

RESOLUTIONS AND SOLUTIONS

October 07, 2026

SUMMARY OF DISCUSSIONS

Background

Institutional investors have a very major role to play in shaping the fortunes of companies that they have invested in. Both because of the size of their holdings and the stewardship role that some of them are expected to perform, their influence on voting behaviour is disproportionately high. Many of them, either on account of time constraints, or on account of being unwilling to engage, go blindly by the recommendations of proxy advisory firms. Is outsourcing of thinking a desirable option? What happens if personal prejudices, or a pick and choose approach informs those recommendations? How should corporates engage with institutional investors and proxy advisory firms? These issues formed the basis of the roundtable discussion.

DISCUSSIONS

ROLE AND INFLUENCE OF PROXY ADVISORY FIRMS (PAFs)

Outsourcing of Thinking to PAFs

- Large institutional investors, because of the number of companies they are invested in, often do not have the bandwidth to independently assess every shareholder resolution, especially due to bunching of Annual General Meetings (AGMs). Reliance on PAF recommendations may therefore be inevitable to some extent. However, such outsourcing should not result in the complete outsourcing of thought and judgement.
- The fundamental question is whether institutional shareholders are still applying their own mind while voting, or whether voting has become a largely mechanical exercise based on PAF recommendations. The consequences on the company of such decisions should not be lost sight of.
- Institutional investors often seem to agree with PAF recommendations because they have to otherwise make a case for the non-agreement, and submit those internally for approvals. Most managers do not have time or the inclination for this in the AGM season.
- All companies have some active investors, and some passive investors. The company is normally in touch with the former category, but the latter category usually relies on PAF recommendations, without engaging with the company. Most foreign institutional investors, for instance, rely heavily on PAF recommendations.
- Some domestic institutional investors may, however, take a different voting position from the recommendation of a PAF, particularly where there is an engagement with the company and additional information is provided. There have been instances where institutional investors have voted in favour of resolutions despite negative PAF recommendations.
- Investors should vote in a manner that can be independently justified, rather than treating PAF recommendations as the final decision. The rights of shareholders should not effectively be outsourced and diluted through excessive dependence on PAF recommendations.

Influence of PAF Recommendations

- Increasingly, PAFs try to position themselves as the sole custodians of governance. They exhort companies to up their standards, which is a welcome change, but it cannot result in companies being penalised with negative recommendations, when a company fails to meet the higher expectation. It is felt by some that owing to PAFs, some companies have improved their disclosure standards. However, there are some who feel that good companies would proactively want to disclose quality information to their investors, irrespective of the influence of PAFs.
- The report by a PAF has a significant influence because it creates an initial perception among investors. By the time a company responds to the recommendation, investors may already have formed a view or may have voted.
- The increasing influence of PAFs in some matters has raised the question of how much authority/influence should effectively be enjoyed by such firms, which are not themselves shareholders of the company.
- PAFs should not be permitted to influence investor perception beyond their legitimate role, which is as providers of voting research and recommendations. Further, they should not be allowed to influence perceptions by writing in media or commenting on specific companies.
- There is a need for clarity on the remit of PAFs, including by having a clearly defined scope document, and the extent to which investors should rely on their recommendations.

PAF GUIDELINES AND THE ONE-SIZE-FITS-ALL APPROACH

Beyond Regulatory Requirements

- PAFs are increasingly perceived as setting governance standards through their voting guidelines, which often go beyond legal requirements. While higher standards can be beneficial in some cases, there is a need to define the limits of this increased requirement. Further, a one-size-fits all approach should not be adopted.
- PAF guidelines relating to Independent Directors, their tenure, Executive Chairpersons, ESOPs, committee composition, ESG performance and other governance matters can be materially higher than the requirements prescribed under law. Companies may have complied fully with the applicable legal and regulatory requirements, while PAF guidelines may nevertheless prescribe additional or different standards.
- A company may therefore have to consider the Companies Act, SEBI requirements, PAF guidelines, and the voting guidelines of large institutional investors while taking important decisions, and structuring a shareholder resolution. This could result in companies having to consider multiple layers of standards in addition to applicable law.
- Further, different PAFs may have different voting guidelines on the same subject, adding to uncertainty for companies and investors.
- There is a need for greater commonality among PAF guidelines on at least the fundamental governance matters, while retaining room for legitimate differences in judgement.
- Also, a one-size-fits-all approach cannot work across companies, industries and business circumstances.

