SHAREHOLDER VOTING WORKING GROUP

SHAREHOLDER PROXY VOTING: DISCUSSION PAPER ON POTENTIAL PROGRESS IN TRANSPARENCY

JULY 2015

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EXECUTIVE SUMMARY

The Shareholder Voting Working Group (SVWG) is a multi-disciplinary team of individuals from across the UK voting chain, working together to identify, explore and document current issues with UK listed company voting processes, and to suggest potential improvements. It was first established in 1999 and has produced several reports since then.

The business and regulatory environment is continuing to move company and investor interaction towards greater transparency. Shareholder voting is one area where despite earlier efforts, progress can continue to be made. The transparency of voting data, both to issuers and shareholders, is critical to creating and maintaining trust and facilitating engagement.

The UK system of proxy voting is one of the most efficient in the world. This is reflected in comparatively high voting rates and low levels of failed votes. However, certain aspects of the process still require significant manual interventions to resolve continuing problems.

This paper seeks to build on previous work and to describe the key barriers to trust and transparency in this multiparty process given current and potential future regulation. Further it seeks to articulate often competing needs and propose possible next steps. The paper is generally aimed at FTSE350 issuers and their investors, but the issues presented are relevant to a much wider group, and potentially to non-listed companies.

There are presently two areas that the SVWG feels could contribute significantly to an improvement in trust and transparency in the proxy voting system, namely: visibility of voting data to issuers and vote confirmation to investors.

In addressing these issues, the SVWG has looked at ways of making improvements to, and better utilisation of, existing processes rather than attempting to change the underlying system, as it believes this would be both complicated and not cost-effective.

Initial suggested solutions include:

- Minor adjustments to some CREST messaging formats
- Greater use of CREST or electronic data transfer for proxy voting
- Separation of record date from proxy appointment deadline
- Introduction of a UK online gazette
- Public disclosure of votes by investors
- Vote confirmation trials

REQUEST FOR FEEDBACK

This paper intends to stimulate debate and does not set out specific recommendations. A range of proposed solutions are set out which have differing levels of support both amongst the group membership and market participants as a whole.

The voting chain comprises a large number of different participants who each have different drivers and requirements. The SVWG has gathered data and opinions from a large number of groups (see Appendix E), but recognises that there is a much larger constituency that has not yet been reached. Feedback is therefore sought on the processes described in this paper and the potential solutions suggested from all interested parties. The goal is to publish a paper of specific recommendations by the end of 2015.

All feedback should be submitted by the end of September 2015. The following questions are offered to guide feedback but all comments are welcome:

- Have we adequately captured your needs as a stakeholder in the voting chain?
- Do you have any recent examples of the current system working well or badly?
- Do you think our suggested solutions will help fulfil your needs?
- Do you think any of them would be detrimental or unworkable, or give rise to unintended consequences?
- Can you offer any other solutions that we have not thought of?

- What do you think the cost of implementation of any of the solutions would be?
- Who should (or should not) pay for implementation?

Please forward comments and suggestions to Jude Moore preferably via email to: Jude.tomalin@uk.bp.com

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1 INTRODUCTION

The SVWG was established in September 1999 under the chairmanship of Terry Pearson, an experienced investment custodian. The SVWG was the first industry-wide body to address the issue of improving the voting process in the UK and brought together many relevant stakeholders. (See Appendix B1.) The original work of the SVWG and the reports by Paul Myners in 2004 and subsequently have done much to improve the level of shareholder voting in the UK. From a position where the average percentage of outstanding shares voted was around 45%, the average vote in the FTSE350 now reaches around 70%. Any further increase in the level of voting is likely to be gradual and limited. This is for several reasons, including the following:

> Of the 'unvoted' 30% of capital, up to half may relate to retail investor holdings possibly because there is a sense that their small holdings won't make a difference to a vote.
>
> Companies that have part of their capital issued as American Depositary Receipts (ADRs) may be affected by low voting rates from those shares. ADR holdings do now generally vote where their underlying holder has instructed them, but there are retail funds, some overseas funds and some short-term holdings which do not vote as a matter of course.

The UK has a voting process that is more transparent and efficient than many other markets. There however continues to be significant focus by regulators, investors and issuers on corporate governance and voting. The SVWG believes that the vast majority of voting instructions are correctly processed and counted. However it is not currently possible to provide evidence of this easily in case of a challenge.

Recent changes in the voting landscape, such as the greater use of polls, the requirement for directors to be re-elected every year, the binding vote on remuneration policy and the introduction of the Stewardship Code, are leading to even greater scrutiny of vote processes and results. Both investors and issuers are engaging in greater levels of dialogue, with higher expectations of transparency of vote data. Some issuers are receiving requests from investors for confirmation that votes submitted have actually been lodged, or for audits of

votes processed. Investment managers are being asked to demonstrate to clients that votes were cast in accordance with instructions given.

