 29
1.	Issues relating to shareholder rights, and the accountability of the board of directors to the company's shareholders	29
1.1	Dual capitalisation and preferential voting rights	29
1.2	Conduct at shareholder meetings	30
1.2.1	Time and location of shareholder meetings	30
1.2.2	The provision of explanations for shareholder resolutions	30
1.2.3	The rights of proxy holders	30
1.2.4	Voting by poll	30
1.2.5	Use of independent directors to represent proxy holders:	31
1.2.6	Votes regarding "other business"	31
1.2.7	Publishing the results of shareholder votes on SENS	31
1.2.8	Nomination of Directors	31
2	Issues relating to corporate governance and risk management	32
2.1	The structure and composition of board and its committees	32
2.2	Placement of the Remuneration Report to shareholder vote	32
2.3	Declarations with respect to Related Party Transactions, that involve non-executive directors	32

2.4	Risk management with respect to financial instruments	33
2.5	Risk management relating to ethical, workplace, social and environmental issues	33
2.6	Compliance with the statutes	33
3.	Issues relating to disclosure	34
3.4.1	Code of Ethics	34
3.4.2	Financial Disclosure	35
3.4.3	Environmental Disclosure	35
3.4.4	Disclosure on Social & Economic issues	35
3.4.5	Government	35
4	Issues relating to Black Economic Empowerment ("BEE") and transformation	36
	Issues that are subject to shareholder vote	36
4.1	BEE deals and schemes of arrangement	36
4.1.1	Disclosure	36
4.1.2	Principles for consideration	36
4.1.3	Election of directors as part of the empowerment deal	37
	Issues that are not put to shareholder vote	38
4.2	Board diversity and performance	38
4.3	Employment equity and training	39
4.4	Joint ventures, affirmative procurement, supplier development and treatment	39

Note: Applicable sections and pages from King Report on Corporate Governance for South Africa 2002 (King II) are shown in parentheses where appropriate. Extracts from other guidance codes have been referenced accordingly.

This is the third version of the Element Investment Managers Voting & Proxy policy, succeeding the second version of the policy which was first implemented in 2004 and formally adopted in November 2004 following a review by the Element Investment Managers advisory board. While the amendments to the 2004 policy are not substantive, the document remains dynamic and will be adjusted in line with further proxy voting developments, both locally and internationally as well as from the engagement experience of the firm. What appears is our full proxy voting policy.

SECTION A

Element Investment Managers views seriously its responsibility to exercise voting authority over securities owned on behalf of its asset management clients.

Transparency with respect to Element Investment Managers' voting policy and its individual voting decisions remains a key priority. This will enable clients to assess whether Element Investment Managers is fulfilling ownership responsibilities on their behalf in a manner that is prudent, and loyal to the objectives of protecting and enhancing their assets. This is consistent with international best practice trends. Accordingly, Element Investment Managers will publish its voting record on its website along with a clear explanation of any votes made against the company's proposals or any abstentions.

With respect to segregated institutional clients such as pension funds ("the fund/s"), the responsibility to vote lies with the fund, except where this authority has been delegated to Element Investment Managers and incorporated into the asset management mandate. In such cases, Element Investment Managers will vote according to these proxy guidelines, except in cases where issues arise which should be referred back to the fund for, inter alia, the following reasons:

- Mergers and takeovers between listed companies, where the client's overall portfolio weighting may differ materially from the portfolio weighting in the Element Investment Managers portion of the client's portfolio.
- Corporate Actions, such as Black Economic Empowerment deals, where the fund is required to make a policy decision with regard to accepting a proposal that is likely to result in current shareholder dilution.
- Proxy campaigns, where either Element Investment Managers or other asset managers and/or funds initiate campaigns that involve either the raising of resolutions or the use of strategic voting that would require the fund's general support.
- In any instance where they may be an apparent conflict of interest between Element Investment Managers and the Fund.

Should a segregated institutional client present its own proxy policy to Element Investment Managers, Element Investment Managers will ensure, insofar as is possible, that the vote is conducted separately, regardless of whether the votes are the same or similar to those made by Element Investment Managers. Element Investment Managers will liaise with institutional clients if the voting decisions implied by the client's policy appear to be in contradiction with the aims of the client.

Element Investment Managers undertakes to provide comprehensive feedback to institutional clients with respect to its voting decisions on a quarterly basis.

Element Investment Managers recognises that scrip lending by institutional clients is a practice that contributes additional revenue separate from fund performance. Scrip lending does, however, result in the beneficial owners of the stock losing the ownership rights associated with the investment, including the right to vote. This is deemed a material issue, as the right to vote and engage with the company is fundamental to the enhancement and protection of fund investments. Scrip lending may well mean that the fund is not able to apply its vote in instances where value may be destroyed. The scrip lender, however, tends to be a long term investor, where issues such as governance are significant value drivers. This is an increasingly significant issue internationally, and Element Investment Managers will keep abreast with policy developments at the ICGN¹, and ensure that its clients are informed of this issue and formulate appropriate strategies accordingly.

Proxy statements increasingly contain material issues involving shareholder rights and corporate governance, among others, which deserve careful review and consideration.

In voting proxies, Element Investment Managers is required to consider, on a case-by-case basis, those factors that may affect the value of investments made on behalf of our clients. While our proxy policy serves as a guideline, our duty as an asset manager appointed by beneficial owners, or their representatives, requires us to examine each resolution offered and the context in which it applies. For this reason, there may be instances in which Element Investment Managers does not vote in strict adherence to these guidelines, as the overriding consideration is to optimise long term risk adjusted performance, and where there is a conflict between this objective and the proxy policy, the former shall prevail. The beneficial owners comprise members of retirement funds, members of unit trusts, pooled investments and other clients for whom Element Investment Managers acts as investment manager.

As far as possible, Element Investment Managers will contact the company, preferably in writing, prior to the voting, to discuss our concerns, explain why Element Investment Managers is voting in a particular manner, explain the voting policies of the firm, and to request the company to implement a strategy to meet our recommendations, where appropriate. Prior discussions with the company and potentially other shareholders are deemed particularly important where a "No" vote is being proposed by Element Investment Managers. A committee consisting of the CIO (or alternate), and relevant engagement analysts will consider and evaluate all voting issues deemed material. The final decision in terms of voting strategy will rest with the CIO (or alternate).

In line with international trends, Element Investment Managers published an abridged version of its proxy voting policy on the Element Investment Managers Earth Equity Fund website (www.earthequity.co.za) when the unit trust was launched in October 2001. In addition, Element Investment Managers has also provided a full record of all of the votes made at meetings or made by proxy from October 2001. In light of the SEC's disclosure requirements for mutual funds, which were implemented in the US in 2004, Element Investment Managers will continue with its policy of full transparency, and make an abridged version of its proxy voting policy publicly available on its website (www.elementim.co.za). Its full version will be available to its clients, and Element Investment Managers will continue to publish its proxy voting records via its website. The proxy voting records enable the investor to review not only Element Investment Managers' voting procedure with respect to fund shares, but also to review the actions taken in individual proxy voting situations.

The proxy voting policy can be divided into two distinct areas within the overall governance framework:

- 1) Issues a company is obligated to place before shareholders annually, or intermittently with the purpose of obtaining shareholder approval to meet the requirements of either the Companies Act (1973) or the JSE Listings Requirements (2003).
- 2) Issues that are not placed before shareholders specifically, but are of governance significance. The proxy voting policy presents two recourses with respect to these issues, if engagement with the company does not meet with an adequate response. They include:

¹ International Corporate Governance Network

- a) Strategic voting against the company's proposals on either related or unrelated resolutions which require shareholder support or approval. For example, this may involve voting against the financial statements, the re-election of directors or the granting of permission for the directors to exercise control over the capital of the company.
- b) Proposing resolutions, or supporting resolutions proposed by other investors which relate to these specific areas.

The second group of issues is broader than the first and requires a higher degree of professional judgement on risk which may or may not result in losses in shareholder value. The current research on many of these governance issues indicates that there is a strong correlation between good practice and lower instances of corporate failure. The inclusion of these issues, particularly those relating to leadership, ethical, social and environmental accountability into governance codes and the law further supports shareholder concern. Thus, not only is there a business case, but disclosure and proactive management of these issues is becoming a governance requirement, and thus a duty associated with holding representative office in a company².

Relevance and materiality, however, remain key to engagement and voting with respect to all of these issues.

² This issue has been used as a management defence against shareholders. The argument follows that management is provided with a mandate by shareholders to operate the entity concerned. Intervention by shareholders detracts management from this mandate.

SECTION B – Agenda issues at Annual General Meetings

Ordinary Business

1. “Approval” of Annual Financial Statements

Section 298 of the Companies Act requires that the company directors approve the annual financial statements. While these resolutions call on shareholders to approve the financial statements, the responsibility rests with the board of directors, and thus the resolution is usually interpreted to mean that the shareholders have read and considered the statements placed before them, and are not voting on other resolutions without having read the financial statements.

A negative vote on this resolution thus tends to be a symbolic vote, which is aimed at sending a strong message to the company that there is a significant omission from the financial statements that have been presented to shareholders, or that the statements have been compiled in a problematic manner.

Voting negatively on this resolution should always be accompanied by a clear explanation as to what the negative vote is related to.

The following situations might give rise to a negative vote:

- Any audit qualification – particularly where an audit opinion is disclaimed or qualified in terms of “going concern”.
- Insufficient financial and/or non-financial disclosure deemed material.

2. Re-Election of directors

The board is at the apex of corporate governance. Directors appointed to the board are the most important contact point between shareowners and the asset that they own. As investors, we thus place considerable trust in the board of directors to operate in our long-term interests, and to display the strength, intuition, diligence and independence required to hold this office.

The following issues should be considered:

2.1 Policy

2.1.1 Responsibility

- Directors should act in the long-term interests of the company as a whole, including the shareholders.
- All directors are responsible for the board’s actions and all are equally accountable to the shareholders.

2.1.2 Balance

- King II recommends that the board should comprise a balance of executive and non-executive directors, preferably with a majority of non-executive directors as considered in Section 2.2.1, of whom sufficient should be independent of management so that shareowner interests (including minority interests) can be protected. Element Investment Managers does not disregard the fact that non-executive directors who are not regarded as independent make a significant contribution to the board, but holds that there should be a sufficient number of independent directors who can apply oversight to the interests of minority shareholders. Such directors should chair and play a significant role on both the Audit and Remuneration Committees, where they should be in the majority.

- ✦ While accepting that non-executive directors should be in a majority, Element Investment Managers supports the practice of having a sufficient number of executive directors on the board to provide the board with a clear understanding of the financial and operational situation of the company.
- ✦ An obvious consideration for South African companies would be to consider the demographics in relation to the composition of the board (King II, 2.1.2).