Some examples of Rigid Guidelines

- PAFs have their own guidelines on attributes of independence for Independent Directors, and subsequently their appointments. This also impacts on their recommendations for appointment of members of Nomination and Remuneration Committee.
- PAFs may recommend voting against the appointment of an Executive Chairperson, even when the company has performed well, solely because their guidelines do not support the Executive Chairperson model, which is permitted under law and regulations.
- PAFs may recommend voting against ESOP proposals as a matter of principle, without adequately considering the company's circumstances. Even in justification for resolutions, there is a requirement for higher disclosures such as business targets achieved versus those set, which companies will legitimately not want to disclose. The expectations of PAFs often are unrealistic.
- PAFs may recommend voting against executive remuneration since they feel the explanatory statement is not adequate, thereby second-guessing the Nomination and Remuneration Committee's role.
- PAFs may not support the appointment or reappointment of a Director where the proposed tenure is less than three years, even though the appropriate tenure may depend on the circumstances of the company and the reasons for the proposed tenure.
- PAF guidelines may result in a recommendation against a committee Chairperson where a woman Director is considered non-independent under the PAF's own guidelines, even though the individual is, under law and regulations, independent. This could result in their stating that the committee composition is not as per law.
- A PAF may recommend voting against the appointment of a Chairperson because the company's ESG performance does not meet the PAF's prescribed standards.
- There have also been instances where PAFs have recommended voting against an individual Director because of concerns relating to another Director or the overall Board composition.
- PAFs have their own guidelines on royalty, and how much should be paid.
- Such recommendations raise the question of whether PAFs are assessing individual resolutions within their proper context or applying predetermined standards without sufficient regard to company-specific circumstances. It also raises the question of remit when one Director's appointment seems to be influenced by another Director's performance on the Board. PAFs should assess each resolution on its own merit and avoid allowing unrelated considerations to determine their recommendation on a specific resolution.

QUALITY, EXPERTISE AND ACCOUNTABILITY OF PAF RECOMMENDATIONS

Expertise of Team

- There is a need to consider minimum qualifications or competency requirements for persons responsible for analysing and making recommendations on company resolutions. Such persons should have the expertise necessary to understand and interpret the resolutions and the associated governance, legal and commercial considerations. As of now, SEBI Regulations only require the minimum requirement to be graduation, which is hugely inadequate to understand and opine on company resolutions. There is an urgent requirement to have some benchmarks.

Quality of Recommendations

- PAFs should have a transparent process for preparing voting guidelines and recommendations, and should disclose the methodology and guidelines applied.
- Where voting guidelines are proposed to be changed, the process followed should be in consultation with industry and institutional investors. Once the process is over, PAFs should disclose the changes, and explain the reasons for the same. This would make the process truly consultative, and in line with the process being followed by Regulators themselves. The process which seems to be followed at present is to solicit response, but the changes not being communicated transparently. A multi-stage consultation process, akin to the one being followed by Regulators, will help.
- Where a PAF changes its recommendation on the same subject in subsequent years, the change in approach should be explained.
- The PAF reports must clearly bring out whether a recommendation to vote against a resolution is based on non-compliance with law and regulations or non-compliance with the higher standards that the PAF has set out. This would result in the institutional investors taking the judgement call, without leaving this to the PAF. Companies must not be penalised for not meeting standards of governance higher than those prescribed by law and regulations.
- Even where PAFs issue a positive recommendation, they may flag significant concerns or red flags. Such concerns should also be based on a transparent and consistent methodology.
- PAF reports sometimes contain factual errors or miss vital information, already available in the public domain. These errors are not always corrected through a revised report. PAFs should have a clear process for companies to flag inaccuracies or omissions, with material errors corrected promptly. The draft report of the PAF should be made available to the company sufficiently in advance, and not with 48 hours to comment, so that the concerned person can flag any inaccuracies. The practice of sending draft reports to the company is not followed uniformly by different PAFs, with the foreign PAFs not sending them, and not factoring any information provided by the company even in the event of a factual inaccuracy.