Two key perspectives at the forefront of the push for improvement were not under consideration at the time of the Myners report.

The first is the desire of issuers to understand voting intentions as early as possible. In order to engage successfully, issuers need to be confident that key investors understand the issues and intend to vote accordingly. Opacity in the voting chain currently makes this difficult, although most issuers do manage to communicate with their major investors.

The second is the desire of investors to be satisfied that proxy appointments, validly submitted to the issuer, do represent all those shares on which instructions have been given, and that they are voted at the meeting itself, in circumstances where a poll is called, unless they (or their agent) have been advised otherwise.

The SVWG reconvened in 2013 with revised membership, with a view to providing clarifying information about this complex process and recommending actions to attempt to address these outstanding needs. The work carried out to document the data flows, particularly of vote decision data from investor to issuer, has revealed many complexities and highlighted the fact that few participants understand all aspects of the end to end process. This paper seeks to address that by setting out the processes in some detail and using that information to identify ways in which improvements could be made.

Definitions of key terms used in this paper are given in Appendix A.

2 AREAS FOR IMPROVEMENT

As set out earlier there are a number of factors which are driving improvements in the proxy voting process. There are more resolutions where the impact of a failed vote could be significant, and in the circumstances of a very close vote the process would be under enormous scrutiny, for example in a bid situation. While it is true that in the majority of cases there are no queries or disputes, in a contentious vote, the lack of transparency in the system leaves the very system open to challenge.

Voting levels have improved however transparency remains a concern. Issuers cannot always link votes received to specific investors without a degree of cost and effort. Equally, investors cannot see that their final instructions have been voted correctly on a poll. Both these issues raise questions around transparency.

Institutional investors expend resources in engaging with issuers and making vote decisions on behalf of the underlying beneficiaries. Often the requirement to vote is a contractual obligation, defined in the underlying client's Investment Management Agreement. Investors continue to take an increasing interest not only in the vote decisions that were made on their behalf but also the outcome of the meeting, particularly in cases where opposition levels have been high.

Since the financial crisis, the scrutiny of these processes by all stakeholders has increased and as a result so has the range of topics being discussed and voted upon. This has coincided with global attention turning to environmental, social and governance (ESG) matters within the investment process and the further evolution of governance, stewardship codes and global responsible investment initiatives such as the UN Principles for Responsible Investment (PRI).

This has all in turn led to most institutions expanding their teams, voting in most global markets, increasing the external information and resources they use, improving their reporting and transparency, broadening the markets in which they engage with companies, and generally becoming more "joined up" in terms of explaining to companies what their principles are.

The most recent IA survey[1] concluded that the total headcount responsible for stewardship has been increasing year on year (from 2010 to 2014) with 779 more individuals involved in stewardship in 2014 compared to 2012.

Throughout Europe, issues relating to voting and, in particular, the processes required leading up to a General Meeting are being reviewed. There are a number of initiatives and ideas being discussed and it is important that any harmonisation of law produces the best model for Europe as a whole and that those different initiatives are complementary. (See Appendix B2.)

In April 2014, the European Commission published a draft Directive to revise the Shareholder Rights Directive (2007/36/EC). The proposals include a wide variety of measures. The requirements are still under discussion and require a great deal of clarification, but the following themes are likely to be addressed:

- Identification of shareholders.
- Transmission of information from companies to shareholders.
- Exercise of rights by shareholders, including the right to participate and vote in general meetings.
- Confirmation by companies of the votes cast by or on behalf of shareholders in general meetings. It is not clear whether this requirement means that the company must provide the final results of the poll after the meeting (as is already the case in the UK), or confirm to each shareholder who has submitted a vote that their vote has been properly recorded and accepted as valid, or whether the intention is that the information is to be given to shareholders by the intermediary.

The final definition of "shareholder" in this context may impact whether any obligations extend beyond the registered holder.

[1] http://www.theinvestmentassociation.org/assets/files/surveys/20150526-fullstewardshipcode.pdf

2.1 Visibility of voting data to issuers

Issuers need to ensure that they have properly engaged with and can rely on the support of key investors. In the first instance they need to know what the intentions of their investors are, in particular where the investors intend to vote against management. After the meeting, they may wish to analyse actual votes cast in order to plan future engagement, particularly if vote results are not as expected.

At best, the current system allows issuers to see proxy appointments immediately prior to the meeting, but rarely in time to allow further engagement. In many cases it is not possible to get complete data even after the meeting, due to the opaque nature of omnibus accounts (see section 3.3), and where this is not the case, determining the origin of votes can be a laborious process.