2.1.3 Independence

- ✦ While it is the function of the board to consider whether a director is independent both in character and judgement, this is difficult for a shareholder to discern in the short term.
- ✦ Element Investment Managers acknowledges that there is currently a shortage of people who have the requisite experience which will ensure that their contribution adds significant value to board decision making. Thus for the purposes of determining the independence of directors, Element Investment Managers will consider independence in terms of the guidelines proposed in King II and the Combined Code.
- ✦ Independence however remains a subjective concern relating to whether Element Investment Managers, as a representative of its clients has no confidence that the candidate directors can independently apply oversight to the interests of minority shareholders.
- ✦ Element Investment Managers holds the opinion that any relationships or circumstances that are likely to affect, or could appear to affect, the director's judgement should be clearly disclosed in the Curriculum Vitae proposed to shareholders prior to a directors election or re-election. These relationships and circumstances could include³:
 - Having been an employee of the group in the past 5 years.
 - Having had a material business relationship with the company either in his/her own capacity or through a related party.
 - Receiving remuneration from a company other than a director's fee. This could include the participation in a share option scheme, performance related scheme or is a member of the company's pension scheme.
 - Having close family ties with any of the company's advisors, directors or senior employees.
 - Having cross directorships with other directors through involvement in other companies or bodies.
 - Representing a significant shareholder or asset management company that holds a significant number of shares on behalf of its clients.
 - Having served on the board for more than nine years from the date of their first election.
- ✦ As the director being placed for election is being proposed by the board, the onus is on the company to demonstrate that the director is able to put the interests of all shareholders ahead of any other relationships or commitments whether or not any of the above relationships or circumstances apply.

2.1.4 No concentration of power

- ✦ No concentration of power in the hands of a small quorum of directors. In particular, this relates to the composition of the board sub-committees. While for the purposes of streamlining board processes, the Companies Amendment Bill (13 July 2005) has proposed increasing the powers and functions of the Audit Committee, Element Investment Managers emphasises that such authority is on behalf of the whole board, and that all directors bear responsibility for decisions taken in these committees.

³ Element Investment Managers has taken guidance from the Combined Code with respect to the identification of independent directors. It is our view that the Combined Code has issued the most recent and comprehensive understanding on this issue. Independence is difficult to judge, and the outside shareholder is forced to judge on what may compromise independence (Combined Code A.3.1 pg 7), refer (King 2.12.1, pg 23).

- Element Investment Managers supports a continuous process of director refreshment through such committees to ensure that power blocks are not given the opportunity to develop, and that vigilant oversight is continuously being refreshed in a manner that ensures that the board can keep abreast with the continuous changes in the business environment
- To ensure that this can take place, Element Investment Managers supports the establishment of a nominations committee that can from time-to-time play a role in ensuring that new skills are attracted to the board

2.1.5 Separate CEO and Chair positions

- Given the board's role in holding executive directors and management accountable, the board chairman should be separate from operational responsibilities;
- We should support the election of an independent non-executive Chairman so that the Board can provide strategic oversight that incorporates the interests of shareholders and other stakeholders. Reasons for non-separation of these positions should be carefully examined and this decision should be justified each year in the annual report. If these roles are combined an independent non-executive director should serve as deputy chairperson (King II 3.4, pg 24).
- Element Investment Managers supports the identification of a lead director who is independent in cases where the Chairman is not independent. The lead director should both attend shareholders meetings and make him/herself accessible to shareholders and investors who wish to gain an understanding of the governance of the company.
- The separation of chairman and chief executive positions has been subsequently endorsed in Section 3.84 [b-c] of the JSE Listing Requirements, which points to the importance of the division of responsibilities at the head of the company to ensure a balance of power and authority. The JSE Listings Requirements state that the chief executive officer must not hold the position of chairperson (JSE Listings Requirements Schedule 3.84 [b-c]).
- Element Investment Managers will discourage the practice of Chief Executive Officers moving into the position of chairman following their retirement, and in general will not support such proposals.

2.1.6 Capability & Performance

- We should consider the contribution of each board member and the effectiveness of the board as a whole. As this is difficult to establish, Element Investment Managers will encourage companies to implement a formal and rigorous annual evaluation of the performance of the board, its committees and individual directors. The scope of the evaluation and whether it was internal or external, and key findings should be discussed in the governance section of the annual report.
- The board should be balanced in terms of skills, experience and age.
- New members of the board should have a comprehensive induction programme and should be mentored by more experienced members of the board. The induction programme should not only include a full appraisal of the responsibilities of the position, but should also include a significant amount of time allocated towards understanding strategic and operational issues associated with the company.
- Board members should have enough time to devote to the job. A list of all of their fiduciary commitments should be disclosed in the annual report (this has a dual function in terms of providing shareholders with an understanding of whether they have the time to devote to their duties and also how independent they are).
- Committee membership should be continuously refreshed⁴, as envisaged in Section 2.14. It is inevitable that the board as a whole will need the infusion of new and appropriately qualified candidates⁵ that can ensure that it and those of its committees continue to apply a high level of independent oversight.

⁴ Although not covered in King II, certain key board committees can be dominated by a few board members for a considerable period of time. It stands to reason that this may impact on the independent oversight responsibility that these committees hold.

⁵ As recommended in the Companies Amendment Bill (2005)

- Directors should attend all directors meetings, including the annual general meeting.

2.1.7 Size of boards

- In South Africa there have been examples of ineffective boards as a result of having too many (and too few) members.
- We should consider the appropriateness of the board structure in line with the relative size of the company as well.
- Element Investment Managers will consider the size of boards on a case-by-case basis. Excessively large boards should be discouraged. In such cases, Element Investment Managers will apply its voting in favour of independent non-executive directors over executive directors and other non-executive directors.

2.2 Considerations with respect to the election of directors

- 2.2.1 In line with the JSE listings Requirements (s.3.84(a)), the company should disclose its policies and procedures relating to the appointment of directors. Such appointments should be formal and transparent, and while they are a matter for the board as a whole, Element Investment Managers supports the formation of a separate nominations committee, which is made up of a majority of independent directors who can present appropriate board candidates to both the board and to shareholders.
- 2.2.2 Directors are re-elected/elected by means of individual resolutions (as opposed to a collective resolution). Element Investment Managers should oppose voting via a collective resolution. If there is no provision to vote by means of individual resolutions and there is opposition to the collective resolution this can cause a deficiency in the voting procedure in terms of s210 (1) of the Companies Act. We may choose to abstain in this instance and follow-up with the company regarding individual resolutions at a later stage. However, if Element Investment Managers has alerted the company to this issue previously, Element Investment Managers should vote against this resolution.
- 2.2.3 Performance of the company over the years since the director was previously put forward for election. In this respect Element Investment Managers will pay close attention to governance disclosure, strategic planning, stakeholder relationships and financial performance, as well as the committees that the director participated in. Element Investment Managers may oppose the re-election of directors who are in any way associated with poor governance in the relevant company or in other companies.
- 2.2.4 Overall demographic composition of the Board – particularly with respect to gender, age and empowerment criteria. We should encourage disclosure to shareholders on these issues and initiatives to increase the diversity on boards. Understanding that there may be some plausibility to statements of skills shortages, Element Investment Managers would support board mentorship programmes for directors who are less experienced.
- 2.2.5 Number of other board positions held – particularly with respect to independent and other non-executive directors. King II states that: executive directors should be encouraged to hold other non-executive directorships only to the extent that these do not interfere with their immediate management responsibilities. Non-executive directors should carefully consider the number of appointments they take in that capacity so as to ensure that the companies on which they serve enjoy the full benefit of their expertise, experience and knowledge (King II 2.4.5). Details of the candidate directors' other fiduciary commitments (such as other directorships, trusteeships and curatorships) should accompany the proposal for their re-election or election (King 1.16). While over-commitment is difficult to determine, Element Investment Managers recommends that:

- The Chairman of a JSE/FTSE ALSI40 (“ALSI 40”) company should not hold the chair of any other ALSI 40 company, and the chairman of a bank should not hold any other chairmanship positions.
- An executive director of an ALSI 40 company should not hold more than one other independent directorship. The level of non-executive commitments on subsidiary company boards should be carefully assessed on a case by case basis
- A non-executive director, holding no executive positions, should not hold more than 5 ALSI 40 company directorships, and no more than a total of 9 positions with fiduciary obligations.

Where these limits are exceeded, Element Investment Managers should vote against the re-election of the proposed candidate. Where these limits are not exceeded and the candidate has a poor attendance record, Element Investment Managers should vote against the candidate’s re-election. Cognisance will be taken of changes in company status with respect to ALSI 40 inclusion.

- 2.2.6 Past attendance record of directors. The board should meet regularly (at least once a quarter) and disclose in the annual report the number of board and committee meetings held in the year and the details of attendance of each director (as applicable) - (King II 2.6.1, pg 28). Sustained non-attendance of both board and committee meetings should be grounds for voting against re-election of a director.
- 2.2.7 Element Investment Managers should vote against the re-election of directors in instances where the governance and accountability of the board or board committees of the company is in conflict with other aspects of the proxy voting policy.
- 2.2.8 Within the proposals for the election of new candidates to the board, the company should declare that the candidate(s) are eligible to be directors in terms of Section 218 (1A) the Companies Act (1973) as amended.

3. Remuneration of Directors

South Africa has not as yet introduced legislation similar to that of the United Kingdom that requires companies to submit remuneration policies to shareholder vote. King II advocates transparency and accountability, but does not establish a defining mechanism for either to take place.

The resolutions that are thus placed before shareholders of Johannesburg Securities Exchange (“JSE”) listed companies are to approve the remuneration of directors in their capacity as directors, not in their capacity as executives. Executive contracts, and thus executive remuneration, is established by the remuneration committee of a company, or what is termed usually in a company’s articles of association as a “disinterested body of directors”.

Shareholders thus do not have any direct rights to use their vote to stop executive pay abuse in South Africa. While this remains the case, other recourses have to be sought. Signals can be sent to the board that either that there has been poor disclosure, or that there is a clear misalignment of interests between executives and shareholders, indicating that the Remuneration or Compensation Committee has not been fulfilling its responsibilities.

Shareholders do, however, have rights to vote on the introduction and amendment of share option schemes, and other share based payment schemes. Furthermore, they have to grant approval for the allocation of shares to such schemes, or alternatively, they would have to approve share buy-backs, which are used to increase treasury stock, which in turn have been used to issue shares to scheme beneficiaries.

Disclosure on remuneration is determined by the JSE Listings Requirements and the Companies Act (1973) in the case of companies listed in South Africa.

JSE listed companies with a primary listing in the United Kingdom, however, have to present their Remuneration Report for shareholder vote. In this respect, Element Investment Managers has a clearly stipulated policy on how voting should take place.

