Triodos Investment Management

# SOLARCITY CORPORATION

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| MEETING DATE | Tue, 07 Jun 2016 13:00 pm | TYPE | AGM | ISSUE DATE | Sun, 05 Jun 2016 |
| MEETING LOCATION | Crowne Plaza Hotel, 1221 Chess Drive, Foster City, California 94404 | | | | |
| CURRENT INDICES | PIRC Global | | | | |
| SECTOR | Construction-special trade contractors | | | | |

| | PROPOSALS | ADVICE |
|---|---|---|
| 1b | **Elect Lyndon R. Rive**<br>Chief Executive Officer. | **For** |
| 1a | **Elect John H. N. Fisher**<br>Non-Executive Director. Not considered independent because he is the beneficial owner of 4.1% of the outstanding share capital. There is insufficient independence on the Board. Mr Fisher is also non-independent Chair of the Remuneration Committee which is not in line with Triodos guidelines. | **Oppose** |
| 2 | **Appoint the auditors**<br>EY proposed. Non-audit fees represented 8.28% of audit fees during the year under review and 6.68% on a three-year aggregate basis. This level of non-audit fees does not raise serious concerns about the independence of the statutory auditor. The current auditor has been in place for more than five years. This is in accordance with Triodos guidelines. A vote in favour is recommended. | **For** |
| 3 | **Approve and ratify non-executive director compensation program**<br>The Board has asked for shareholder approval and ratification of the Company's non-executive director compensation program. The proposal is made as a result of shareholder legal action that claims the Board breached its fiduciary duties to shareholders by "committing waste" in connection with non-executive director compensation. The Board states that shareholder approval of the program may also result in more deferential court consideration in the ongoing litigation, which could result in a more favourable outcome for the Company.<br>Under the program, non-executive directors are paid $20,000 annually for their service, with additional fees for committee chairmanship and membership ranging from $1,000 to $15,000. Non-executive directors receive options to purchase 33,333 shares upon their appointment, which vests over four years, as well as recurring grants of 30,000 additional options after the initial grant has vested. Chairmanship or membership on board committees also entitle non-executive directors to additional option grants every three years ranging from 1000 to 10,000.<br>Though the retainer fees contained in the program are reasonable, the non-executive director equity grants are excessive, especially considering that the executive officers and directors as a group collectively own 36.4% of the Company's share capital. It is recommended that Triodos opopse this resolution. | **Oppose** |
| 4 | **Approve SolarCity Corporation 2012 Equity Incentive Plan**<br>The Board has asked shareholders to re-approve the material terms of the performance goals in the SolarCity Corporation 2012 Equity Incentive Plan (2012 Plan) for the purposes of Section 162(m) of the Internal Revenue Code of 1986. Section 162(m) requires that shareholders approve the material terms of the 2012 Plan at least every five years in order for corporations to qualify for certain tax deductions. In addition, the Board has asked for shareholders to approve the extension of the term of 2012 Plan to 2026.<br>The 2012 Plan identifies a number of performance criteria that may be used, but leaves it to the discretion of the Compensation Committee as to which metrics are chosen. Shareholders cannot tell from the 2012 Plan what performance targets (if any) would be applied to the metrics selected by the Committee. Given that, there is no meaningful way that shareholders can approve or re-approve performance criteria of which they have scant prior knowledge. Accordingly, a vote to oppose is recommended. | **Oppose** |

**5 Shareholder Resolution: proxy access** **For**

**Proposed by:** James McRitchie

The Proponent asks for the Board to adopt, and present for shareholder approval, a proxy access bylaw. The bylaw would require the Board to include in the proxy materials prepared for a shareholder meeting the name, certain disclosures and the statement of a person nominated for election to the Board by a shareholder or an unrestricted number of nominating shareholders that meet certain criteria. The Proponent's criteria would require nominating shareholders to have beneficially owned 3% or more of the Company's shares continuously for at least three years and would limit the number of shareholder-nominated candidates appearing in proxy materials to one quarter of the directors then serving or two, whichever is greater.

**Supporting Argument:** The Proponent states that the proposal would enhance shareholder value. The Proponent cites a cost-benefit analysis by the Chartered Financial Analyst Institute, which found that proxy access would benefit both markets and corporate boardrooms.

**Opposing Argument:** The Board recommends a vote against the proposal. The Board notes that a US court vacated a SEC proxy access rule in 2011 and states that the Board is awaiting guidance from the SEC on the issue before making implementing proxy access at the Company. The Board also states the terms of the proposal could be detrimental to the Company by causing Board turnover.

**Conclusion:** A vote for the resolution is recommended. The terms of the proxy access proposal - the 3% ownership threshold, one quarter limit on shareholder-nominated directors - are in line with best practice in this regard.

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Researcher: Brittnee Stein
Email: pircresearch@pirc.co.uk



Pensions & Investment Research Consultants Limited
8th Floor, Suite 8.02, Exchange Tower
2 Harbour Exchange Square
E14 9GE

Tel: 020 7247 2323
Fax: 020 7247 2457
http://www.pirc.co.uk

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