LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Financial Management (Ethical Investment) Legislation Amendment Bill 2010)

Members:

MS C LE COUTEUR (The Chair)
MR B SMYTH (The Deputy Chair)
MR J HARGREAVES

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 5 JULY 2011

Secretary to the committee:
Dr A Cullen (Ph: 6205 0142)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 21 January 2009

The committee met at 4.17 pm.

PERES DA COSTA, MS SUSHEELA, Head of ESG Services, Regnan Governance Research and Engagement
WILSON, MS AMANDA, Acting Managing Director, Regnan Governance Research and Engagement

Evidence was taken via teleconference—

THE INQUIRY CHAIR: Good afternoon everyone, and welcome to this public hearing of the Standing Committee on Public Accounts inquiry into the exposure draft of the Financial Management (Ethical Investment) Legislation Amendment Bill 2010. I note for information that the committee made a statement to the Legislative Assembly on 28 October 2010 setting out how it has determined and agreed to progress this inquiry. A copy of that statement is available from the committee secretary.

On behalf of the committee, I would like to thank you, Ms Wilson and Ms Peres da Costa, for appearing today by conference phone on behalf of Regnan Governance Research and Engagement. Andrea tells me she has sent you a copy of the privilege statement.

Ms Wilson: Yes.

THE INQUIRY CHAIR: Have you read the privilege card provided to you by the secretary and do you understand the privilege implications of the statement?

Ms Peres da Costa: Yes, we do.

THE INQUIRY CHAIR: I assume you have both appeared before committees before at some stage?

Ms Wilson: I have not.

Ms Peres da Costa: I have not either.

THE INQUIRY CHAIR: We will have a fun afternoon then! Before we proceed, would you like to make an opening statement?

Ms Peres da Costa: I will. It is an opening summary, really. I should mention that Regnan provides ESG engagement services for 12 institutional investors, including the ACT Treasury. So it is something of a declaration of interest. However, we do also provide ethical screening services to two of our clients. We feel that negative screening does have an important role to play and can be effective in some cases, but our central point is that on the whole we believe that any such screening needs to be situated within a wider context of responsible investment practices rather than forming the core of these.

In addition, we have identified, looking at the legislation in detail, in the draft

exposure a number of things that we would see as likely to be difficulties in implementation of the legislation, in the way that it is written. We would like to shed some light on that as well.

THE INQUIRY CHAIR: Thank you. Why don't you proceed and shed some light.

Ms Peres da Costa: Okay. Regnan was actually founded by institutional investors as far back as 2001, with the intention of introducing environmental, social and corporate governance considerations, within the context of fiduciary obligations, into portfolios. We understand that, from the explanatory statement, the intent of this bill, the draft bill, is to build on and complement the ACT's adoption of the UN principles. We wholly support that objective. We are just not entirely convinced that that objective is effectively met by the bill as drafted.

The central idea that we would like to discuss today is that responsible investment best practice has really evolved from the time when it revolved around screening portfolios. More recently, institutional investors have started to recognise themselves as agents within financial markets—agents which have more of an effect on the market than simple buy, sell or hold decisions would make visible. They act as buyers of financial services and they act as influences over the companies that they own, and exercising some of these duties is really core to responsible investment. In some cases the exercise of those duties is hampered by a strict screening process, which is not to say that there is not a role for some screening within a portfolio.

Ms Wilson: An example of this might be a screen where you do not want the company to have more than five per cent of its revenue come from products that are tested on animals. Currently, that is not normally disclosed. That percentage, due to a host of variables, could change overnight. So given that it is not even standard practice to disclose such things, to start imposing that would provide us with a burden of proof that would be unmeetable.

THE INQUIRY CHAIR: So how would you address that?

Ms Peres da Costa: I guess our thesis is that, given our decade of experience in screening as well as engagement, we think that that criterion might be one that might be extremely difficult to be met.

Ms Wilson: If it were something that was well established—the norms and values of society might say something about the manufacture of tobacco—it is easier. For some of the things that might be proposed, I do not think we have the infrastructure in place, the reporting infrastructure for disclosure protocol, to address that yet. That would require amendments to the corps act and all sorts of things in order to comply.