It follows that there are five different voting strategies which need to be dealt with:

- 1) Voting where there is a lack of transparency and/or appropriate institutional structure for the determination of directors' fees (fees for acting as directors, as opposed to remuneration granted in terms of an employment contract).
- 2) Voting on directors' and committee fees that are proposed to shareholders.
- 3) Voting on remuneration reports for companies that are required to submit them to shareholder advisory vote⁶.
- 4) Strategic voting in the case of executive remuneration issues, which may relate to misalignment with shareholders, poorly designed and implemented option schemes, lack of independence of the remuneration committee, and generally poor disclosure.
- 5) Voting on the introduction of and amendment of option or other share based payment schemes

Levels of remuneration should be sufficient to attract, retain and motivate executives of the quality required by the board. (King II 2.5.1). Given that remuneration has implications for corporate performance and shareholder returns, this is an area in which shareholders have a valid role to play in approving remuneration policies that have been set by formal and independent procedures.

We will encourage shareowner advisory approval for remuneration schemes prior to them being implemented. As this is not a requirement in South Africa, it is difficult to persuade companies that they should take this step to improve their accountability to their shareholders.

3.1 Voting where there is a lack of transparency and/or appropriate institutional structure for the determination of directors' fees

- 3.1.1 The remuneration of executive directors should be decided on by a quorum of disinterested (independent or non-executive) directors who will form the compensation or remuneration committee. This is usually determined in most company articles of association, and is in line with both local and international best practice. It is acceptable that executive directors attend the meeting to play an advisory role with respect to decisions that do not involve their own remuneration. However, they should not be regarded in any way as a member of the committee that has any right to vote or participate in the decisions made by the committee (King II 5.2)
- 3.1.2 Element Investment Managers should raise this issue where appropriate, and advise the company that they should not act in conflict with its Articles of Association.
- 3.1.3 Element Investment Managers should consider a symbolic vote against the re-election one or all of the Chairman, deputy chairman and the chairman and members of the Remuneration/Compensation Committee in cases of sustained poor governance in this respect and failure by the company to adopt best practice standards.

3.2 Voting on directors' and committee fees that are proposed to shareholders

- 3.2.1 Given that there is a greater acknowledgement of the governance and legal responsibilities associated with being a director, director remuneration has had to be adjusted to reflect the time and commitment required to meet these responsibilities in an effective manner. Element Investment Managers supports non-executive directors' fees reflecting this.

⁶ Advisory in that such a resolution is not binding, and thus does not have any legal effect.

- 3.2.2 Fees for non-executive directors should be proposed to shareholders for their approval on an annual basis. The remuneration report, or explanations for the resolutions provided in the notice of the meeting should clearly indicate the quantum of fees proposed for the Chairman, the Deputy Chairman, the Chairman of the board committees, members of the committees and directors.
- 3.2.3 Due to the time and commitment associated with committee membership, and that such commitments may change from time-to-time, Element Investment Managers supports the setting of committee fees at a level which takes into consideration both the skill and time commitment of the committee members.
- 3.2.4 In general, non-executive directors should not be participants of share option schemes as it may impact on their independence. But, if under certain circumstances non-executive directors are participants in such schemes, Element Investment Managers requires the following:
 - 3.2.4.1 Shareholder approval for the option awards should be sought in advance
 - 3.2.4.2 The rules should be amended to ensure that participating directors are obliged to hold onto shares granted in terms of the scheme for a period of one year after they cease to be a director.
 - 3.2.4.3 No options should be issued at a discount, and the terms of the option scheme should be clearly disclosed. Attention should be given to the fact that such option schemes should be aligned with board performance indicators, rather than the performance indicators and terms applied under option schemes relating to employees of the company.
 - 3.2.4.4. A clear motivation should be provided as to why the issue of share options to non-executive directors is necessary and in the interests of shareholders.
 - 3.2.4.5 The process surrounding the award of options should be clearly described.
 - 3.2.4.6 In line with Schedule 14 s.14.6 of the JSE Listings Requirements, no beneficiary should be a trustee of the option scheme.
- 3.2.5. Element Investment Managers should vote against option schemes that are not specific in this regard, and will vote against any resolutions regarding payment to directors if these conditions are not met, and options are granted to non-executive directors.
- 3.2.6 Element Investment Managers regards any board member who is a beneficiary of an option scheme of the company on which board s/he sits as not being independent, and will review support for the director's re-election within the context of the balance of the board as a whole as discussed in Section 2.1.2.
- 3.2.6. Fees for other services should be clearly disclosed. Furthermore, such fees should be disclosed and explained in the Directors' report and under the note in the financial statements dealing with related party transactions, even if it is less than the disclosure levels required by either SA GAAP or the JSE Listings Requirements.

3.3 Voting on remuneration reports for companies that are required to submit them to shareholder advisory vote

3.3.1 Basic Salary Component

The basic salary component should be market-related in that it should take into account the basic component of remuneration being paid to people of equivalent positions in companies of similar sizes in similar sectors. Remuneration committees should be encouraged to employ the services of independent consultants (not connected to any service provider to the company) to provide relevant data. Consideration should be given when determining the basic remuneration of the pay differentials between the highest paid staff member and the lowest paid staff member. Remuneration surveys should be treated with care, and the size of any increase should also be seen in the context of company performance, the prevailing inflation rate, the relative market situation and the size of previous increases in basic salary.

The following issues should be considered:

3.3.1.1 The size of the increase relative to inflation and whether an explanation for the quantum of the increase, if greater than inflation, has been provided in the remuneration report.

3.3.1.2 Whether independent opinion has been used to establish the basic pay.

3.3.2 Pension Contributions

In general, pension contributions should be linked to basic remuneration. Should there be a differing structure clear explanations are required. Typically, this could relate to certain job categories where short and long term incentives are weighted more heavily. This should be clearly explained with reference to the basic, pension, and short and long-term components of the overall package. The pensionable bonus should be clearly explained within the remuneration report. Changes in pension terms should also be clearly disclosed.

3.3.3 Fringe Benefits

There should be clear disclosure of all allowances given to directors. Accommodation costs, transport costs, relocation costs and any other form of non-pension benefits should be clearly disclosed in the statement of executive remuneration. Element Investment Managers should vote against remuneration reports if there is any indication of abuse. Such benefits should be subject to board scrutiny.

3.3.4 Service Contracts

Notice periods should be set at periods of one year or less unless clearly motivated. Clear disclosure should be provided on the nature and extent of director contracts. Element Investment Managers should vote against remuneration reports where this is not disclosed. Element Investment Managers should also vote against executive contracts that are posed to shareholders without comprehensive information relating to the period, conditions, basis for reward, performance criteria and exit clauses.

The following issues should be considered:

- 3.3.4.1 Golden parachutes for early termination of service or if triggered by a takeover.
- 3.3.4.2 Executive severance pay (particularly where the company performance was poor during said executive's tenure).
- 3.3.4.3 The length of the contract periods proposed. While it is understood that initial contract periods may be longer in order to attract executives, subsequent contract periods should be reduced. Initial contract periods should not exceed 3 years. If more than one year, shareholders should be given a clear idea of the possible costs associated with early termination.

3.3.5 Short-term performance incentives

Element Investment Managers is supportive of the short term performance element of the scheme making up a substantial portion of cash based remuneration. However, the upper limits of such schemes should be capped as a percentage of basic remuneration. Clear targets should be identified. The targets presented should be graded, with the quantum of the incentive rising as the target becomes more challenging. The targets in themselves should be designed so as to align management's interests with shareholders. While it is understood that short-term performance targets can involve a range of different measurements, Element Investment Managers favours models that relate to total shareholder return and a combination of hurdle rates over short-term EPS targets. The targets the remuneration committee decides to be appropriate should be motivated clearly to shareholders. Furthermore, there should be a clear balance between incentives for short, medium and long-term performance.

The following issues should be considered:

- 3.3.5.1 Element Investment Managers favours the establishment of upper limits of short-term incentive schemes. Element Investment Managers should consider not supporting a short-term incentive scheme where the maximum incentive is greater than 150% of basic salary, unless a clear motivation and full disclosure on the performance requirements is presented in the remuneration report.
- 3.3.5.2 Element Investment Managers should not support a short-term incentive scheme where there is a high ceiling (relative to basic remuneration) and no differing levels of targets.
- 3.3.5.3 Element Investment Managers should not support a scheme where the targets are not clearly disclosed.
- 3.3.5.4 Element Investment Managers should not support schemes where the targets solely relate to earnings per share growth.
- 3.3.5.5 Element Investment Managers should consider supporting schemes where part payment is made in shares.
- 3.3.5.6 Element Investment Managers should support schemes that have rolling awards associated with total shareholder return targets (or a combination of appropriate hurdle rates).
- 3.3.5.7 Element Investment Managers should vote against schemes where the targets are deemed to be undemanding.

3.3.6 Long-term performance incentives and share ownership schemes

Long-term schemes are central to the alignment of management interests not only with shareholders but with other stakeholder groups. They play an essential role in encouraging management to take actions that will ensure that shareholder value (in its broadest sense) is improved over the long-term. The mechanism most frequently used to create this alignment is to provide some mechanism for deferred ownership of shares. The notion that this does not have a cost has been dispelled by the implementation of IFRS 2 (expensing of share-based payments) from January 2005. As a result of this, and high levels of coverage in the media relating to excessive executive payments through large option allocations, this will be subject to increasing levels of public and shareholder scrutiny.

The following issues should be considered

- 3.3.6.1 Element Investment Managers should vote against any remuneration reports where options have been issued at a discount to the market price.
- 3.3.6.2 Element Investment Managers should, vote against any remuneration report that does not disclose in full the number of options issued, the options' life span, the exercise price, and time of issue for each executive director who is the participant of a long-term incentive scheme.
- 3.3.6.3 Element Investment Managers should vote against remuneration reports where the assumptions used to ascertain the fair value of the option for the purpose of expensing have not been clearly disclosed. This would include expected volatility, expected dividends, risk-free interest rate and any other assumptions that may be relevant to early adoption.
- 3.3.6.4 Element Investment Managers should vote against remuneration schemes that have vesting periods of less than three years and expiry dates of more than 10 years.
- 3.3.6.5 Element Investment Managers should vote against the re-pricing of share options.
- 3.3.6.6 Element Investment Managers should consider innovative schemes proposed by the company that are not necessarily share option schemes, but that incentivise management to perform in the long-term interests of shareholders and other stakeholders. Such schemes should be clearly explained to shareholders, and the likely financial affects and assumptions relating to these calculations should be clearly disclosed.

