

24 April 2014

Judith Fox
National Director, Policy & Publishing
Governance Institute of Australia
GPO Box 1594
Sydney NSW 2001

Dear Judith,

RE: IMPROVING ENGAGEMENT BETWEEN ASX LISTED ENTITIES AND THEIR INSTITUTIONAL INVESTORS

Computershare supports the Governance Institute's initiatives and guidelines that aim to improve the disclosure and understanding between issuers and their institutional investors, and we welcome the opportunity to present our submission on the proposed guidelines. We see that these guidelines will provide practical suggestions and direction around improving engagement and will be of particular benefit to those issuers and institutional investors who do not have large and well-resourced investor relations and corporate access functions.

In addition to the issues identified in the proposed guidelines, we urge the Governance Institute to further address the risks to good governance that arise when the engagement between investors and issuers is crystallised in a transaction such as voting at an AGM, due to lack of transparency of investors' entitlement to participate. Such risk is in large part a result of the common practice of many institutional investors to hold their securities in pooled or omnibus accounts on the securities register, where the securities of multiple investors are commingled.

We have discussed these issues in a number of submissions and papers, most recently in our;

- Response to CAMAC on their investigations into the future of the AGM,
- Australian Intelligence Report – Insights into company meetings held in 2013,
- Global report on the 'Transparency of Share Ownership, Shareholder Communications and Voting in Global Capital Markets'.

For completeness we have attached full copies of these as appendices.

We are pleased to see that the Governance Institute's Guideline 11 recognises the importance of issuers knowing who their significant institutional investors are, and we agree that the beneficial ownership tracing provisions of the Corporations Act are a critical tool to aid issuers in this regard. We also note that the Background Paper discussion of Guideline 11 identifies the ability of investors to appear directly in their own name on the share register as a relevant option for investors to enable their direct identification by the issuer, and thus facilitate engagement. We strongly endorse this recommendation and recommend that it be identified directly in the Guidelines rather than only in the Background Paper.

However, investors have varying reasons for their chosen securities account structure, and we agree that they should retain the ability to have their shares registered in the name of another party (generally referred to as registration in a nominee). It is however important to highlight that investors have the option to use designated nominee accounts rather than pooled accounts, where the securities of multiple investors are not commingled. While this option does not facilitate direct identification of the beneficial owner to the issuer, it is a very relevant solution to the governance risks created by the voting processes for pooled accounts, which we have explained in detail in the papers referenced above and outlined in our further comments here. Voting remains a core governance mechanism, and the integrity of voting processes require reform to ensure good governance outcomes, with the enfranchisement of properly entitled investors.

Computershare believes that those institutions that continue to prefer holding via a nominee should be encouraged to use designated accounts instead of pooled accounts, and the Federal Government should consider the designated account as the default for institutional shareholders. We have been campaigning for some time now on what we believe is an obvious solution that will resolve a number of the issues highlighted in the CAMAC discussion paper.

The difference between pooled and designated accounts

A pooled account is the combination of the assets of multiple client held through one omnibus account in the name of the custodian or its nominee, rather than in individual accounts for each underlying client. For example, HSBC Custody Nominees (Australia) Limited or National Nominees Australia Limited.

A designated account is the segregation of underlying investors into individual accounts on the share register. For example, QIC Limited <c/- National Nominees Limited>, or INVIA Custodians Pty Limited <Sample Superfund>.

Designated or segregated accounts can be established within CHESS and directly on the share register, enabling direct communications and voting between companies and shareholders. While as noted designated accounts are not always registered in the name of the beneficial owner, as shown in the examples above it is not uncommon for the beneficial owner to be identifiable in the parenthetical designation. Further the ownership tracing arrangements for designated accounts are considerably simpler to utilise for these segregated accounts as compared to pooled nominee accounts.