Revisions to the UK Corporate Governance Code require that "when, in the opinion of the board, a significant proportion of votes have been cast against a resolution at any general meeting, the company should explain when announcing the results of voting what actions it intends to take to understand the reasons behind the vote result." This inherently requires issuers to be able to know how their investors have voted.

In many if not most cases, issuers and investors do carry out constructive engagement around key issues. However, without early access to voting data it is not possible for issuers to see whether their engagement has been successful.

Issuers only have visibility of voting instructions once they have been forwarded by the registered holder or proxy voting agency to the registrar. Issuers would like the instructions to be forwarded to the registrar as soon as they are entered by the investor into either the custodian's or agency's systems. However, agencies typically wait until four days before the meeting before beginning to upload the instructions, the majority by CREST messaging, where that mechanism is made available by the issuer. The reasons for waiting appear to be dictated by efficiency and cost. The costs arise from the requirement for resources to resolve reconciliation issues in circumstances where proxy appointments need to be amended post submission, and CREST fees for additional instruction transmission.

The potential problems with reconciliation of account positions by the custodians or their agents are described in detail in section 3. Reconciliation issues generally arise from changes in account balances due to intraday settlements, stock lending and trading prior to the record date.

The vast majority of instructions do not result in a query. However, less than 1% does not reconcile automatically and these cause nearly half the manual work required by the agencies and registrars to resolve. While this does not represent a material cost to the registrar in terms of overall AGM management, it is significant to voting agencies as the bulk of the rest of the work is automated.

Further costs are incurred through the fees that are levied per account by CREST each time a message is sent (circa £0.30 per instruction per registered holder). It is therefore in the proxy agency's (and the custodian's) interest to minimise the number of messages sent. This particularly applies to pooled accounts where the agency may receive a large number of separate instructions for one nominee account. Waiting until nearer the meeting means these instructions can be sent as a single message rather than as a daily update, which reduces cost.

Early visibility of voting instructions at the registrar is not without its own issues. Instructions are only visible at the registered account level. In order to form a complete picture of which underlying investors are voting, issuers have to use the results of s.793 requests – the s.808 register – to identify underlying investors and their account balances, and attempt to match these up with voting data. If the s.808 register is available and up to date, registrars are generally able to provide matching services to identify major proxy appointments.

In Australia, a similar regulation has been applied more broadly to allow issuers to request information on voting intentions submitted as well as account balances and investor identities (see Appendix B3). In practice this may be more useful as a post-meeting vote audit tool.

Early visibility may also present a misleading picture, as account balances may change prior to the record date. Also, some investors typically vote their shares on the deadline that is set by their voting providers. This is more the case during AGM season, when investors are voting on a large number of holdings across an often compressed timeframe. Therefore, if the voting agencies were to send votes sooner, it may not be entirely efficient and may not be a true

representation of the overall votes as there would be a lot more votes still to come. That said it would allow issuers to identify any significant votes against management in order to seek engagement at an early stage.

An alternative approach would be to require parallel disclosure outside the voting chain. Principle 6 of the Stewardship Code already recommends this under certain circumstances, such as when an investor is voting against management. However, there are no standard mechanisms in place to facilitate this activity, nor agreement on when the timing of this notification should take place (i.e. in enough time prior to the meeting so that engagement could take place if desired). There have been trials by agencies of making voting data available to issuers via a parallel process, whilst those votes were in transit and before they were submitted to the registrar. However this was unpopular among many issuers – who had to pay for the disclosure – and certain custodians and investors, who withdrew permission for their instructions to be included, reducing the usefulness of the remaining data. It is however a widely used procedure in the United States.

Issuers occasionally face the active avoidance of engagement from investors voting against management. A balance needs to be struck between the needs of the issuers and the resources of the investors. Investors may not always have the time to justify all voting decisions. These may need to be prioritised in terms of size of holding and whether there are any contentious issues.

It is important to consider any unintended consequences of mandating voting disclosures. Investors may be more reluctant to vote if by doing so they are creating further work in disclosing and justifying their decisions. However, it is difficult to argue against requiring an explanation of a vote against management or even a vote withheld. These are, after all, principles of the Stewardship Code and investors who profess compliance should be able to comply in this area.

In the United States, mutual funds are required to annually disclose their voting activity, although compliance is not enforced. A similar requirement might prove useful to both issuers and underlying investors.

2.2 Vote confirmation to investors

Fund managers may seek some form of vote confirmation at various stages of the voting process, both for their own records and to pass on to clients. The stages need to be clearly differentiated by the timing, feasible content and interpretation of any such confirmation.

The first confirmation point could be on receipt of the proxy appointment and vote instruction by the registrar. This would simply confirm that data has been passed along the chain. No attempt is made to reconcile the number of votes with the number of shares in the account. For investors lodging instructions via CREST, a receipt is provided by a status change to acknowledge collection of the instructions by the registrar. Some registrars provide online/electronic receipts for investors using online voting systems, but paper and fax votes are unlikely to be acknowledged in this way.