- 3.3.6.7 Element Investment Managers encourages remuneration policies to include provisions that will assist the beneficiaries of option schemes to hold onto their shares after they have vested, and after they have satisfied tax and acquisition liabilities.
- 3.3.6.8 Element Investment Managers should vote against block allocations, and favours the incremental granting of options.
- 3.3.6.9 Element Investment Managers should encourage that long-term targets are aligned with long-term shareholder value creation. Importantly, shareholder value extends beyond solely financial measurements, but also includes non-financial issues, inter alia:
- environmental issues;
 - empowerment and gender issues;
 - HIV/AIDS and other health care and safety issues (company workforce and generally);
 - social issues.
 - brand value
 - Human capital formation, Human resource planning, and succession arrangements
 - corporate reputation and ethics
- Long-term targets should include these issues and further incentivise and commit executives to meaningful disclosure and performance with respect to these areas.

3.4 Strategic voting in the case of executive remuneration issues

Placing executive remuneration before shareholders for their approval is not required in South Africa. As stated, executive remuneration is decided on by the remuneration or compensation committee of a company. As there is no direct vote with respect to this area, Element Investment Managers will have to consider voting on other related resolutions. Broadly speaking, there would be three actions:

- a. In cases of poor disclosure – particularly where it does not comply with the minimum standards required by the Companies Act (1973), the JSE Listings Requirements and King II, Element Investment Managers should consider voting against the financial statements. Element Investment Managers should at all times reserve its rights to lodge complaints with relevant authorities should the disclosure not be compliant with the minimum disclosure requirements.
- b. In cases where there has been excessive remuneration, where it is inadequately motivated and there is a clear misalignment of interests between management and shareholders, Element Investment Managers should consider voting against one or all members of the remuneration committee nominated for re-election, and/or the Chairman or deputy chairman. This action should be taken, as this situation will in all likelihood result from directors not fulfilling their responsibilities of oversight.
- c. In cases where there are allocations to the share option scheme that are unexplained and/or deemed excessive, the only recourse is to vote against resolutions that give the directors control over the share capital of the company. Such resolutions relate to the power to issue shares, to issue shares to the option scheme and to repurchase shares. The intention of voting against such resolutions is to effectively prevent any allocation of shares to the scheme, thereby forcing the remuneration committee to re-consider the allocation, and the conditions attached to it.

These situations are determined on a case-by-case basis, and may at times require further explanation from the company. To offer guidance with respect to determining the Element Investment Managers vote, a number of principles have been established. These principles correlate with many of those applied in voting on remuneration resolutions placed before shareholders. The following principles should be considered:

3.4.1 Principles relating to disclosure

- 3.4.1.1 There should always be full comparative disclosure of the prior year's remuneration
- 3.4.1.2 Disclosure should be set out according to Section 8.63(1) of the JSE Listing Requirements and should contain details on:
- Fees for services as a director
 - Basic salary
 - Bonuses and performance related payments
 - Expense allowances
 - Other material benefits
 - Pension scheme contributions
 - Commission or gains from profit sharing arrangements
 - Any share options, including their strike price and period, period when and at what price options have been exercised and any other relevant information.
- 3.4.1.3. Element Investment Managers should vote against the financial statements where such disclosure is inadequate. Element Investment Managers should also retain its right to notify the JSE with regard to any contraventions to the disclosure requirements stipulated in the JSE Listings Requirements.
- 3.4.1.4 In line with international best practice, Element Investment Managers will assess whether disclosure is adequate on how the remuneration package has been devised with respect to:
- Formulation on basic pay
 - Short-term performance based remuneration
 - Long-term incentives
- Poor disclosure on these issues makes it difficult to assess whether the Remuneration or Compensation committee has taken shareholder interests into consideration.

3.4.2 Principles relating to alignment of interests

- 3.4.2.1 In accordance with the King Code and the JSE Listings Requirements, companies should establish a formal and transparent procedure for developing a policy on executive remuneration and for fixing packages of individual directors (JSE Listing Requirements, Schedule 22).
- 3.4.2.2 Element Investment Managers will apply the voting principles raised under section 3.3.5 when assessing whether the remuneration is aligned to shareholder interests.
- 3.4.2.3. Where there appears to be a misalignment, in terms of there being unexplained increases and bonuses during periods of poor performance, Element Investment Managers should vote against Remuneration Committee Members and the Chairman.
- 3.4.2.4. Element Investment Managers should vote against Remuneration Committee members and the Chairman if, in the opinion of Element Investment Managers, the remuneration structure is designed to encourage short-term behaviour to the potential detriment of long term shareholder value.

3.4.3 Principles relating to the allocation of share options

Element Investment Managers will apply the same principles raised in Section 3.3.6 relating to long-term performance incentives and share ownership schemes when assessing the allocation of share options. Element Investment Managers should vote against granting directors power over the share capital of a company should the option scheme be in contradiction with the above principles.

3.5 Further issues

- 3.5.1 Many boards are emulating board structures found in the United States, where the only executive directors are the CEO and the CFO. Remuneration reports relating to two operational individuals provide limited indication of whether the management team is being incentivised appropriately. While not required in either the Companies Act (1973) or the JSE Listing Requirements, Element Investment Managers will encourage companies to disclose the salaries of top management beyond what is required at present (particularly detail on the basis on which options are granted and performance pay is calculated). In companies that are listed on the LSE, Element Investment Managers will encourage that the remuneration report placed before shareholders in terms of Section 241 A of the UK Companies Act also stipulates policies, processes, targets and details surrounding senior management remuneration.
- 3.5.2 The level of award for short-term cash incentives, and other bonuses should be sensitive to pay and employment conditions elsewhere in the group. High executive remuneration during periods of retrenchments and significant cost cutting can have a negative impact on a company's workforce morale.

4. Payment of Dividends/Capitalisation issues, Confirmation of Reductions in Capital by way of special dividends, odd lot offers, share splits and consolidations

Items we should consider:

4.1. The Payment of Dividends

- 4.1.1 Whether dividend payment will put undue strain on cash resources and capital base of the company, particularly with respect to material special dividend payments (i.e. could the board be perceived as trading irresponsibly by declaring a dividend under the current circumstances?);
- 4.1.2 Where no dividend is declared, reasons should be provided on whether this is justified based on historical performance of the company.
- 4.1.3 Element Investment Managers will consider whether management is adopting an appropriate and well motivated dividend policy on a case-by-case basis.

4.2 Capitalisation issues

- 4.2.1 Size of cap issue in relation to shares in issue;
- 4.2.2 The value of the capitalisation issue relative to dividend offered (if a choice is provided), and whether shareholders are being forced into a selection based on relative valuations, for instance where the cash dividend is significantly lower than the cap issue offer.

4.3 Reductions in capital by way of special dividends

- 4.3.1 Capital reductions should be assessed on a case-by-case basis.

4.4 Odd-lot offers

- 4.4.1 Element Investment Managers should consider supporting resolutions aimed at reducing costs and the administrative burden associated with large numbers of shareholders with very small shareholdings.
- 4.4.2 Odd-lot offers and related resolutions (permission to repurchase and issue shares in relation to the odd-lot offer) will be assessed on a case-by-case basis.

4.5 Share splits and consolidations

- 4.5.1 Element Investment Managers should consider share consolidations and share splits on a case-by-case basis.

5. Re-Appointment of auditors

Auditing is a fundamental element of accountability to shareholders. The audit process must be objective, rigorous and independent to maintain the confidence of the market. The Companies Act (1973) requires the annual reappointment of the company's auditors at a general meeting to hold office until the next meeting (Companies Act s270 (1)). The right of shareholders to appoint the auditors is indicative of the fact that the Auditors are appointed by the shareholders to provide them with external opinion with respect to the financial performance and affairs of the company. The Audit Committee plays a central role in selecting and monitoring the auditors, to ensure that the audit remains independent. In this respect, it is crucial that the audit committee is made up of non-executive directors, the majority of whom should be independent. The Chairman of the Audit Committee should be an independent non-executive director. The majority of the members of the committee should have financial experience. The head of the audit committee should also be available to answer questions at the AGM on issues relating to the audit definitions and the scope of the audit.

Items we should consider:

- 5.1 The independence of the Audit Committee, and the disclosure with respect to its functions. In light of this, a report should be included in the governance statement which outlines how the audit committee has performed its functions as required by the Act. These functions include:
- 5.1.1 The recommendation to shareholders of an auditor that is independent. Included in this function will be the appointment for a limited period of time of an individual auditor (if required by the law), thereby ensuring that rotation can occur within firms.
 - 5.1.2 Setting the fees and the auditors' terms of engagement.
 - 5.1.3 Oversight over nature and extent of any non-audit services provided to the company that may compromise the independence of the auditor. In particular, this will involve ensuring that the external auditor is not involved in other work with the company that it will have to provide an audit opinion on.
 - 5.1.4 Including a statement within the financial statements that the audit is in compliance with the law and has been independently conducted.
 - 5.1.5 Dealing with any complaints with respect to the accounting practices and any related matter.
- 5.2 Competence and capacity of the audit firm to carry out a proper audit given the nature and extent of the work to be performed (e.g. does a very small regional audit firm have the capacity to audit a large nationwide company?);
- 5.3 Reasons should be provided where a change in auditors is proposed.
- 5.3.1 This is particularly pertinent where auditors have resigned. If this is the case, a copy of the written notification of no material irregularity having taken place as required by s280 (2) of the Companies Act, should be made available for shareholder inspection.
 - 5.3.2 Where the company aims to dismiss its auditors in terms of Section 179, public notice should be given, and Element Investment Managers will endeavour to ensure that the auditor is given the opportunity to make representations to shareholders as required in the Companies Act (1973), prior to the resolution being voted on.
 - 5.3.3. While a change of the company's auditors is not always negative, a clear explanation needs to be provided by the head of the Audit Committee. Element Investment Managers favours the rotation of audit partners over the rotation of auditors, and would favour greater disclosure by auditors in the audit report that is presented to shareholders. Instances where auditors have been replaced require substantive explanations, particularly where the audit fee will make up a substantial portion of the

audit firm's total revenues, as this may be deemed to compromise the auditors' independence.

- 5.4 Any issues that may have compromised the audit firm's independence and objectivity with respect to the company over the past year. Particularly where the auditors performed an "independent" valuation for the company during the year, or where any other non-audit work may have impacted on the independence of the auditor. Element Investment Managers supports the full disclosure of any contract that may have impacted on the auditor's independence in all of the Auditors' Report, the Directors' Report and the report of the Audit Committee.
- 5.5 Any issues highlighted during the current year that could call into question the appropriateness of prior audit opinions (e.g. restatement of prior year results due to audit errors) should be considered when conducting the vote.

