Triodos Investment Management

# SUNEDISON INC

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| MEETING DATE | Thu, 28 May 2015 8:00 am | TYPE | AGM | ISSUE DATE | Tue, 26 May 2015 |
| MEETING LOCATION | 600 Clipper Drive, Belmont, CA 94002 | | | | |
| CURRENT INDICES | PIRC Global | | | | |
| SECTOR | Semiconductors and related devices | | | | |

| | PROPOSALS | ADVICE |
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| 1a | **Elect Antonio R. Alvarez**<br>Independent Non-Executive Director. | **For** |
| 1b | **Elect Peter Blackmore**<br>Non-Executive Director. Not considered independent owing to a tenure of over nine years. There is insufficient independent representation on the board.<br>He is chair of the Nomination committee and less than 20% of the board are women which Triodos does not support. | **Oppose** |
| 1c | **Elect Ahmad R. Chatila**<br>President and Chief Executive Officer | **For** |
| 1d | **Elect Clayton C. Daley, Jr.**<br>Independent Non-Executive Director. He is newly appointed to the Board and his appointment did not improve the gender balance on the Board. For this reason, Triodos opposes his election to the Board. | **Oppose** |
| 1e | **Elect Emmanuel T. Hernandez**<br>Independent Non-Executive Chairman. | **For** |
| 1f | **Elect Georganne C. Proctor**<br>Independent Non-Executive Director. | **For** |
| 2 | **Advisory vote on executive compensation**<br>The company has submitted a proposal for shareholder ratification of its executive compensation policy and practices. The voting outcome for this resolution reflects the balance of opinion on the adequacy of disclosure, the balance of performance and reward and the terms of executive employment. The compensation rating is: CEB.<br>The CEO's maximum annual cash incentive award opportunity was 250% of salary. Stock options have no performance criteria beyond time-based vesting. Performance conditions on restricted stock units are based solely on share price, which is subject to market fluctuations and not necessarily driven by management performance. Based on these concerns, Triodos opposes this resolution. | **Oppose** |
| 3 | **Appoint the auditors**<br>KPMG LLP proposed. Non-audit fees represented 27.37% of audit fees during the year under review. This level of non-audit fees raises concerns about the independence of the statutory auditors. The current auditor has been in place for 26 years. There are concerns that failure to regularly rotate the audit firm can compromise the independence of the auditor. Triodos opposes this resolution. | **Oppose** |

**4 Approve the 2015 Long-Term Incentive Plan.** **Oppose**

The Company has put forward a resolution requesting shareholders to approve the 2015 Long-Term Incentive Plan. If shareholders approve the Plan, the 2015 LTIP will replace the 2010 Plan with respect to awards to consultants and employees. There are currently 41,182,804 shares of Common Stock authorized for grants under the 2010 Plan. The Plan is open to all employees (approximately 2,697 persons) and permits the Company to grant stock options, restricted stock, performance units and other share-based awards. The Plan will be administered by the Compensation Committee which has the power to interpret the Plan, select participants, determine the number of shares or the amount of cash to be made subject to each award, determine the terms and conditions of the awards and select the performance criteria. The Company currently has 36,369,347 shares of Common Stock subject to outstanding equity awards or available for future equity awards under the 2010 Plan, which represented approximately 13.3% of fully diluted shares of Common Stock outstanding.

It is noted that as performance conditions may be attached to awards at the Compensation Committee's discretion, there are concerns that the committee will have considerable flexibility in the payout of discretionary awards, which are not supported. There are concerns that awards may not be subject to robust enough performance targets, and be insufficiently challenging. Performance targets, for awards granted under the plan that are performance based, are not disclosed which prevents shareholder assessment whether future payouts will be commensurate with performance.

Based on the excessive dilution and the lack of specific performance conditions for awards under the Plan, Triodos opposes this resolution.

**5 Approve the 2015 Non-Employee Director Incentive Plan.** **Oppose**

The Company has put forward a resolution requesting shareholders to approve the Director LTIP. Upon approval of the Director LTIP by stockholders, the Director LTIP will replace the 2010 Plan with respect to awards to non-employee directors and no further awards will be issued under the 2010 Plan to non-employee directors. Under the 2010 Plan, there are currently 41,182,804 shares of Common Stock authorized for grants. The Plan will be administered by the Compensation Committee which has the power to interpret the Director LTIP, select participants, determine the number of shares or the amount of cash to be made subject to each award, determine the terms and conditions of the awards, the performance measures, and select the performance criteria.

Triodos does not support plans which provide for equity grants to non-employee directors.

**6 Approve the Employee Stock Purchase Plan.** **For**

The Company has put forward a resolution requesting shareholders to approve the Employee Stock Purchase Plan (the ESPP) to provide employees of the Company with an opportunity to acquire a proprietary interest in the Company through the purchase of shares of Common Stock. The Plan is open to all employees (approximately 2,800 persons) and is administered by the Committee which has the power to interpret the Plan and amend its rules. Under the Plan, the maximum number of shares that may issued is 2,000,000 shares. According to the Plan, the purchase price shall be an amount equal to the lesser of eighty-five percent of the closing price of a share of Common Stock on the first trading day of the offering period or eighty-five percent of the closing price of a share of Common Stock on the last trading date of the offering period. In addition, no participant may purchase more than 5,000 shares of Common Stock during an offering period.

It is considered in the best interests of the Company and its shareholders to provide employees with an opportunity to benefit from business success and increase their share ownership through payroll deductions. The Plan is open to all full-time employees and is capped. Triodos supports this resolution.

**7 Shareholder Resolution: Stockholder proposal regarding stockholders' right to act by written consent** **Oppose**

Stockholder proposal regarding stockholders' right to act by written consent. Proposed by: not disclosed. The Proponent requests the Board of Directors to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. The proponent argues that written consent can be used by shareholders to raise important matters outside the normal annual meeting cycle. The Board recommends shareholders oppose and argues that adoption of the proposal could enable short-term or special interest investors to advance proposals that are not in the best interests of all stockholders. The Board argues that actions by written consent could result in duplicative disrupting management and confusing shareholders. In addition, the Board argues that shareholders have the right to call a special meeting of shareholders.

Action by written consent would circumvent the important deliberative process of a shareholder meeting. While it is considered that the Board should remain accountable to its shareholders, regardless of the method of communication chosen, the there are concerns that using written consent could lead to minority shareholders losing the ability to have their say on matters affecting the company. On this basis Triodos opposes this resolution.

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## SUPPORTING INFORMATION FOR RESOLUTIONS

### Proposal 2 - Advisory vote on executive compensation

**Disclosure: C**- In fiscal 2014, annual cash incentives were based on profitability (the sum of SunEdison EBITDA and foregone margin), megawatts completed and on individual performance. Specific targets are not disclosed in the compensation analysis. The Company awarded long term incentives in the form of stock options.

**Balance: E**-The CEO's maximum annual cash incentive award opportunity was 250% of salary. Stock options have no performance criteria beyond time-based vesting. Performance conditions on restricted stock units are based solely on share price, which is subject to market fluctuations and not necessarily driven by management performance.

**Contract: B**-The Company provides "double trigger" accelerated vesting in the event of a change in control.

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