The second confirmation point would involve the reconciliation by the issuer agent (registrar) of the number of votes instructed with the number of available shares, and a confirmation to the lodging party that the instruction has been accepted and that there are sufficient shares in the account to cover the vote. This could also flag to the voting agent if not all the shares in the account have been voted. As account balances may change in the period between vote submission and the record date, such a confirmation could only be based on the account balance at the time that the confirmation is given. It would not be a guarantee that those votes will be recorded at the meeting.

Once votes are input into the registrar's system (e.g. by automatic file transfer from CREST) reconciliations are immediately carried out. The majority of instructions will be accepted and held in the database until the record date when a final reconciliation takes place. In the few cases where more votes are instructed than there are shares present, the system will flag that the instructions cannot yet be processed.

At present, different registrars have different approaches to dealing with these flagged accounts/appointments. Some will simply hold them until the record date, allowing for the balances to be adjusted to match the instructions. Others will immediately kick them back to the custodian or agency for revision. The

methods of seeking revisions are not automated because there are no defined systems or infrastructure – they usually involve a phone call or email.

There are pros and cons to each approach. An immediate kick-back will provide an early flag to the agency or custodian if shares have been lent out, trades have failed or shares have been moved to other accounts without notification. However it may also generate a certain amount of unnecessary interventions in cases where the custodians have a clear plan for the account balance to be adjusted prior to the record date.

Holding the kickbacks until the final record date reconciliation, results in the bulk of the work being required in the final 24-48 hours before the meeting.

Different investors may require this type of confirmation at different times, some requesting it at the time the vote is submitted, others wanting it after the record date but before the meeting.

The final confirmation point would be a statement of the votes that were counted at the meeting where a poll is taken. While proxy appointments are fixed at the cut-off, the instructions relating to them can be changed at any time up to the poll being taken. However the deadline for changing instructions may also be fixed at 48 hours before and will depend on the provisions in the relevant notice of meeting and articles of association. In addition, representatives may attend the meeting and override any previous instructions, either fully or partially.

At present, the institutional investor who bears responsibility for the voting instruction is not easily able to confirm to the underlying beneficial holder that their decision is reflected in the outcome of the vote. This is particularly the case with pooled accounts (see section 3.3). With knowledge of the record date position and the vote they submitted, proxy voting agencies and custodians can provide some form of confirmation of the proxy instruction to their clients (second level). However they cannot provide confirmation of a poll vote. That said, absent any notification of an issue with the instruction or the appointment of a representative to attend the meeting in person, there is no reason to believe the instruction will not be carried through to the meeting.

The onus to check this information is with the investors and custodians. This is a manual and very cumbersome process. It has been suggested that this confirmation could better be provided in the first instance by the issuer or their registrar by reverting directly to the proxy voting agency or custodian from which the original instructions were received.

One problem with achieving this is that it is not always clear to the registrar who actually lodged the instructions in CREST. Only the custodian ID is stated in the message, not the agency ID. They generally rely on contact details being completed in a free format, non-compulsory field in the CREST message, by the submitting party. Investors would still rely on the voting agency or custodian then breaking down the data into individual positions for forwarding along the chain.

Provision of poll vote confirmation is more complex. All the registrars use their own or third party systems to manage poll votes at meetings and the votes are not tabulated within the main register system. There is currently no automated mechanism to push poll vote data back into the register, but outputs in standard file formats could be investigated.

It should be noted that investors also have the option of requesting a vote audit under the Companies Act. However it requires a support test and is costly, and therefore done very infrequently.

Different investors are likely to want different stages and timings of confirmation. Delivering these manually would be prohibitively time consuming and expensive; automation of the messages and a system to allow investors to elect (and possibly pay) for various confirmations will be critical to success.

2.2.1 Vote confirmation trials

During proxy seasons 2013 and 2014, Broadridge carried out vote confirmation pilots in Spain (with Santander Corporate Services, a registrar) and in Taiwan (during 2014 only, directly with issuers). Processes in these jurisdictions are similar but not identical to those in the UK. The pilot is ongoing and has been expanded further in proxy season 2015. Participation in the pilot was voluntary and all custodian banks involved actively consented to the inclusion of their

data. In 2014 participation included up to 40% of the total vote processed by Broadridge, or up to 17% of voting received at the meeting.

The pilot was aimed at validating that votes transmitted through the legal chain of intermediaries did reach the meeting and were cast and counted. Investor information is not divulged to registrars, issuers or other third parties during this process and reconciliation activities are conducted with respect to the registered shareholder position. On confirming each registered vote, the underlying investors are informed via an alert in the Broadridge electronic voting platform and can also subscribe to email alerts to receive this information.