MS LE COUTEUR: You are aware that there are companies who make their business in terms of doing all of that investigation of what companies actually work on, and addressing these criteria. Taking the example you gave of animal testing, for many companies it would be very obvious that they were not doing animal testing, I would have thought.

Ms Wilson: I think that is an interesting point. Obviously, we do not like the thought

of companies doing that. I think there was a case a while back with the Body Shop, where that was one big part of their branding and then it was discovered that there was some part where they were doing animal testing—a subcontractor; I think L'Oreal or some other cosmetic company. There is a labyrinth or a byzantine sort of process you have to go through to identify that. Yes, there are companies, mostly NGOs in fact, who will track that down. We certainly, in our engagement meetings with companies, when there is an issue that we are concerned about, try and flesh that out, and we do take an approach of trying to get more information on those practices. As I said, we basically laud the principle but we are not sure that this is the best way to get it. We just do not know if it is going to be enforceable.

THE INQUIRY CHAIR: So if it is not enforceable and you have concerns, how would you change the bill?

Ms Peres da Costa: To begin with, I think many of the provisions that are around thresholds might be something that may be better handled perhaps by investment policy rather than by legislation. That is only a suggestion. I do not profess to have expertise on legislation or the governance between the ACT Treasury and its legislative instruments. But the thresholds are something that, again, as an organisation that is very experienced in providing screening services to a number of clients over a decade, are one area that we would see as particularly problematic to have hard-coded in law.

To give you an example, even just relying on the animal testing one, it would be unclear the extent to which a large, diversified retail organisation derived revenue from cosmetics. It is not typically reported what proportion is derived from cosmetics. So then tracing through the supply chain, even if you were able to identify that at a given point in time, or the fluctuations through any reporting period that may occur from revenue coming from an individual product line, would make some of those things very difficult.

Where it is easier, and Amanda mentioned some of these earlier, is excluding something like tobacco manufacturing, excluding something like the manufacture of gaming machines. Where a company's core business is what you are aiming to get at, it is a much easier prospect to ensure that the implementation of legislation can be done.

Ms Wilson: So the thresholds are problematic, just in terms of implementation, for the reasons that Susheela has outlined. But there is also the issue around being specific about what things you were trying to exclude—whether it is values based and so on. As we know, whether or not something is ethical is quite subjective. Gaming, if you are a libertarian, is not going to be such a bad thing. We think that if you were going to have this criterion, you would have to be extremely clear on exactly what it is you wanted out, and for what reason. That needs to be built in. I think that would be a mammoth task—reconciling the subjective views you have.

THE INQUIRY CHAIR: If you pull out the thresholds, does that not render the bill somewhat impotent? Therefore I guess the logical conclusion is: don't have the bill; just have a government policy that says we won't deal with people who do X, Y and Z.

Ms Peres da Costa: Without making reference to the political environment in which the ACT parliament may need to operate, one way that may allow some ethical views to be expressed through an investment policy without tangling up the robustness and the seriousness of the investment processes which need to be implemented is to have some mechanism by which positions taken by the ACT parliament can be referred to their investment organisation for further interrogation and/or action as is seen to be appropriate. A reasonable action for an institutional investor of your size would be to insist that any service providers address concerns that you might have associated with particular ethical issues, with reference to the stock choices that they make over time.

MS LE COUTEUR: Is that in effect doing negative screening but with less defined criteria? You said with reference to stock choices over time; is that what it would amount to?

Ms Peres da Costa: I guess what I am suggesting is that the investment case needs to be informed by the ACT position but I think the hard coding of that position in a rules-based system is perhaps both difficult to implement and associated with some unintended consequences perhaps, which I will come to in a minute. But it also fails to make use of an opportunity that is open to any institutional investor to influence the thinking of the financial market's participants who they employ.

MS LE COUTEUR: You are talking there about if you are a shareholder talking to the management; that is what you mean by that?