Format of report

- Companies operate with established disclosure formats and regulatory requirements governing the information provided to investors, whereas PAFs do not always follow comparable levels of standardisation in their reporting processes. Use of dramatic colours like red and green for voting recommendations too adds to sensationalising some contents of their reports.

Accountability of PAFs

- Companies are accountable to Regulators, shareholders and other stakeholders for their disclosures and actions, whereas questions remain regarding the accountability of PAFs for the recommendations they issue.
- The right to question companies and challenge their proposals should be accompanied by an appropriate level of accountability on the part of PAFs.
- There is a need for stronger codes of conduct for PAFs, which should address issues such as conflicts of interest, proper disclaimers, quality of recommendations, use of information, consultation processes and accountability for errors.

- Foreign PAFs should also be subject to appropriate standards of accountability where their recommendations influence voting on resolutions of Indian companies. At present, those who have no presence in India, consider themselves as not being accountable to any Regulator or any other body in India. There is a need to change this.
- Accountability should extend not only to factual errors in a report, but also to material facts or disclosures that were overlooked or not adequately considered while formulating a recommendation.
- Competition between different PAFs, that could at times result in different views on same resolutions, would adversely impact the company, with no accountability being cast on the PAFs.

CONFLICTS OF INTEREST AND BUSINESS MODELS OF PAFs

Advisory Services

- The providing of advisory services by PAFs to companies whose resolutions they may subsequently analyse, or make recommendations on, raises significant conflict-of-interest concerns, including, but not limited to, independence of the recommendations. It also puts undue pressure on companies to avail their services. Experience has shown that where companies have entered into advisory arrangements with PAFs, negative recommendations have been less likely because of the commercial relationship.
- Some companies are asked to purchase or encourage their investors to purchase PAF voting recommendation reports.
- Some companies have also been asked to consult empaneled law firms to get the resolutions vetted.
- Some PAFs also provide scores, such as ESG scores to companies, and then sell advisory services based on those.

Conflict Management

- PAFs should not use their position as voting advisors to create pressure on companies to purchase advisory services.
- The business model of PAFs, and the potential conflict between advisory services and voting recommendations, require greater regulatory clarity. Appropriate Chinese walls and internal safeguards are necessary where PAFs provide multiple services.
- PAFs should be required to disclose any advisory relationship or other commercial relationship with a company covered by their report. There is a need for disclosures, such as a disclaimer, clearly stating any advisory service provided to the company, on whose resolutions, a recommendation report has been issued. This disclosure/ disclaimer should include any advisory service provided through a subsidiary of the PAF too.

COMPANY-PAF ENGAGEMENT AND CONSULTATION

PAF and Company Engagement

- PAFs do not consistently approach companies for clarifications/ additional information before issuing “for” or “against” recommendations.

- In many cases, companies receive the PAF recommendation only towards the fag end of the process, leaving as little as 48 hours to respond. This is even though the company may send its notice as early as 30 days prior to the meeting. The alleged reason for this is that the PAF does not have adequate time to send the report earlier.
- 48 hours may not be sufficient for a company to assess the recommendation, determine the appropriate response, obtain internal approvals and, where necessary, involve senior management.
- In some companies, senior management may also be reluctant to engage with PAFs. Among other reasons, this could be because the voting process may already have progressed significantly.
- A PAF report should ideally be shared with the company sufficiently in advance to enable a meaningful response.
- In the case of a negative recommendation, company's clarification/ rationale should be factored in. The report should also clearly state whether the negative recommendation reflects non-compliance with law and regulations, or non-adherence to the PAF's guidelines. Then it should be left to the institutional investor to take a decision.