6. Remuneration of Auditors

Shareholders approval on the remuneration of auditors is a symbolic resolution intended to convey to shareholders that the auditor is employed by them, as the ratification of their appointment would imply. In effect the remuneration of the auditor is determined by agreement between the auditor and the directors acting on behalf of the company (Companies Act (1973) s283)⁷. Thus, the remuneration of auditors may not be a separate resolution at the AGM. If presented to shareholder vote, a significant message can be sent to the company, and appropriate questions can be raised with respect to the size and components of the audit fee, and the procedure surrounding defining the scope of the audit.

Items we should consider in this respect:

- 6.1 Remuneration relative to prior year and other benchmarks (e.g. competitors, similar audits, inflation)
- 6.2 The level of disclosure required for non-audit work performed by the company's auditors.
- 6.3 All non-audit work performed and whether this charge is reasonable given its nature and extent.
- 6.4 Whether the Audit Committee has issued a statement with respect to the scope and extent of non-audit work performed by the auditor, with an undertaking that measures were taken to ensure that conflicts of interest did not occur.
- 6.5 Any issues highlighted during the current year that could call into question the appropriateness of prior audit opinions (e.g. restatement of prior year results due to errors).

7. Placing unissued ordinary shares under the control of the directors

Currently, directors have to apply to shareholders on an annual basis to renew their control over unissued shares in the company (Companies Act (1973) s221 (1)). Unlike issuing shares for cash the mandate requested by directors is unrestricted, and does not have to be passed by an extraordinary majority. In the past, the use of scrip for acquisitional growth has resulted in substantial destruction of shareholder wealth, in light of this, the following items that should be considered:

- 7.1 Generally we should oppose these resolutions, as they provide directors unfettered discretion to issue unissued shares, which as a result dilutes existing shareholders. We would require a specific resolution at the time of any further issue with the appropriate motivation provided by the company on a case-by-case basis, rather than providing the directors with a general control over the unissued shares.
- 7.2 Element Investment Managers should consider voting in favour of proposals by the company to limit control over unissued shares to 5% of issued share capital, only if the directors have a

⁷ Commentary on the Companies Act (2003), Blackman et al, s 10-21

strong track record of maintaining and enhancing shareholder value. In particular, the company's acquisition track record should be assessed.

- 7.3 Permission to issues shares to option schemes and executive share schemes should be put forward in a separate resolution as required by s222 of the Companies Act (1973).
- 7.4 We should oppose resolutions where the directors may seek authorisation to issue shares in an effort to avoid a takeover. The motivation for the company to issue shares will need to be carefully examined on a case-by-case basis.

8. Renoucement of Pre-emptive rights

This resolution is linked to granting directors the right to issue shares and the right to issue shares for cash. It enables the company to avoid having to conduct a rights offer to existing shareholders on a pro-rata basis, as required in both UK Company Law and in the JSE Listing Requirements (Schedule 10.2).

Items to be considered:

- 8.1 Element Investment Managers should vote against such resolutions if it is voting against resolutions granting directors the authority over issuing unissued shares or the issuing of shares for cash.
- 8.2 Element Investment Managers should make efforts to ensure that pre-emptive rights are taken into consideration when permission is being sought for board control over unissued shares, and when contemplating the power of directors to issue shares for cash.

Extraordinary Majority Resolutions

9. Providing the directors the authority to issue shares for cash

Element Investment Managers holds that significant restrictions should be placed on a general authority to issue shares for cash for the following reasons:

- a. The authority to issue shares for cash can be used by directors as a defence mechanism against shareholder bodies.
- b. The issue of shares is dilutive to current shareholders and the directors should consult with shareholders providing a clear motivation.

Items to be considered:

- 9.1 Generally we should oppose these resolutions, as any further issues would dilute existing shareholders. We would want a separate resolution at the time of any further issue with the appropriate motivation provided by the directors, rather than providing the directors with a general control over the unissued shares.
- 9.2 Currently, the ceiling imposed by the JSE Listings Requirements on issues of shares for cash is 15% of the issued share capital (5.52 (c)(i)). A general authority to issue 15% is deemed to be excessive, and Element Investment Managers should vote against all resolutions which revert to the ceiling proposed by the JSE.
- 9.3 Element Investment Managers should consider voting in favour of proposals by the company to issue shares for cash to a limit of 5% where the directors have demonstrated a strong track record of maintaining and enhancing shareholder value, and also have a strong record of shareholder accountability.

Special Resolutions

10. Changes to the Articles of Association

As a general point, the Articles of Association of a company should be written in plain, accessible language. Element Investment Managers should vote against the adoption of new Articles of Association (or amendments to the existing Articles), which indulge in excessive legal obfuscation.

Should the company be adopting a new set of Articles, or substantive changes to the current set of Articles, a set of Articles identifying the changes from the original should be made available to all shareholders prior to the meeting, either on request or via the Company's website.

While changes to the Articles will always be assessed on a case-by-case basis, there are certain significant issues that bear mentioning:

10.1 Introduction of new share classes and debt instruments

We are concerned that the effect of these proposals, over time, is to consolidate voting power in the hands of relatively few insiders disproportionate to their percentage ownership of the company's share capital as a whole. This concentration of voting power can effectively block any takeover which the owners of high voting classes of share oppose as well as diminish the need for accountability to the shareholders who are providing a significant proportion of the funding to the business. Generally however, the introduction different classes of securities (equity or debt) should be considered on a case-by-case basis.

Items to be considered:

- 10.1.1 Generally, Element Investment Managers should oppose proposals to divide share capital into two or more classes or to otherwise create classes with unequal voting and/or dividend rights.
- 10.1.2 Element Investment Managers is prepared to consider different classes of shares, with different voting and dividend rights if there is an irrevocable undertaking that the class of shares will convert to ordinary shares in a not excessive time period. Such mechanisms may be used to facilitate Black Economic Empowerment, and can also present an effective compromise for controlling groups in pyramid and family control structures.
- 10.1.3 Element Investment Managers should consider on a case-by-case basis proposals to amend the articles to allow for the introduction of debt instruments.

10.2 The facilitation of dematerialisation

Element Investment Managers should support resolutions to change the Articles of Association that facilitate the electronic transfer of shares under STRATE.

10.3 Changes to the articles that enable share repurchases

- 10.3.1 In general Element Investment Managers should support resolutions to change the Articles of Association that enable share buybacks to occur.
- 10.3.2 Element Investment Managers should vote against amendments to the Articles of Association that enable buybacks where:
 - There are different classes of shares and it is not specified that permission for share repurchases should be granted by the holders of the class of shares for which the permission is being requested. (i.e. high voting classes of shares should not be able to vote on resolutions to repurchase low voting share classes).

- There is a pyramid control structure in place.
- There is a holding company and poor tradability.

10.4 Changes in the board size, and eligibility of directors

The Articles of Association determine both the minimum and in some cases the maximum number of board members, qualifications of directors (retiring ages), the procedure and rules relating to alternate directors, and the powers of the directors. The company is bound by its articles, which in turn have to adhere to the provisions of the Companies Act (1973).

As the alterations in respect of this section can be diverse, they will be assessed on an individual basis with reference to appropriate legislation and both international and local best practice codes.

10.5 Initiatives to improve board functioning

Such resolutions include obtaining permission for directors meetings to be conducted by using conference telephone facilities and/or conference video facilities, and for resolutions from such meetings to be valid. Element Investment Managers will support such resolutions, given that board meetings should be held more frequently, and such initiatives can be used to improve non-executive director participation. It should, however, be recorded on the director attendance records whether they attended the meeting in person or by teleconference or video conference. Meetings by teleconference or video conference should only be held, however, in exceptional circumstances. Continued non-physical presence at board meetings is not considered to be acceptable.

10.6 Initiatives to improve shareholder consultation and voting

In certain instances, companies put entirely new sets of articles forward for shareholder vote. Many of these articles still contain sections or include new sections that limit shareholder rights.

- 10.6.1 Element Investment Managers should oppose any clauses that require the appointment and vote by proxy to be submitted more than 48 hours before the meeting. Element Investment Managers will thus oppose the introduction of the new set of articles.
- 10.6.2. While Element Investment Managers supports the voting of all resolutions by poll, the Articles of Association of most companies prescribe that resolutions are voted by a show of hands. In certain instances the articles expressly state that proxy holders only have the right to vote by poll. Element Investment Managers should oppose clauses that prohibit proxy holders from voting by a show of hands, or raising issues at meetings. Element Investment Managers should thus oppose the introduction of the new set of articles.

10.7 Directors' Indemnification

With the increased awareness of director personal liability, clauses have arisen in company articles that commit company funds to indemnify any person employed by the company and its auditors against liabilities incurred when defending any proceedings against him/her that he/she successfully defends in a court of law. Furthermore, company employees and officers are indemnified against action that they take on behalf of the company that may result in loss or damage, which has not been caused through negligence or dishonesty.

This is a complex area, as most people would be reluctant to accept a position with a company should they attract such liabilities. Director fees would also be very high if they had to pay their own indemnity insurance.

The wording of such clauses needs to be clearly understood, as there is often a fine line between losses that are a result of “errors in judgement”, or “oversight” and losses that are due to gross negligence, which may arise from the failure to conduct proper due diligence, or implement control systems.

In general, Element Investment Managers should be cautious when considering changes to the articles that bind the company to indemnification of directors, other company officers, and employees of the company’s auditors. Element Investment Managers should assess whether an indemnification statement in the Articles of a company is appropriate, or whether the company should commit to the payment of indemnity insurance for its directors. An advantage of insurance by a third party relative to on balance sheet insurance, is that premiums will be determined by the third party’s assessment of governance risks. This is in the interests of shareholders as it provides a financial incentive for the company to improve governance and risk management.

Element Investment Managers should review proposals to introduce indemnification into the articles of Association on a case-by-case basis.

10.8 Amendment of clauses relating to the borrowing powers of directors

The Companies Act (1973) suggests in Schedule 2 Table B that the borrowing powers of directors should not exceed one half of the issued share capital plus share premium without prior approval from shareholders. In the older sets of Articles, this restriction has remained. In the newer articles, companies bind their subsidiaries to certain restrictions, which in the view of Element Investment Managers is prudent. However, no restrictions tend to be applied to the listed entity. Clearly, a balance needs to be made between the board’s ability to raise debt for expansion and the board putting the company at risk through getting into a situation where the company cannot repay its debts.

10.9 Opposition to clauses that release executive directors from re-election by rotation

While a common feature in Articles of association, this prevents shareholders from challenging the office of an executive director. It is important to note that the office of the director is separate from the management position as an employee, which is contractual rather than fiduciary in nature.