Issues surrounding pooled accounts

Any review of shareholder engagement should include a review of the mechanics of the proxy system and, more importantly, the institutional proxy system in Australia. The current practice of custodians and nominees holding institutional investors in pooled account structures, rather than in investor-registered or designated accounts named on the company register, in order to reduce their own internal operational costs, is causing market inefficiencies including:

- > Over-voting
- > Governance
- > Transparency issues
- > Timeframe concerns

Over-voting

Over-voting occurs when more shares are instructed to be voted than the actual number of shares owned by a registered shareholder. It can occur when there is an imbalance between the perceived voting entitlements of the multiple individual investors whose shares are pooled with other investors and/or traders within a single nominee account, and the actual (lesser) shares and associated voting entitlements held by the nominee on the share register.

All underlying holders within a pooled account are faced with a risk of their votes not being cast or counted in the event that any other investor's securities commingled in the account are less than what had been calculated and taken into consideration at proxy close off. This can occur for a number of reasons, such as voting on a traded rather than settled position, or in the event of securities lending if investors' entitlements are not reduced to reflect the movement of the securities position in a loan.

In the 2013 season Computershare identified 175 over-votes, which impacted 111 issuers. This meant that votes were either disregarded in their entirety, or that significant rework was required by all parties to ascertain the true voting position. The custodian/nominees generally represent the largest holders on a company's register, (with an average of 40-60% of the issued capital). The use of pooled accounts (which contribute significantly to the risk of over-voting) is unintentionally disenfranchising beneficial holders and impacting on companies.

The use of pooled accounts also creates a risk of 'invisible' over-voting, as the amount of shares voted does not exceed the total securities position, but one or more investor has not voted in full and their un-voted share entitlements within the pooled account may be used by other non-entitled investors. This may particularly arise through stock lending, where voting instructions may be lodged by both the borrower and the lender.

Equivalently, where the underlying investor lodges an instruction ahead of the proxy close off and then acquires additional shares, or where the custodian has inadequate reconciliation procedures to calculate the anticipated record date position, an investor may not be enfranchised to vote against their full entitlement at the proxy close off.

These concerns with the appropriate enfranchisement of entitled investors would be resolved by the registration of shares either directly in the name of the investor or through a designated nominee account.

Governance

The various solutions available for addressing an over-vote scenario also raise some interesting governance questions. Whether the whole vote was struck out; a pro rata adjustment was made; or an amended instruction was submitted, it is far from an ideal governance outcome to place an issuer in the position of having to make these types of judgments or amendments, and to risk the disenfranchisement of their investors.

Transparency issues

Pooled accounts cause several issues relating to transparency:

- > Pooled accounts do not facilitate a direct audit trail or confirmation process between the company and shareholder, whereas a designated account can facilitate certainty of the vote lodged and is readily traceable.

- > Pooled accounts rely on offshore manual rekeying of meeting information (including meeting resolutions and vote exclusion details) which can introduce errors and misinterpretation.
- > Companies do not automatically know who has the voting rights and who is making voting decisions under a pooled account structure. This is further compounded when stock is lent.
- > To record the varying vote instructions of the multiple investors holding in a pooled account, the custodian must lodge split vote instructions, showing the number of shares in favour of, against, abstaining or withholding on each resolution. Where changes are made in the instructions prior to proxy close off, this adds complexity to the required adjustments which are not necessary for directly registered and designated nominee accounts.

Computershare believes that these issues will become more prominent and more costly for companies and shareholders as institutional shareholders, superfunds and pension funds increasingly vote their shares and make their vote preferences public.

Concerns about timeframes

With just over 90% of issued capital voted via proxy being lodged in the last two business days prior to the meeting, the process of 'stockpiling' votes delivers far from ideal outcomes for issuers attempting to understand and track voting intentions and trends. We believe that by having securities held in a designated account the degree to which votes are stockpiled will be decreased and proxy lodgements will occur as and when received from by custodians from their underlying clients.

Whilst we have seen some examples of Institutions holding the securities in a designated account, Institutions and nominees should be further encouraged to use designated accounts and consideration should be given to making designated accounts the default for institutional shareholders, and that this change will maximise the benefits from any attempts to improve the engagement and communication between issuers and their institutional investors.

We would welcome the opportunity to further discuss our submission with the sponsors. Please do not hesitate to contact me on 0419 013 131 or via email greg.dooley@computershare.com.au, should you have any questions or require any further information.

Yours faithfully,



Greg Dooley
Managing Director
Computershare Investor Services Pty Limited