Company Responses to Reports

- Companies should have adequate time to respond, and the company's response should be annexed to the PAF report, where relevant.
- Addenda are important where additional information or clarification materially changes the understanding of a proposal. However, some companies are skeptical in issuing these since the information contained therein is, at times, quoted by media without proper context.
- PAFs have, in some instances, listened to companies and revised their reports after receiving clarifications. Large institutional investors and fund houses have also been known to change their voting stance after receiving clarifications from companies. This demonstrates the positive outcome that meaningful engagement can produce.
- There is a need for a draft report of the PAFs to be sent to the company, before it is shared with the institutional investors. This will help eliminate any factual inaccuracies. Further, the report should contain the company's point of view, where necessary, in addition to the PAF's point of view. This will give the investor both points, with the judgement call being with the investor. Pending this, in a number of situations, the company would start from a position of defense, trying to explain why the negative recommendation needs reconsideration by the investors.

ROLE OF INSTITUTIONAL INVESTORS

Institutional Investors' Approach

- Institutional investors' approach to engagement may depend on the size of the company, their holding and their relationship with the company, with some international investors relying solely on PAF recommendations.
- Institutional investors should have their own stewardship guidelines and a defined framework for taking voting decisions. At present, some investors have such codes in place. Reliance on PAF recommendations

should be consistent with this framework and should not replace an independent assessment of the resolution.

- Institutional investors should use PAF recommendations as an input into their decision-making rather than treating them as the decision itself. The ultimate responsibility for deciding should remain with the institutional investor.

Engagement between Investors and Companies

- Very few institutional investors approach companies to seek clarification on proposed resolutions before voting. Both the company and the institutional investors should engage where a resolution raises substantive concerns, rather than relying exclusively on PAF recommendations. The Company Secretary, along with the Investor Relations (IR) team, should proactively offer additional information, where required.
- Companies undertake investor roadshows and interact with fund managers, but the team making the investment decision may not be the team deciding how to vote. Stewardship teams often operate separately from fund management teams, creating another layer in the voting decision-making process. However, this should not prevent companies from proactively communicating with investors.
- Contact details of stewardship teams can be made readily available so that companies can directly provide explanations regarding proposed resolutions and their rationale.

DISCLOSURES AND THE COMPANY'S RESPONSIBILITY

Quality of Company Disclosures

- While concerns have been raised regarding PAF practices, companies also have a responsibility to provide complete, clear and adequate disclosures. It is felt by some that quality of corporate disclosures have improved in several respects due to the scrutiny exercised by PAFs.
- Some companies continue to draft disclosures in a manner that resembles legal literature, rather than providing information that enables investors to understand the rationale for the proposal. There is a need for Company Secretaries to work with IR teams to make resolutions more meaningful. At the same time, the communication should not be defensive. It should lay down, clearly and completely, the rationale for the resolution.
- The starting point while drafting a resolution should be the mind of the investor whose approval is being sought. Companies should anticipate the questions investors are likely to raise and ensure that the resolution and its explanatory statement clearly articulate the rationale for the proposal, the relevant facts and the considerations supporting it.

Engagement Post Issuing Notice

- After issuing the notice containing shareholder resolutions, companies should consider using investor or analyst calls, or exclusive calls, where appropriate, to explain the rationale for important resolutions and allow investors to seek clarification. However, large investors are unlikely to ask questions in joint forum, and one-to-one discussions may be meaningful with them.
- Companies should also engage directly with PAFs where additional information or clarification may address concerns underlying their recommendations. However, in the process, confidential information must not be given out, and there must be a clear stop to how much information should be shared.