Ms Peres da Costa: To management of the company, to any financial service providers that you may employ, and in collaboration with other investors as well. One of the key aspects of the UN principles for responsible investment, and I think one of its strengths, is actually the idea of collaboration. One of the six principles recognises that institutional investors working together can effect change in markets and within companies. They are actually quite a powerful agent. In some senses I guess I see it as a stepping aside from that duty as a responsible investor, to just say, "Oh well, we won't invest in these things," and just walk away from it rather than to try and exercise that influence.

Ms Wilson: Going back to unintended consequences when you hard-code or hard-wire rules through, what we often see in all sorts of spheres that we work in is that the reaction tends to be to focus on a "work around" rather than addressing the issue. What we are saying with reference to the UNPRI is that we need to triangulate and try and harness the energy of community concern, in our fiduciary duty and in investment choice, and, where appropriate, engage with companies and have dialogue, and even where appropriate embarrass them, where we do not think that they are aligning with the norms and expectations of the community.

One example where we see workarounds and where I have certainly seen them for a long time when they have tried to enshrine things in legislation is around executive pay. You saw that in the United States when they put a $1 million fixed cap on pay and then you saw the explosion in incentives, and witnessed the GFC. So we want to harness resources in the right way to get the best outcome. I guess that is our main point here.

MS LE COUTEUR: Part of the bill also talks about positive investment screening. Do you have any views on that?

Ms Peres da Costa: We think that positive investment in sustainable businesses, practices and operations is a good thing. It would surprise me if there was not already some measure of recognising the investment benefits of those things within an investment process already. I am not sure of the extent to which it is necessary, again, to hard-code those. There is an element of picking winners, I think, in a bill that stipulates—in fact, picking losers as well. What we know about companies is that there is often a lot more complexity there. To give an example, regardless of what an individual institution's policy on uranium may be, the reality is that for a number of jurisdictions in the world uranium is an important part of the energy mix that avoids alternative fossil fuel use. So with respect to the extent to which one is able to make the trade-off, it makes sense for investment decisions to be made about that rather than for legislation to hard-code.

What I encourage investors to do is to identify the principles that they would like to operate with and to allow the policies, procedures and the hard-letter law to operate in a manner that is a little bit more flexible and recognises the more nuanced realities.

MS LE COUTEUR: Talking about more nuanced realities, you are pushing privately for a number of positions, as I understand it. How does the public and how does the ACT government know what improvements you are actually pushing for and what you have achieved?

Ms Peres da Costa: There are two parts to our process of reporting. The ACT Treasury and clients that we have receive quarterly reports on our activities, annually on outcomes, as well as over a longer period on outcomes with particular companies. As you might imagine, on many issues that we work on, there is a periodicity that goes for longer than a single year. Each year we have a process whereby we use the research that we do in-house to identify the companies, the issues, the sectors and the themes where we think that a lot more work needs to be done to improve ESG performance. We put that proposal to all of our 12 engagement clients, including the ACT Treasury, for comment, discussion and approval.

MS LE COUTEUR: How does the public find out about this, given, in the case of the ACT at any rate, it is public money that is being used here?

Ms Peres da Costa: There is certainly a similarity with the situation of our superannuation fund clients who have a membership base that arguably they would like to report to as well. It is an interesting kind of a tension because on the one hand obviously the principles of transparency are very important to us, and they are among the things that we advocate for the companies that we engage—public companies in the ASX 200. However, we were set up with a very special purpose of effecting change within companies, and at the time we were set up it was recognised that there was a longstanding push by NGOs, labour organisations and many others to try to achieve change with listed corporations through more aggressive means, often in the public domain. It was recognised that there was a gap for a more business-oriented discussion that was able to happen outside newspapers and without embarrassing companies, in order to more constructively effect change.

We have found that to be quite effective over the years that we have taken that approach. So we have deliberately set out, and I think we have been effective in building constructive relationships with companies because a lot of the engagement that we do is confidential. The reality is that many of the conversations that we have and the change that we are able to get from companies only happen because we have those confidences with them.