10.10 Clauses that enable electronic communication and voting

To ensure that shareholders rights are enhanced, while at the same time the efficiency and cost effectiveness of company decision making is not impaired, suitable mechanisms should be investigated to streamline communication and the time consuming and paper intensive process associated with voting. While it is likely that the standards for electronic voting and communication will be set in the revised Companies Act (in line with proposals from the Department of Trade and Industry and the UK Companies Bill), companies will need to allow for it in their articles. Element Investment Managers is supportive of mechanisms that can be employed that will enhance communication between companies and their shareholders, particularly initiatives that can improve the efficiency of gaining shareholder consensus. These should, however, be subject to standards set by the Department of Trade and industry and the JSE Securities Exchange.

11. Introduction of share option schemes

Share options form the basis of long-term incentives in South Africa. There are a number of concerns relating to this “one-dimensional” approach to long-term pay, as these do not always work effectively towards aligning management’s interest with those of shareholders. Firstly, an option is more valuable if the underlying stock is more volatile. Share price volatility is clearly not in the interests of shareholders, whose stock valuation is better served by predictability and steady appreciation. Secondly, the holder of the option makes money only through price appreciation, and not through dividends. Management who hold excessive options do not have an incentive to recommend the issue dividends to shareholders (and in many instances issuance of dividends is used as motivation for the re-pricing of options). Lastly, share prices in South Africa are frequently driven by exogenous factors (such as rand depreciation or movements in the prices of commodities). When these factors result in share price declines, it may well serve as a disincentive to the executives whose remuneration is geared towards share options. In addition, much of the review following the USA corporate collapses such as Enron and WorldCom, centred on the role that share options played in leading executives to take short-term reckless decisions, that were aimed primarily at driving earnings per share growth and short term share price movements, and not concentrating on enhancing the long term value of the company.

To this end, Element Investment Managers supports the Association for British Insurers (“ABI”) Guidelines which recommend “challenging performance conditions should govern the vesting of awards or the exercise of options under any form of long term share-based incentive scheme. These should:

- Relate to overall corporate performance
- Be sufficiently demanding in the context of prospects for the company and prevailing economic climate in which it operates
- Be measured relative to an appropriate defined peer group or other relevant benchmark
- Be disclosed and transparent⁸

In terms of disclosure the ABI Guidelines suggest that “schemes and individual participation limits be disclosed, including

- Performance conditions (reasons for selecting the performance conditions and target levels)
- Related costs
- Maximum levels of awards
- Dilution limits
- Overall policy for granting conditional share or option awards.⁹

Option schemes placed before shareholders should incorporate all of the elements proposed by the ABI.

Furthermore, Element Investment Managers should consider, where motivated and fully explained, the tax implications of the proposed share option scheme. This is frequently cited as being reason for the complexity of schemes being placed before shareholders. Tax regimes are subject to periodic review, and while Element Investment Managers does not oppose tax efficient schemes, tax efficiency should not distract the intention of the scheme to align management interests with those of shareholders.

Should the company be adopting a new scheme, or making substantive changes to the current scheme, a scheme highlighting changes relative to the original scheme should be made available to all shareholders prior to the meeting, either on request or via the Company’s website. Element Investment Managers should vote against schemes which indulge in excessive legal obfuscation.

Items to be considered:

11.1 As stated, in general Element Investment Managers does not support the inclusion of non-executive directors within share option schemes, notably, non-executive directors who are

⁸ Association of British Insurers: Guidelines on Executive Remuneration – Guidelines for Share Incentive Schemes, Point 6.2

⁹ Association of British Insurers: Guidelines on Executive Remuneration – Guidelines for Share Incentive Schemes, Point 5.2

- members of the remuneration or compensation committee, as inclusion in such a scheme may impact on their independence.
- 11.2 Element Investment Managers requires that the option scheme clearly identifies the persons who will benefit from the scheme. Element Investment Managers should vote in compliance with Schedule 14 of the Listings Requirements, against all option schemes that do not restrict the definition of participants to those involved in the business.
 - 11.3 Element Investment Managers should vote against any scheme where the aggregate number of securities that may be used for all of the existing schemes is in excess of 10% of the total issued share capital. Element Investment Managers should vote against any limits that are higher than 5% in any 10 year period for the total of all specific schemes reserved for top level management.
 - 11.4 Element Investment Managers should vote against any scheme which enables the allocation of more than 1% of the total share capital to any individual.
 - 11.5 In accordance with the JSE Listings Requirements (Schedule 14.1) Element Investment Managers should vote against any share scheme whose trustees are executive directors, employees of the company or service providers to the company, or any other party whose independence may be compromised. The scheme should state these exclusions explicitly.
 - 11.6 Element Investment Managers should vote against any scheme where the expiry period is beyond 10 years and vesting periods of less than three years.
 - 11.7 Element Investment Managers should vote against any scheme which does not require that options allocated to any individual are automatically cancelled should that individual cease to be employed by the company (for reasons other than retrenchment, disability, retirement or death) within a period of three years. Should the individual leave after three years other than for reasons mentioned above, but before the next vesting date, the remaining options should be forfeited. The scheme should make provision for the recall of all loans made to such employees in terms of the option scheme.
 - 11.8 Element Investment Managers should vote against any scheme that does not institute provisions that incentivise employees to remain with the organisation for a period of over three years.
 - 11.9 Element Investment Managers should vote against any scheme that does not stipulate the terms of loans made to employees.
 - 11.10 Given the introduction of IRFS 2 in January 2005, Element Investment Managers proposes that new schemes and existing schemes present the methods that will be employed for the costing and expensing of options, and the level of disclosure which the company will commit to.
 - 11.11 Share option schemes should promote active employee ownership and we should oppose their use for other means (e.g. as a way to place shares to avoid a takeover);
 - 11.12 Element Investment Managers should carefully review the clauses relating to changes in control. Element Investment Managers should favour schemes that clearly stipulate that in the case of a change in control, a pro-rata calculation is made with respect to both the performance targets and the duration of the option at the time of the change in control.

12 Authority to repurchase shares

Since share re-purchases were permitted in terms of the Companies Act (1973), through the Companies Amendment Act No. 37 of 1999, virtually all listed companies have made the appropriate changes in their Articles of association, and as a matter of course apply for shareholder permission to repurchase shares at every AGM.

In most instances, share repurchases are not debated. It has been seen as a tax effective way of giving money back to shareholders. There are however significant control and tradability issues that need to be considered prior to voting on such a resolution.

Items to be considered:

- 12.1 The impact that a share repurchase will have on the "free float" of the company. Where the share repurchase has a material negative impact on liquidity and hence could affect the share's

- rating we should consider opposing such resolutions. This is particularly relevant where a historical pyramid holding company structure remains in place.
- 12.2 Element Investment Managers should vote against share repurchases where the permission is being sought to repurchase both high and low voting shares, and the different share classes are not provided with the opportunity to vote separately.
 - 12.3 Element Investment Managers should vote against share repurchases where there is an existing control, or pyramid structure, unless the repurchase is being done on a pro-rata basis.
 - 12.4 Element Investment Managers should consider voting against share repurchases where public shareholders own less than 50% of the shares in issue, or alternatively where the repurchase would have an adverse impact on the share's position in the FTSE/JSE Free Float Index. Element Investment Managers should consider supporting repurchases in such circumstances when the repurchase is being conducted on a pro-rata basis.
 - 12.5 While the ceiling level for repurchases is 20% (JSE Listings Requirements, 5.68), Element Investment Managers should review its voting decision with respect to the above issues, should the company apply to repurchase a lower percentage of issued shares.
 - 12.6 Element Investment Managers should vote against share repurchases if it has been demonstrated that no value has been added by prior year repurchases.
 - 12.7 Element Investment Managers should support resolutions to repurchase shares that are connected to resolutions related to odd-lot offers.
 - 12.8 Element Investment Managers should vote against any repurchase where there is disagreement with the structure, conditions and method of allocation of the share option scheme. The negative vote in this respect is complementary to a negative vote against the issue of shares to the share incentive scheme in such an instance, as share repurchases will increase the number of treasury shares that could be used to allocate to option holders.

13. Corporate Actions

Element Investment Managers should assess all other proposals, and proposals that relate to specific corporate actions such as mergers, the unbundling of assets, takeovers, name changes etc. on a case-by-case basis.

The recommendations of the Companies Amendment Bill (2005), follow that companies should note that directors will not have the power, except by special resolution to dispose of the whole or greater part of the undertaking or assets of the company. This is a significant change from the previous simple majority requirement and represents a substantial improvement in shareholder rights.

Should Element Investment Managers have significant objections, and there be reason to believe that long-term shareholder interests have been compromised by such actions, Element Investment Managers should consider voting against the re-election of one or both the Chief Executive Officer and the Chairman of the company.

SECTION C - Issues that are not placed before shareholders

One of the key considerations that needs to be taken into account is how votes are assigned on issues that are not put to the vote, in fact issues, which, if ever put forward may result in a defensive, possibly legitimately so, stance from management.

Many of these issues are fundamental to gaining a better understanding of the company from a risk or from an ethical perspective and relate to the quality of governance in the company concerned. Element Investment Managers and other shareholders should not be precluded from taking such action in relation to issues which pre-existed their investment, particularly those which are designed to ensure that the rights of shareholders are disproportionate to the capital that they have invested in the business.

Given the increasingly complex business environment, these issues have become extensive and multifaceted. To assign a position on each one, would not only be impractical, but would also undermine the fact that Element Investment Managers invests in specific companies, each of which has its own stakeholder and governance issues. Materiality and relevance thus remain central to any voting decision.

While we are not adopting a generic "one size fits all" approach, there are a number of issues that have become increasingly regarded as being fundamental aspects of good governance, risk management and central to corporations improving stakeholder relations.

This section will be divided into distinct areas, which will each follow different symbolic voting guidelines.

1. Issues relating to shareholder rights, and the accountability of the board of directors to the company's shareholders
2. Issues relating to corporate governance and risk management
3. Issues relating to disclosure
4. Issues relating to Black Economic Empowerment and transformation

In the event of any resolutions being proposed with regard to any of these areas, Element Investment Managers will assess the contents of the proposal, and vote according to its principles as set out in a separate document, or alternatively vote according to the framework established in this proxy voting policy.

1 Issues relating to shareholder rights, and the accountability of the board of directors to the company's shareholders

From a governance perspective, these issues are of central importance. In many instances, shareholder rights may be compromised by processes.

1.1 Dual capitalisation and preferential voting rights

Preferential voting rights remain a feature of the South African corporate sector, and have significant negative long-term governance implications.