The UN Principles for Responsible Investment (PRI) initiative has also set up a vote confirmation group which includes Aviva Investors, UBS Global Asset Management, Investec, Hermes, USS, Robeco and PGGM. This group is carrying out a pilot project in the UK and the Netherlands in 2015.

The goal of the project is to determine possibilities and best practices by piloting an 'in practice confirmation chain', by setting agreements for a back-flow of voting instructions throughout the voting chain for a small number of meetings. The pilot hopes to show that vote confirmation is possible and will be a useful exercise in getting the various layers in the chain talking to each other and understanding the issues involved. This may then lead to further collaboration to begin the development of data transfer mechanisms and assessment of the costs of automation.

The US has a substantially different voting chain, but participants face similar issues and have expressed similar desires for vote confirmation.

In 2012 the End-to-End Vote Confirmation Working Group began work to develop operational protocols to implement a process by which tabulators, nominees and proxy service providers would furnish each other with sufficient information to permit an investor to confirm that its vote was submitted to the tabulator and tallied properly.

A pilot project was carried out during the 2014 proxy season involving 26 issuers, Broadridge, several broker-dealers and five transfer agent tabulators, and a second pilot project is planned for July 2015. Unfortunately, the level of

participation in the 2014 pilot from U.S. brokers was very low. The Working Group is still analysing the results of the pilot to determine why this was the case.

It was also reported that, at present, resolving the reconciliation requests involved manual processing steps that were very time-consuming and cumbersome. The Working Group has concluded that the development of automated systems to replace manual ones will be critical[2]. As noted above, the technical developments are unlikely to be directly comparable with those in the UK, but it seems reasonable to assume that the underlying issues will be similar.

The Canadian Securities Administrators (CSA) have also been carrying out work on these issues, primarily related to vote reconciliation. Canada uses a system almost identical to the US. The CSA published a consultation paper in August 2013 and a subsequent progress report in January 2015[3]. As a result they have asked all entities that play key roles in vote reconciliation to identify and implement any immediate steps they can take to improve accuracy, and will direct key entities to work collectively in 2016 to develop appropriate industry protocols, which may include vote confirmation.

[2] Securities Transfer Association: Report on Industry Efforts to Improve the U.S. Proxy Voting System, 23 September 2014
[3] CSA Staff Notice 54-303: Progress Report on Review of the Proxy Voting Infrastructure, 29 January 2015

3 DATA FLOWS AND KEY OBSTACLES TO TRANSPARENCY

Analysis of current data flows has shown that there is not one single vote process, but several different processes, each with potential minor variations depending on the stakeholders and individual contractual relationships between the parties involved.

Strictly speaking, voting is the process by which registered holders and proxies submit votes via a poll card or show of hands at a meeting. For the purpose of this paper, voting is defined more widely as the process whereby investors appoint proxies and submit voting instructions which are implemented at a shareholders' meeting even though the investor is not physically present. In 2013 polls were held in over 90% of FTSE100 meetings and up to 40% of FTSE250 meetings.

3.1 Data flows

Figures 3.1.1 and 3.1.2 attempt to map the transmission of voting materials from the issuer to the ultimate beneficial holder, and the flow of voting decision data back through to the issuer, together with relevant position data. The diagrams represent a simplified view of the data flows and may not apply in all situations. As can be seen, multiple alternative routes are available according to preference – not all will be used for every instruction.

3.1.1 Distribution of voting materials

The registrar provides data to the print and mailing company appointed by the issuer who disseminates voting papers on behalf of the issuer, or carries out this function itself. The registrar will also hold email addresses for those shareholders who have elected to receive electronic communications and will send notification emails to them directly. (Some companies do not appoint an external registrar but manage these functions internally.)

Materials are sent to registered holders who may be nominees holding a custodial position on behalf of underlying holder(s) (see section 3.3 on structure of holdings). Beneficial holders may also request their nominees to provide their details to the registrar in order to receive materials directly (CA 2006 Part 9

s.146), but very few holders take up these rights, partly a consequence of few nominee providers offering the option. Where offered and the service is taken up, materials (not including voting documentation) are sent to these underlying holders by paper or electronically as required.

Assuming the issuer has provided the necessary authorisation, the registrar also "sets up" the meeting in CREST. This contains basic meeting information and resolution texts and provides the ability to include a URL link to where more information can be found on a company's website. There is currently a 50 character limit on this field, which makes its usefulness limited and therefore it is not universally completed or referred to by participants. Euroclear has indicated that an increase that will at least double the size of this field is due to be implemented in November 2015.