MS LE COUTEUR: Speaking as someone who is not part of the ACT government, is there any way that we can find out what, if any, successes Regnan has had?

Ms Peres da Costa: There are probably some things that we can do at the margins to identify companies where there is no longer any risk of embarrassing them. For instance, with companies that have long since exited the stock market for various reasons, we can describe the things that we did with those organisations. Certainly, on a couple of individual cases, we have sought permission from companies to communicate about our discussions with them, and we have received that and been able to disclose. But it tends to be very restricted.

The reality is that there is a tension between wanting to be able to be visible to our clients and their stakeholder audiences and the need to preserve such relationships with companies that would allow us to go back the next time we have a concern that we would like them to address. So it is something that certainly we could talk a little bit more about and have a think a little bit more about. But to date our client base has been satisfied that we are prioritising the effectiveness of the work that we do over the visibility of the work that we do.

Ms Wilson: At Regnan we basically have three branches of our work. We do research, we do engagement, which is dealing with companies, and we do advocacy. So when we have an issue, for example, around executive pay or around diversity, which has been an issue, or around carbon pricing, you will see that we are in the press. We have had opinion pieces in the *Financial Review* and the *Australian*. We write letters. We sometimes are in coalitions who are looking at certain issues. So we are not entirely private. It is just that when it comes to something that may embarrass a particular company, for example, within the board there might be a conflict. We are actually on the side of good in trying to help to resolve that, but it cannot be made public. So it is not entirely secret business; it is just where it is at the moment.

The other point I would make is that often the rules are catching up in practice. So we are often trying to persuade companies of things that will become enshrined in corporate governance practice several years later. So that is why we are quite happy a few years later to retrospectively go public with what we have done.

THE INQUIRY CHAIR: In that regard is there something that you would do publicly if you could not get the desired outcome—shareholder motions, for instance?

Ms Peres da Costa: We have within our processes the option to go through public processes. We just tend not to need them because the conversations that we have behind the scenes tend to move things along more quickly. Certainly, having the ability to put to our clients the idea that even calling an EGM may be one of the things

that you would like to consider down the track is a very powerful, unstated stick in our conversations with companies. It would be something that we would certainly be very careful about doing.

MS LE COUTEUR: Do you give your clients advice about resolutions which are put by others? In particular I am thinking about the climate change resolution put to Woodside this year, on 21 April. Do you have any advice for your clients on these matters?

Ms Peres da Costa: We do not formally do proxy voting, but we certainly did provide a background for our clients on some of the issues that we saw as relevant for that situation. I think your question was about whether or not we suggested that they vote in a particular way?

MS LE COUTEUR: It was, yes.

Ms Peres da Costa: In that case, no, we do not. But we provided quite extensive background, and in that case we did it by a teleconference with a number of clients who were interested in dialling in at the same time. And we plan to do that going forward as well. The climate change resolution for Woodside was certainly one but it is not the only time that we have done similar things or provided backgrounders that are specifically informed by a news flow or that respond to news flow, including deals that might be happening in the market.

THE INQUIRY CHAIR: One of the options that the committee has is to accept material in camera and we give a guarantee that we would keep it in confidence. You must have prepared some internal documents that prove that you are able to achieve what your stakeholders want to achieve. If we were to offer you that option, is there something you could provide us with as an example of how you have made change?

Ms Wilson: I would think so, yes.

THE INQUIRY CHAIR: On behalf of the committee, as chair, I would like to offer you the opportunity to provide material, which we guarantee to keep confidential, on how you work behind the scenes. I am certainly intrigued.

Ms Wilson: So how would we do that?

THE INQUIRY CHAIR: The best way is to put it in writing and send it to the committee secretariat, and we will be in touch with an email to tell you where to send it.

Ms Wilson: Okay.

THE INQUIRY CHAIR: What other public things might you do apart from the motions?