The following actions should be considered on a case-by-case basis

- 1.1.1 Voting against all share repurchases that include both high and low voting shares that are not proposed on a pro-rata basis

- 1.1.2 Proposing that high voting class shares should not be entitled to vote in instances where low voting class shares will be diluted such as the granting of directors authority over unissued share capital and the issue of low voting class shares for cash.
- 1.1.3 Co-ordinating low voting class shareholders in a manner that will ensure that they can use their physical numbers to attend company meetings, propose necessary amendments, and if their rights are being significantly compromised call upon the Minister of Trade and Industry to enact Section 252 of the Companies Act (1973).
- 1.1.4 Efforts should be considered to lobby the appropriate Regulator to phase out non-voting stock and phase out high voting shares over a period of time.
- 1.1.5 Efforts should be considered to lobby the appropriate Regulator to enforce that all shareholders are treated equally in the event of a takeover bid. Any transfer of high voting shares that affects the control of the company should be subject to low voting share approval.

1.2 Conduct at shareholder meetings

1.2.1 Time and location of shareholder meetings

- 1.2.1.1 Shareholders should be given sufficient time to examine relevant documentation prior to the meeting. The Companies Act (1973) stipulates that 21 clear days' notice in writing is required for any meeting where a special resolution is being proposed to shareholders (s186(10)(a)). In many instances companies do not fulfil these requirements (or do so over a holiday period which is deemed inappropriate). Should there be insufficient time to assess the resolution, Element Investment Managers should reserve its right to motivate that the meeting is rescheduled. Element Investment Managers concurs with the recommendations of the Hampel Committee¹⁰, where 20 working days notice is given.
- 1.2.1.2 Meetings should be held on an appropriate date, not on a date immediately prior to a public holiday, or during a holiday period (such as Easter), so as to ensure that few shareholders can attend the meeting.
- 1.2.1.3 Meetings should be held during normal business hours.
- 1.2.1.4 Meetings should be held, insofar as possible, in accessible metropolitan centres, where attendance by shareholders may be assured.

1.2.2 The provision of explanations for shareholder resolutions

- 1.2.2.1 Resolutions should contain at least the minimum statutory disclosures. In addition, motivations should be required for any special resolution or resolution that is not regarded as "ordinary business".
- 1.2.2.2 Element Investment Managers requests that an abridged CV is included for each of the directors being proposed for election/re-election.

1.2.3 The rights of proxy holders

- 1.2.3.1 Proxy holders should have the right to attend the company meeting, speak at it, vote at it, and initiate or join a demand for the vote to be held by a poll instead of a vote by show of hands. Element Investment Managers should vote against any amendments to company articles that do not specifically state that proxy holders have the right to speak, raise issues and vote by poll or show of hands.

1.2.4 Voting by poll

- 1.2.4.1 Element Investment Managers regards the antiquated system of voting by a show of hands as a significant fault of shareholder democracy in South Africa. Element

¹⁰ Hampel Committee, as included in the UK Combined Code

- Investment Managers will thus encourage a poll in preference to a show of hands, to promote shareholder rights.
- 1.2.4.2 Votes by poll should be taken on all resolutions that require a significant majority, and on any resolution where the Chairman has any information indicating that there are a significant number of proxies which could change the outcome of the vote. The Chairman should make a statement to this effect and should rule that the vote will be by way of a poll. Element Investment Managers should reserve its right to question the transfer secretary provide details on the number of proxies submitted and whether there were any significant negative votes cast by proxy.

1.2.5 Use of independent directors to represent proxy holders:

- 1.2.5.1 Element Investment Managers should investigate the feasibility of appointing independent directors to represent their proxies instead of company Chairmen. While this is not relevant if voting is to occur by means of a poll, many companies will continue to vote ordinary business by show of hands. This enables the Element Investment Managers vote to be represented by an alternative rather than a possible consolidated vote through the Chairman

1.2.6 Votes regarding “other business”

- 1.2.6.1 Element Investment Managers should vote against all resolutions which ask for blind shareholder support or permission. While invalid, such resolutions remain on proxy forms.

1.2.7 Publishing the results of shareholder votes on SENS

- 1.2.7.1 Element Investment Managers will encourage the practice of publishing for, against and abstention votes on the Stock Exchange News Service (SENS) following shareholder meetings. Clearly this can only be done in a meaningful manner if votes are conducted by poll. Any discrepancy in the vote which is apparent to Element Investment Managers should be raised.

1.2.8 Nomination of Directors

- 1.2.8.1 Element Investment Managers should consider nominating a range of independent candidates to a company’s board only under exceptional circumstances, but may also request the company to put forward additional independent candidates to the nominations committee and/or shareholder vote.
- 1.2.8.2 Element Investment Managers will not nominate one of its own staff members or any person directly associated with Element Investment Managers. Element Investment Managers should have an arm’s length relationship with such a candidate, so as to ensure that the candidate is deemed fully independent.
- 1.2.8.3 Nominations should be considered and/or requested where there is a lack of diversity and independent candidates on the board.
- 1.2.8.4 Element Investment Managers should follow due process with regard to such a nomination, firstly by recommending the candidate to the nominations committee of the company concerned. Should this not be successful Element Investment Managers should consider proposing a resolution at the annual general meeting of the company in accordance with Section 185 of the Companies Act (1973).

2 Issues relating to corporate governance and risk management

2.1 The structure and composition of board and its committees

Considerations should include:

- 2.1.1 Balance of the board, regularity of board meetings and meeting attendance
- 2.1.2 Capability and track record of board members
- 2.1.3 Independence of the Audit Committee, number of meetings, skills of members and meeting attendance
- 2.1.4 Independence of the Remuneration or Compensation committee
- 2.1.5 Element Investment Managers should encourage companies to establish a nominations committee, alternatively, the company should disclose which board committee has responsibility for the nomination of directors and succession planning.
- 2.1.6 The functions of the above committees
- 2.1.7 The role of the company secretary, and their line of accountability. Element Investment Managers holds the view that the company secretary is an essential component of the governance system, and that their remuneration and nomination should be decided on by board, rather than executive management.
- 2.1.8 The resignation of a board member or the company secretary should be declared and reasons for the resignation provided in the director's report.

2.2 Placement of the Remuneration Report to shareholder vote

This is covered under the section dealing with the remuneration of directors. The voting strategy is described under Section B (3.4).

2.3 Declarations with respect to Related Party Transactions, that involve non-executive directors

Considerations should include:

- 2.3.1 Declarations should be made in both the notes to the financial statements and in the Directors' Report.
- 2.3.2 Independent directors on the Audit and Risk Committees should be prepared to provide shareholders at a general meeting with full details with respect to the nature and extent of the conflict.
- 2.3.3 Element Investment Managers regards major shareholders, or their representatives (e.g. asset manager representatives) who are non-executive directors as not independent. Element Investment Managers is of the view that any share dealings by the entity that the director is associated with should be declared in the same manner as directors' share dealings, closed periods should be observed, and procedure consistent with sections 3.63 to 3.74 of the JSE Listings Requirements should be followed. Element Investment Managers encourages proactive disclosure on how these relationships are managed.

2.4 Risk management with respect to financial instruments

Considerations will include:

- 2.4.1 Full details should be provided in the risk management section on the methods used to assess financial instrument risk, and which directors are responsible for this.
- 2.4.2 This section should link up with the relevant section of the financial report dealing with IFRS 2, and full explanations should be given on the accounting treatment of financial instruments in the accounting policies.
- 2.4.3 Should there be no apparent structure for dealing with financial risks at board level, or any clear failings in this respect that could be linked to negligence, Element Investment Managers should vote against directors who occupy positions on the Audit and Risk Committees.

2.5 Risk management relating to ethical, workplace, social and environmental issues

Considerations should include:

- 2.5.1 The company should demonstrate that the board is taking responsibility regarding ethical, workplace, social and environmental risks seriously in so far as they impact on the company.
- 2.5.2 Risk management systems for ethical, workplace, social and environmental risks should be considered on a case-by-case basis.
- 2.5.3 Should systems be deemed inadequate, and there be no leadership from the board with respect to these areas, Element Investment Managers should consider voting against directors who are members of the Audit and Risk Committees or the Sustainability or SHE committees in so far as they exist.
- 2.5.4 Disclosure on these risks is covered in Section C (3), and should be considered on a case-by-case basis.
- 2.5.5 Element Investment Managers requires that companies address risk management issues across all operations in all of the geographical areas that it operates. While it is not always practical to disclose these issues, the board should be prepared to answer shareholders questions and concerns with respect to specific risk areas.

2.6 Compliance with the statutes

Element Investment Managers requires that companies in which it invests adhere to the letter and principle of the laws applied in the countries in which they operate. Furthermore, companies should adhere to both local and international codes of good practice, sector based codes and guidelines and codes established by multilateral organisations such as the United Nations ("UN"), International Labour Organisation ("ILO"), World Health Organisation ("WHO"), the World Trade Organisation ("WTO") and the Organisation for Economic Cooperation and Development ("OECD"). Such laws and guidelines include; inter alia:

- Compliance with the Companies Act (1973), and all subsequent amendments, in particular those amendments which form part of the Company Law review process
- Compliance with labour legislation including; inter alia:
 - Employment Equity Act;
 - Basic Conditions of Employment Act;
 - Labour Relations Act;
 - Promotion of Equality and Prevention of Unfair Discrimination Act;
 - Skills Development Act;

- Pay Equity (no discrimination in pay to women or previously disadvantaged as outlined in SA Constitution)
- Compliance with Occupational Health and Safety legislation
- Environmental Legislation including:
 - The National Environmental Management Act
 - The Water Quality Control Act
 - The Air Quality Control Bill
 - Other environmental legislation as it is promulgated
- Sector specific Legislation
- The Black Economic Empowerment Act, and associated national and sectoral charters and codes of good practice
- JSE Listing Requirements
- Any other statutes which are applicable to SA (or dual) listed companies
- International Conventions and guidelines, including those promulgated by the:
 - International Labour Organisation
 - Organisation for Economic Co-operation and Development
 - United Nations
- Compliance with the laws of nations in which the company operates.

Companies should declare any contraventions of regulations that have been identified and for which court cases are currently pending or in progress.

3. Issues relating to disclosure

Where Element Investment Managers has perceived material risks relating to financial, economic social, environmental and ethical issues, Element Investment Managers will engage with companies as follows:

- By requesting information regarding the relevant issue so as to provide assurance regarding risk management.
- By recommending that the company review activities in the context of best practice.
- By making direct recommendations to adopt practice as set out in our engagement principles.
- By requesting that companies disclose these risks and the policies that have been adopted, and measures which the company is taking to reduce them.

Where Element Investment Managers engages with companies and continuously encounters unreasonable resistance from both members of management and directors, and the company continues to desist from providing adequate assurance that material risks are being managed effectively, Element Investment Managers should use its voting rights.