In the majority of cases, the custodian forwards materials to proxy voting agencies, either in paper format or as a pdf attached to an email. A small number of custodians may forward papers directly to beneficial owners and/or investment managers. Most proxy voting agencies also have direct access into CREST to obtain meeting information.

The proxy voting agencies use the voting materials to set up the meetings in their own systems. They may receive multiple copies of the same materials from different clients and need to ensure that multiple meetings are not created. It has been noted that other jurisdictions use a centralised online gazette for companies to publish meeting details (e.g. the French Bulletin of Mandatory Legal Notices (BALO)). This automates a great deal of the process for setting up meetings and reduces risks of errors.

Custodians send frequent position files to the proxy voting agencies, detailing an end of day holding balance in each of the accounts for which the voting agent has been appointed. The positions provided by the custodians do not always represent the actual settled position on the day. This will depend entirely on the custodian's policy. It could be a settled position, a contractual position or an expected position at a future date. A final reconciliation is therefore required with the true positions. This can then give rise to the issues mentioned in section 2.2 when the positions are compared to the live balances in the registrar's

system, as can activities such as intraday settlements, failed trades and stock lending.

Proxy voting agencies use the data from the custodians to forward ballots electronically to fund managers, proxy advisors and beneficial owners. The proxy voting agencies rely on the custodians to be told to whom the information should be sent. An individual ballot may be viewed by various different parties in the chain, any of whom may submit an instruction on a single entitlement.

3.1.2 Voting decision data

The voting decision can be made at several different places in the chain. For some investment managers, their underlying clients will direct how they vote but the majority are given discretion to vote their shares. They may decide to follow the advice or recommendations of proxy advisors, or may use the reports as guidance (to highlight the issues most important to them) which may then lead to engagement with issuers and result in investor vote decisions.

In the main, this is likely to reflect the house position although in some cases it is possible for portfolio managers to direct the vote themselves, meaning that a house may vote blocks of the same shares in different ways. More than one proxy may be appointed in respect of different shares.

It is possible for several different people in the chain to submit instructions to the proxy voting agency or custodian on the same ballot for the same entitlement. Generally the last vote received will prevail, but different custodians may choose to apply different rules such that instructions from certain parties outweigh others – another demonstration of complexity in the process.

Fund managers typically do not reconcile the actual holdings they have for each vote for each client portfolio against the exact number of shares on the ballot that is to be voted. Instead they rely on the custodian and agency to provide correct data, which as has been noted earlier may not always be up to date. Attention is obviously paid to the holding to ensure it is broadly correct and that no ballots have been missed, but not down to the exact share. Share positions can and do change for a number of reasons, including late or failed trades and stocklending, the majority being down to trading close to the vote.

In some cases, there may be some manual collation of instructions and re-keying of data as instructions are passed up the chain of intermediaries. Instructions are at some point entered into a proxy voting agency's proprietary system, where further automated collation takes place to combine instructions up to the registered account level. The proxy voting agencies forward the instructions to the registrar or to the next intermediary in the chain.

It is regarded as best practice for issuers that have shareholders in CREST to allow for appointments and instructions via the CREST system and, where this facility is offered, it is best practice that a shareholder who holds shares in CREST should vote via the CREST system. In 2013 and 2014 over 95% of FTSE350 companies offered CREST Proxy Voting. This method is preferred because it provides an audit trail that confirms whether the appointment and instruction has been received by the issuer or its agent in time for meeting deadlines. At FTSE350 meetings in 2014, typically over 80% of votes (as a percentage of the issued share capital) were lodged via CREST. Other methods include online voting and paper via post or fax.

It should be noted that CREST does not hold voting data, but simply acts as a messaging service to allow custodians and their agents to pass instructions to the registrar. CREST has a proprietary messaging system and requires agencies to convert the data output from their own systems into the correct format to upload. A fee (of circa £0.30) is levied per account each time a message is created. If an instruction needs to be updated due to a change in account balance or an amendment to a decision, a further message is sent, incurring an additional fee. It is then up to the registrar to replace the previous instruction in the proxy vote database. On the whole, this is done as a straight through process from the agency via CREST to the registrar.

Internet and paper voting facilities are primarily provided for retail shareholders. However there are a small number of proxy voting agencies that continue to give paper instructions. Both paper and internet are sometimes used by institutions to amend existing instructions at the last minute.

Statistics provided by Euroclear indicate that approximately 92.3% of the 152,000 proxy appointments lodged via the CREST system in 2014 were submitted by the two largest vote service providers.

To provide some context in terms of the volume of instructions being processed, Broadridge processed 90% of its UK voting through CREST during 2012 and 2013 voting season. These numbers have increased from 83% voted in CREST during the 2008 season and from 65% back in 2005. More votes being passed through CREST should ultimately reduce agency fees for all custodians as less manual intervention is required.