Ms Peres da Costa: A lot of what we do has actually been working with bodies that have similar interests to us. For instance, we had a very long campaign to improve the practices around director share trading in the market. Over a long period of time our

research revealed that there had been many cases where directors had breached their own guidelines and even the Corporations Act, as well as ASX listing rules in terms of disclosure of the trades they had made to the market. There had been times where they had been trading during black-out periods—so after the books had closed and before the results had been announced, directors were trading in their company's stock. Over a long period of time we engaged companies, but then we also began to engage the ASX and ASIC to look more closely at this issue. We spoke extensively to the AICD. We started to write opinion pieces and we worked with a number of journalists to start to bring some light to this issue. I am pleased to say that over time the regulators started to take up the slack on this particular issue and have started to report more frequently on the director trading that goes on.

So that is an example where we have taken a pragmatic approach to how we can make the change happen. Rather than taking primarily a flashy approach, we used the media and worked with other bodies to try and effect the change rather than to try and bring a lot of embarrassment or attention to the individuals.

THE INQUIRY CHAIR: In your submission, on page 3, paragraphs 2 and 3, you almost seem to be saying that it is better off to be inside the team and effecting change than outside the team and being excluded. If you apply that to the bill as presented, would it perhaps be more desirable to reduce the bill to a statement of intent inside the act, saying, "The government must maintain a policy of ethical investment, adhere to the policy and report quarterly to the Assembly"—something like that—but then make the detail in the policy so that you have got that flexibility rather than the black-letter law?

Ms Peres da Costa: Yes, that is very much what we would advocate.

THE INQUIRY CHAIR: Is there a jurisdiction that has a model that you would prefer to work with? Has somebody gone down that path?

Ms Peres da Costa: That is a good question. The majority of those that we work with are superannuation funds. Certainly it would be a matter of investment policy for many of those. But I would need to take that question on notice as to—

Ms Wilson: Are you thinking about other countries?

THE INQUIRY CHAIR: Either other countries or a jurisdiction in Australia, if you thought there was a jurisdiction leading the charge. But if there was somebody overseas that had perhaps progressed further than in Australia, it would be nice to know, from your opinion.

Ms Wilson: I think it is fair to say that this field is evolving. It has really started to evolve very rapidly recently. So we are watching it. We get *Responsible Investor*; every day I think we are seeing more and more changes. If you look at the Norwegian example, it can change the market, and there is a roll-on effect. What we have seen with them is that they are sort of experimenting. I think we could take that question on notice but I do not think that we have the perfect model in our mind that is already operating out there.

Ms Peres da Costa: That is right.

THE CHAIR: That was going to be the next question: if there is not somebody around the world, is there a perfect model that you would like to see in place?

Ms Wilson: Aside from remodelling the whole landscape—

THE CHAIR: A bit out of our purview but we are happy to help you do it.

Ms Peres da Costa: What we would like to see—and this applies with the ASX as well, so the ASX itself has corporate governance principles that it requires the companies who are listed on it to conform to. But it applies an "if not, why not?" test. For instance, in the ASX corporate governance principle No 7, it talks about disclosing risk, including a whole lot of risks that are not conventionally thought of as financial risks. And if you do not do that, disclose why not. So it takes a principled stand and it is a little bit flexible on the implementation.

I think there is a lot of strength in the "if not, why not?" type of disclosure, which makes it incumbent upon the person opting not to make the expected decision to explain why not. It does allow them the flexibility to do so. So if you were to have within legislation the statement of principle as discussed, and then within policy explain what the accountability needed to be about meeting those principles, and allowing for an "if not, why not?" type of situation, I think that would be a good starting point for thinking about how you might be able to code a desire to express ethical investment principles.

MS LE COUTEUR: Do you advise any other government funds?

Ms Peres da Costa: I beg your pardon?

MS LE COUTEUR: Your 12 clients: are any others government clients?

Ms Peres da Costa: No.

MS LE COUTEUR: There are a few bits that I do not understand. Your third point in paragraph 4 says:

> Greater pressure on an excluded company that has no revenue-generating alternatives (e.g., coal mine, gaming company) than on a company that profits from excluded activities despite having alternatives …

Could you rerun this for me?