- 3.1 We will consider not supporting the re-election of any director responsible for disclosure or participating in the relevant Sub Committee which would have responsibility for concern raised.
- 3.2 Element Investment Managers should vote against the financial statements raising issues that it deems, on a case-by-case basis, to have a material impact on the company are not disclosed following repeated requests for disclosure.
- 3.3 Element Investment Managers should also support and participate in the raising of resolutions requiring companies to disclose information on material risk areas
- 3.4 Element Investment Managers supports companies enhancing their disclosure on the following areas:

3.4.1 Code of Ethics

- The core values of a company
- The principles of ethical practice that support such values
- Means of communicating these to stakeholders

3.4.2 Financial Disclosure

- Segmental Reporting
- Geographical analysis
- Consistency of reporting
- Disclosure required in other sections (Remuneration)
- Reporting with respect to related party transactions
- Full reporting on provisions and contingent liabilities

3.4.3 Environmental Disclosure

- Disclosure of environmental policies and management systems
- Disclosure of provisions for environmental rehabilitation including mitigation, legal compliance and the implementation of Environmental Management Systems (“EMS”).
- Disclosure on any instances of legal non-compliance and the measures taken to rectify the situation
- Disclosure on resource usage, with particular focus on electricity and water
- Disclosure on environmental impact, waste and emissions management

3.4.4 Disclosure on Social & Economic issues

3.4.4.1 Labour Force

- Strategy towards human capital management, succession planning, training, staff retention and skills development
- Labour turnover
- Minimum wages
- Training and use of the training levy
- HIV/AIDS
- Occupational health
- Pension fund obligations
- Absenteeism rates
- Workplace deaths/injuries

3.4.4.2 Customers

- Labelling Practices
- Predatory practices and “red-lining”

3.4.4.3 Suppliers

- Procurement practices
- Payment practices
- Ethical Trade

3.4.4.4 Human Rights

- Operations in other countries, particularly countries whose governments have been cited by Amnesty International and the International Labour Organisation as having poor human rights records, or who are lenient with respect to child labour.
- Procurement from suppliers that have operations or procure from countries that may have poor human rights records, or who are lenient with respect to child labour.
- Adherence to international treaties

3.4.4.5 Society and community

- Corporate Social Investment
- Adverse and contentious practices

3.4.5 Government

- Political donations
- Disclosure relating to the payment of Royalties
- Tax compliance

4 Issues relating to Black Economic Empowerment (“BEE”) and transformation

BEE is a political, social and economic process of facilitating access by black South Africans into the South African economy.

The aim of BEE “is to redress the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership of the country’s financial and economic resources to the majority of its citizens” (Black Economic Empowerment Commission Report, 2001).

Issues that are subject to shareholder vote

4.1 BEE deals and schemes of arrangement

In general, Element Investment Managers is usually in the position requiring voting in the company that is being “empowered” by the transaction, rather than the empowerment company (as a result of majority of these being unlisted). BEE deals are often complex and individually structured (including shareholding groupings and financing structures amongst others) and may result in the potential dilution of current shareholders in return for potential long-term value creation, Element Investment Managers should consider all elements of the proposed deals on a case-by-case basis.

4.1.1 Disclosure

Shareholders should be provided with all relevant information that may impact on their ability to make informed decisions in relation to the introduction of BEE participation. Element Investment Managers should vote against specific resolutions in BEE deals where acceptable disclosure has not been achieved. At a minimum the following documents should be made available:

- 4.1.1.1 A copy of the explanatory statement of the BEE scheme of arrangement in terms of section 311 of the Companies Act (1973),
- 4.1.1.2 The shareholders’ agreement, including all annexures, between the company and the proposed empowerment partner/s or group/s,
- 4.1.1.3 The profile document of all the proposed empowerment partners or groups,
- 4.1.1.4 A copy of the auditors’ report on the financial effects of the BEE scheme,
- 4.1.1.5 The memorandum and articles of all parties in the deal,
- 4.1.1.6 The audited financial statements of all parties in the deal,
- 4.1.1.7 A copy of the fair and reasonable opinion of an independent financial advisor, who is not in any way associated with either party to the deal.
- 4.1.1.8 The financial commitment, made by the BEE participants to the deal.
- 4.1.1.9 Clear disclosure of costs of transactions to the company if it is involved in funding the transaction either directly (i.e. investing capital) or indirectly (i.e. providing guarantees or put options). Each component of the direct and indirect funding support provided should be costed on an independent, arm’s length, market-related basis (i.e. what would an independent, disinterested market player charge on the loan funding to the BEE group) so that the overall impact on the company can be assessed accurately.

4.1.2 Principles for consideration

The increased pace of black economic empowerment transactions has resulted in a wide range of different schemes being proposed to shareholders. The financial engineering and resultant

structures centre on the fact that not many of the empowerment partners can afford to fund deals in total, and schemes have to be devised on the basis of deferred payment, optionality or earn-outs. As all the schemes differ according to the size, the nature of the empowerment partners and sector, the deals have to be assessed on a case-by-case basis. The following issues should be considered:-

- 4.1.2.1 The extent to which the deal is “broad-based”, and the structures that have been established to ensure that the “broad-based” structure is sustainable and credible.
- 4.1.2.2 Should shares be provided at a substantial discount or through a company funded scheme, lock-in conditions should be considered that restrict the empowerment partner from transferring ownership to another entity that is not considered to be empowerment. Such lock-in conditions should be established for a determined period, which should cover at least the funding / earn-out phase of the deal. While Element Investment Managers will support the application of such “lock-in” conditions to such deals, consideration will need to be given as to whether the “lock in” conditions do not affect the sustainability of the empowerment partner.
- 4.1.2.3 Element Investment Managers favours an employee ownership dimension to such deals as this has a dual function of retaining staff while also contributing to empowerment at an ownership level. Of importance in this regard are the structures that are put in place to ensure that such employees can use their ownership rights. Employee share ownership programmes should be accompanied by governance structures that ensure that their rights as employees or owners are not compromised.
- 4.1.2.4 Employee share ownership programmes (ESOP) vehicles, which may be in the form of trusts or companies should have a majority of employee elected trustees or directors. Element Investment Managers will not support schemes where management appointees make up the majority of the board members of these vehicles, unless a clear timetable is established in the announcement that will ensure full employee control over the vehicle within six months.
- 4.1.2.4 While understanding that there are risks associated with ownership, schemes should be established in such a manner so as to mitigate and limit the risks associated with adverse movements in share prices, interest rates, commodity prices or other exogenous factors during the funding/earn-out phase of the deal do not result in the empowerment partner becoming unable to meet their funding responsibilities.
- 4.1.2.5 Element Investment Managers should vote against deals where funding schemes depend on earnings hurdle conditions that are deemed unrealistic and may result in the deal not being successful.
- 4.1.2.6 Should the deal have an option component to it, there should be comprehensive disclosure from the independent financial advisor on the IFRS 2 (and/or other) disclosure implications of the deal.
- 4.1.2.7 If the terms of the deal are problematic with respect to the above issues, Element Investment Managers should not support the deal. Element Investment Managers should, however, consult with its segregated institutional clients (and potentially other clients) on whether they may have a specifically motivated policy that they should take responsibility for, or at least have the opportunity to do so.

4.1.3 Election of directors as part of the empowerment deal

Separate resolutions should be put forward proposing the director candidates from the empowerment partner.

The number of nominated directors should be in proportion to the eventual holding. This is consistent with the Element Investment Managers policy with respect to the balance of the board, as the employees and representatives of a significant shareholder are not considered to

be independent non-executive directors, notwithstanding that as non-independent directors they may add considerable value to the board.

In addition, Element Investment Managers would welcome the introduction of black independent candidates following such deals that would further enhance board diversity. Element Investment Managers has the view that independent black directors will play a vital oversight role in ensuring that the overall objectives of transformation beyond transfer of ownership are met.

Issues that are not put to shareholder vote

Transformation is a fundamental business imperative for all South African companies. Any company that fails to acknowledge and apply appropriate strategies is likely to experience long term difficulties. Thus, any company that is operating in South Africa that does not have a coherent and practicable transformation strategy is not operating in the long-term interests of shareholders. In this respect it is a corporate governance oversight, and thus an area where Element Investment Managers should consider voting against the Chairman and other non-executive directors.

4.2 Board diversity and performance

It is the responsibility of the Board of Directors to ensure that it is transformed in terms of racial and gender equity. The Board must develop and implement a measurable transformation plan in this respect through its nominations committee. The scope and the ability of black directors to inform transformation processes is an important corporate governance matter. Transformation should extend to important board subcommittees, notably the Audit Committee, Remuneration and Nomination Committees and, where appropriate the Risk Committees and Transformation Committees.

- 4.2.1 Element Investment Managers is cognisant that there may be a limited number of black candidates who have significant board experience, and this results in certain candidates becoming overcommitted, and thus not attending to all of their board responsibilities. While not an optimal situation, Element Investment Managers should support the election and appointment of alternate directors by such candidates in specific instances where this practice ensures that board diversity and director participation and attendance is improved.
- 4.2.2 Should the company have established a Transformation Committee, Element Investment Managers should recommend that the committee chairman makes him/herself available to answer questions at shareholder meetings.
- 4.2.3 Element Investment Managers should support the election of black candidates nominated to the board who have come from subsidiary companies despite them not being independent. Element Investment Managers should encourage companies to allow black executive directors and senior staff members the opportunity to hold non-executive directorships in so far as they continue to meet their responsibilities.
- 4.2.4 Element Investment Managers should encourage companies to allow directors to seek independent guidance with respect to governance, financial, transformation and risk management issues to ensure that they are fully equipped to meet the stewardship responsibilities that are required of them.
- 4.2.5 Element Investment Managers will apply the same performance, independence and remuneration considerations to all directors.

4.3 Employment equity and training

Employment equity is fundamental to the internal transformation of any company. It is possibly the most important component of long term transformation.

The following issues should be considered

- 4.3.1 Companies should disclose full employment equity reports on an annual basis, which should include employment equity targets, when the targets have to be attained, the current status and the movement over the period.
- 4.3.2 Companies should disclose strategies that are being employed to attain these targets. This should include the following:
 - Training programmes
 - Succession planning
 - Recruitment
 - Retention strategies
 - Career development programmes
 - Involvement in industry based skills initiatives
- 4.3.3 Companies should disclose in the value added statement or the relevant sections of the financial statements the amount that they are paying in skills levies, and whether this is greater than the refunds that they receive for internal and SETA training programmes.
- 4.3.4 Following engagement with the company on these issues, Element Investment Managers should consider voting against the company's financial statements in cases of insufficient disclosure on employment equity, or alternatively against the re-appointment of operational directors where the company has persistently failed to perform in this regard.

4.4 Joint ventures, affirmative procurement, supplier development and treatment

The company should report on and be able to answer questions with regard to the impact that the company has, and what measures are being taken to increase its impact, on broader economic transformation.

Details should thus be provided on how transformation has been effected through the creation, support and development of small and medium size suppliers through procurement policies, joint ventures, business support initiatives and corporate social investment.