Once the proxy deadline and record date have passed and all proxy appointments received prior to the deadline have been processed, an issuer (or their agent) will initiate the preparation of final proxy appointment figures. When the proxy voting agency submits the final update (usually at meeting day -2) they are still working with shareholding balance data from the previous day, but this process by the registrar involves the reconciliation of voting figures against the end of day record date position on the register.

At the core of the registrar's role is the commitment to ensure that all validly submitted proxies are voted at the meeting. In circumstances where a discrepancy would cause the invalidation of a proxy appointment, efforts will be made to highlight the discrepancy to the party submitting the proxy appointment in advance of the meeting, to give them the opportunity to resubmit. This could include cases where for example there has been a significant change in the share position such that the account is overvoted where there is a split vote (i.e. some shares are voted for, some against and some withheld). If there is a one-way overvote, (i.e. all shares are voted in a single direction) the lodger may be advised if it is either substantial or potentially material. Otherwise the amount is reduced to the amount of the holding at the record date.

In the event that the amount is immaterial (i.e. would not change the overall vote outcome by more an amount that the issuer specifies e.g. 0.01%), and/or no contact details are provided, this may occur after the meeting or not at all. As contact is generally made by telephone, in very busy times it may not be possible to reach the correct person. In such circumstances, some argue that an email notification might be preferable.

As such, the vast majority of overvotes are corrected. However, there are occasions where changes in position do not result in an overvote (see section

3.3.1) so incorrect instructions, particularly in pooled accounts, may not be noticed.

Figure 3.1.1 Distribution of voting materials

*This represents a simplified view of the data flows and may not apply in all situations.