Ms Peres da Costa: Sure. This point was about some of the unintended consequences of exclusion-based investing. It takes as a premise the idea that in some ways the objective is to not reward companies with capital when they behave badly. In such instances, I guess this point asks the question: is a company behaving more badly when it capitalises on a "sin" activity, if you like, even though it does not need to, than a company who is in a sector—perhaps a coal mine, for instance—that, right or wrong, is an integrated part of the Australian economy and has no alternative? So is it

worse for a Woolworths to profit a lot from cigarettes than it is for a coal mine to continue to produce coal?

MS LE COUTEUR: Is what you are trying to say that, to take the coal mine example, if we decide we are anti coal mines and no-one is going to invest in them and they have got nowhere to go, that is bad; but if a Woolworths invests in coal mining and supermarkets et cetera, if we say, "Goodbye coal mines for Woolworths," this does not make as much difference. So should we also stop Woolworths totally? I am just not quite sure—

Ms Wilson: Say if Woolworths was getting eight per cent of its revenue from cigarettes and the threshold was 10, for example, so they were able to do that, but for a coal mine we decided, "Because you get 100 per cent of your revenue from this polluting activity, we'll starve you of capital," whereas because Woolworths still slips in under the threshold and has other alternatives, even if we lower that threshold to five per cent, it can keep making money, regardless. We are not sure that that gives the single activity companies anywhere to go, and it actually deprives us of influence. It sort of bifurcates the market. That is our issue.

MS LE COUTEUR: Yes, you are quite right; there are some things where it does not give the company anywhere to go except out. That is not an unintended consequence.

Ms Wilson: No, you are right.

Ms Peres da Costa: I guess the unintended—

Ms Wilson: The bifurcation.

Ms Peres da Costa: Yes, with the unintended consequence, what I was trying to express there is that there are several. One is that not all investors have ethical dimensions to their decisions. So what results is that the companies in the most contentious activities, if we were to take what is contemplated by the bill to its logical extreme, would end up in the hands of those with the least interest in ethical outcomes.

MS LE COUTEUR: I would contend that that is probably inherent in the situation anyway. Taking tobacco as an example, I would assume that the people who run a tobacco company have less concerns about tobacco than people who do not. Isn't that going to happen anyway—that people running a company doing whatever are going to be reasonably okay with what the company does? Isn't that really all that we are saying?

Ms Peres da Costa: I guess what I was talking about was not so much those who manage the company as those who invest in the company.

MS LE COUTEUR: And also those who invest in it. I would have thought the same—

Ms Peres da Costa: So what I would like hypothetically for tobacco companies—and tobacco companies are probably a good theoretical example for us to use because

there is little tobacco in the ASX 200 in the market that we cover—is that they are effectively influenced by their owners to be very vigilant about not selling to minors, to be extremely vigilant in the kinds of advertising that they are not permitted to do. What I do not want is a situation where companies like tobacco companies wind up in the hands of investors who are less concerned about the practices that those tobacco companies employ and, as a consequence, tobacco companies start perhaps acting less responsibly.

Ms Wilson: Also, because we take a long-term perspective on that, if we did have some holdings in tobacco companies we would be looking to them to diversify and to protect their future earnings and to gradually move out of tobacco. If you take the example of British American Tobacco, I remember after Sierra Leone they were handing out cigarettes to children, to increase the addiction rates and so on, yet you would not have any clout at all if you did not have any holdings. It is not clear; I agree with you. But I guess it is almost the least worst option, if you look at that sort of example.

MS LE COUTEUR: From my point of view it is like: if you have nice, caring slave owners or uncaring slave owners, slavery is probably still abhorrent.

Ms Wilson: In the case of tobacco we would be saying that you need to diversify. You have all of this money you have made over many years, and that needs to start going into something more sustainable, and tobacco is not sustainable.

Ms Peres da Costa: I probably should highlight the idea that we do recognise that there is a role for some exclusions within a portfolio.

Ms Wilson: Yes.

MS LE COUTEUR: Is there anything that you would think should be excluded?