REGULATORY FRAMEWORK AND THE ROLE OF SEBI

Need for Regulatory Clarity

- Questions were raised regarding the extent of PAF representation and participation in SEBI committees. The fact that PAF representatives may participate in regulatory discussions, and that PAFs may contribute to regulatory thinking, makes the need for transparency regarding their role even more important.
- There is a need for greater clarity regarding the role, remit and accountability of PAFs. PAFs writing articles or issuing statements, to show their influence on companies, is akin to them exercising “freedom to speech”, without any accountability. Questions remain regarding whether the regulatory framework has kept pace with the expanding influence of PAFs.
- SEBI has amended the regulatory framework to require PAFs to directly publish their reports, without sending a draft report to the company. From a company point of view, this puts pressure on the senior management to respond quickly before any misinformation leads to wrong decisions by institutional investors.
- There is also a need to understand the extent to which PAFs should be permitted to prescribe governance standards beyond the requirements of law. PAFs should not effectively become a means through which regulatory standards are imposed, without the transparency and accountability applicable to formal regulation, especially when there is little to no transparency about their own operations.
- There is a concern that governance standards have increasingly been influenced by Western practices and standards, without always considering the Indian context. The guidelines of foreign PAFs at times do not at times even correctly factor Indian law and regulations.
- There is a need for clarity on how much should institutional investors rely on PAF recommendations. Also, outsourcing thinking and judgement on the part of institutional investors should not be promoted.
- SEBI may consider prescribing principle-based guidelines covering the process of preparing guidelines through multi-stage consultation with companies and investors, disclosure of guidelines and methodology, including any changes to the guidelines, conflicts of interest, corrections and accountability, a code of conduct, and proper disclaimers. There could also be some periodic disclosures that can be defined, such as number of investors served, any changes, or any change in guidelines/consultation process.
- SEBI may also consider setting some parameters on which fundamental guidelines can be defined.
- SEBI may also consider a standard operating framework for PAFs while allowing appropriate flexibility in methodology.

Appropriate Limits to the Role of PAFs

- PAFs should not be treated as substitutes for Regulators, Boards or shareholders or be permitted to make commercial judgements on behalf of shareholders. They should not be viewed as the sole custodians of governance.
- PAFs should not use media, public commentary or other communications on ongoing matters to create a perception among investors on issues, including those relating to matters for which voting process may have commenced. Sensationalising issues, at the cost of the company, or exerting undue pressure on a company as a result, should be strictly off limits.

- SEBI may consider prescribing a clear negative list of matters falling outside the remit of PAFs, including the exercise of independent commercial judgement on behalf of shareholders. These could include resolutions such as those impacting commercial decisions, ESOPs and Director qualifications. This would help distinguish legitimate governance scrutiny from matters that are more appropriately left to the company's Board and shareholders.
- PAFs should exercise caution in commenting on or seeking to influence commercial decisions of companies. It is not necessarily the role of a PAF to judge commercial decisions taken by a company, particularly where such decisions involve business considerations that cannot be assessed through publicly available information alone. In the process they also end up judging the decisions of the Board, the Audit Committee and the management. Recommendations on commercial matters can have consequences for the business and should therefore be approached with appropriate context and the benefit of doubt.

Industry Dialogue

- An industry body could facilitate structured dialogue between companies and PAFs on voting guidelines, consultation processes and concerns regarding one-size-fits-all standards. Such a platform could provide a collective industry voice to seek clarification on PAF guidelines and promote a level playing field.
- Institutional investors should also be part of this dialogue so that the framework reflects the perspectives of all three stakeholders — companies, investors and PAFs.
- A formal consultation mechanism could help reduce the current one-sided nature of engagement, particularly after a recommendation has already been issued.

EXCELLENCE ENABLERS

CORPORATE GOVERNANCE SPECIALISTS

ADDING VALUE, NOT TICKING BOXES

www.excellenceenablers.com

All rights reserved.

No part of this publication may be reproduced, stored in retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of Excellence Enablers Private Limited.

The views expressed in this report are the views of the participants at the roundtable and do not necessarily reflect the views of Excellence Enablers Private Limited.