Ms Peres da Costa: It is not an uncommon idea that tobacco companies' practices, even beyond the selling of tobacco, are somewhat egregious. So I only need to look at some of the campaigning around the plain packaging that is going on at the moment to think that the way that they operate, not just the business they are in, gives me cause for concern. For instance, I would not necessarily object to an idea that that would be a reasonable ground for an exclusion.

MS LE COUTEUR: Also in point 4, you say that an unintended consequence could be increasing the cost of capital to companies needing to invest in improved ESG characteristics. I am not sure that I totally agree with this. Doesn't capital have to go somewhere? We could put the capital into windmills rather than in a coal mine.

Ms Peres da Costa: You certainly could. One of the realities from dealing with companies is that some companies are well positioned to move into exactly the kind of businesses that we think are going to be the businesses of the future, and not all of them are going to be start-ups. When you are running an investment portfolio, there are a whole lot of characteristics associated with start-up companies, venture capital and so on, that do not necessarily allow them to be a core part of your portfolio. It makes sense, when you are thinking about a big industrial company who has a lot of

experience, for instance, in manufacture, distribution, good relationships with suppliers in the market—where there is a capability there, it makes sense for them to be doing some of that R&D and investing. I think it is just good business sense not to have to reinvent the wheel with things like HR infrastructure, distribution, transport and so on.

Ms Wilson: A lot of energy companies understand energy and they understand the market for energy. They understand consumer demand, peaks and so on. So it is not just about the raw resources; there is all sorts of IT and infrastructure there that can make a transition to clean energy. We have seen that probably more overseas than here. That is the sort of thing we would want to encourage.

MS LE COUTEUR: Do you have an end game? Dealing with tobacco—maybe it is not a good example—or climate change, is there a point at which you say, "We've been talking to this company for X number of years; we have achieved very little and we will now start advising our clients that nothing is going to change and they should get out," or because nothing is going to change we have public motions or something? Or do you keep talking—

Ms Peres da Costa: No, we would be advising them to get out but that would tend to be on the basis of corporate governance. We see companies as essentially collections of humans, processes, IT and so on. So ultimately on many occasions when we feel we are not making enough progress, we realise that actually there needs to be a change in personnel at the top before these issues are adequately understood. It would only be in a situation where the governance structures of that company prevented shareholders from making those changes in their own interest that we would be saying to our clients: "Look, there's really no hope in this instance. There's nowhere to go with this. No matter what you do, you can't make a change because this company has hard-coded lack of accountability to shareholders into its constitution and therefore we regard it as uninvestable."

MS LE COUTEUR: Given what you said about people being part of the company, does that mean you ever advise your clients to vote against specific directors? My understanding is that in general directors are put forward by the board. I know they are voted on, but they tend to be the board's appointments that get forward. So given you are having problems potentially with a company, would you advise against directors' appointments?

Ms Wilson: We are going to be providing you with some material confidentially. That might be something we could cover in that, if you are happy with that.

MS LE COUTEUR: Yes.

Ms Peres da Costa: As part of the public record, it would be worth noting that this is the very kind of situation that is more effectively and more cost effectively handled by the behind-the-scenes conversation. We often have a discussion with directors on the board or the chairman of a board about particular directors and the need for some refreshment. It often happens that a director will retire. I hardly think that we are the only people having those kinds of conversations. I would love to think it was all down to Regnan, but I think that is unlikely to be the case. But this is exactly the kind of

time when we would not want to be making a big public splash about having voted someone off or having advised, even, to vote against a director, because we find it much cheaper not to go down that route. There is a much smaller transaction cost; relationships are preserved; and nobody comes out embarrassed. We are able to go back to that company later and have the conversation.

THE CHAIR: Thank you for that. It is 5 o'clock; we do not want to delay you. Thank you very much for your insights. It is very interesting.

On behalf of the committee I would like to thank you, Ms Wilson and Ms Peres da Costa, for appearing today on behalf of Regnan Governance Research and Engagement. When it is available, a proof transcript will be forwarded to you, to provide you with the opportunity to check the transcript and suggest any corrections or clarifications. This public hearing is now closed.

The committee adjourned at 5.02 pm.