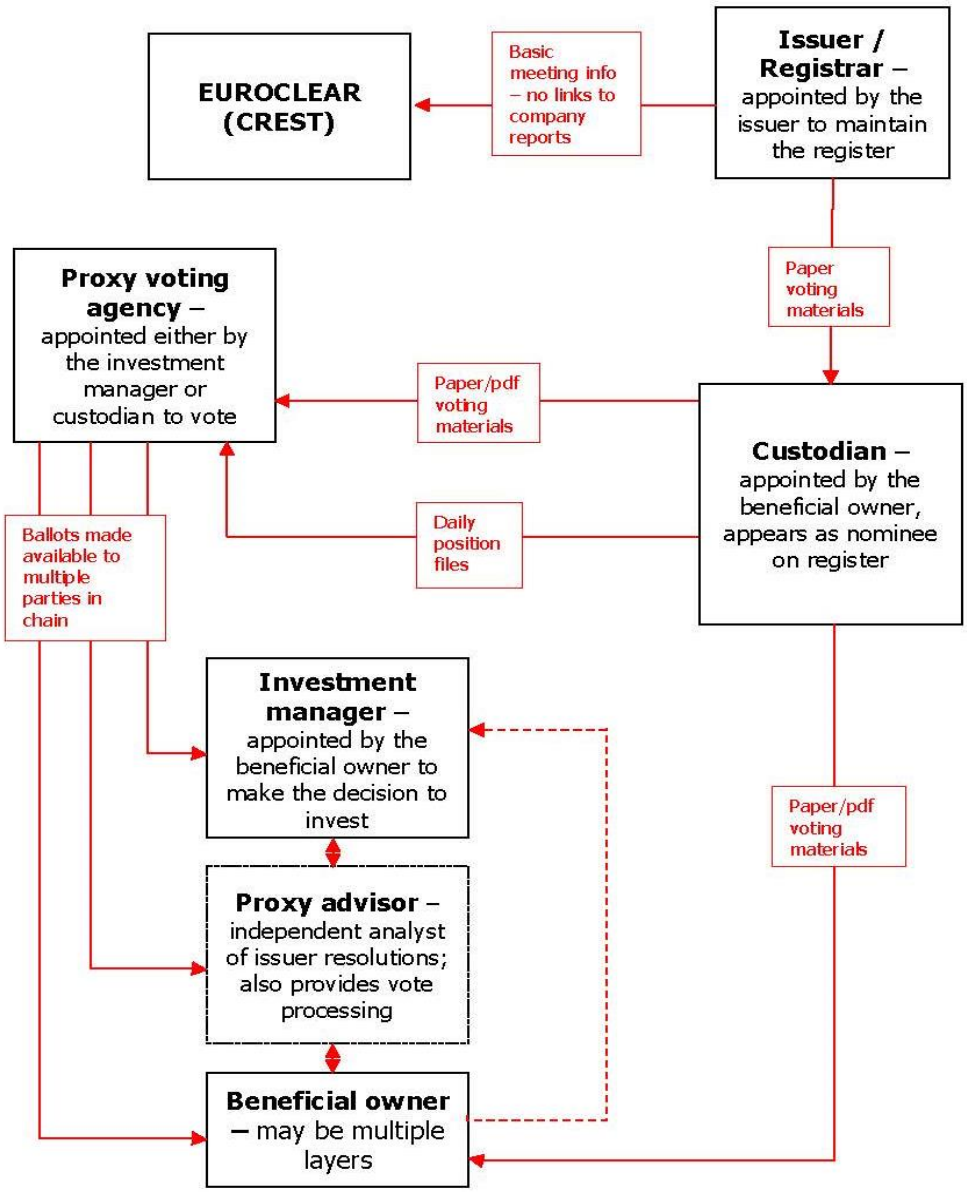
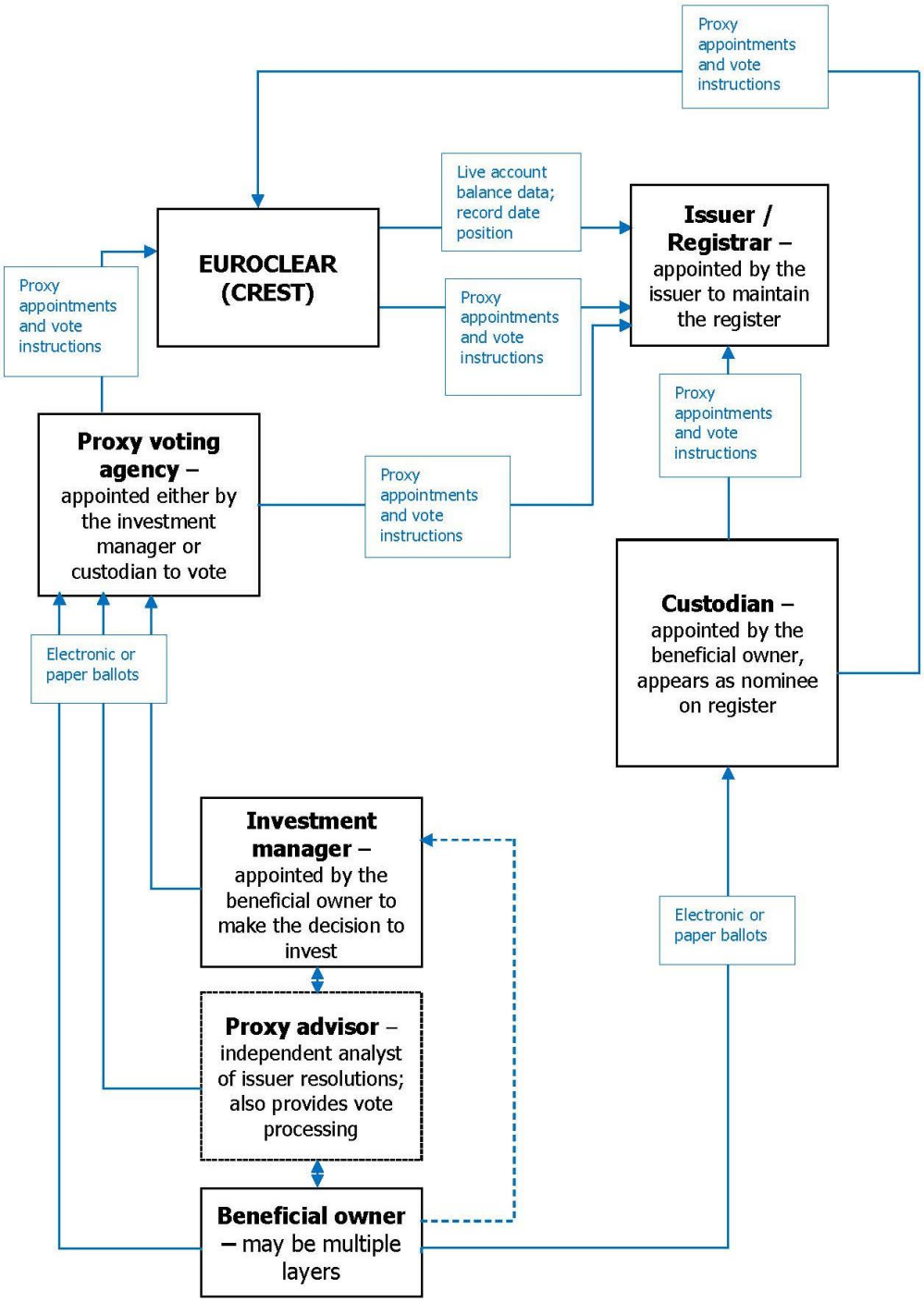


Figure 3.1.2 Voting decision data

*This represents a simplified view of the data flows and may not apply in all situations.



3.2 Timelines

Proxy appointments from retail shareholders will begin to be received almost immediately after the despatch of the Notice of Meeting. These will be received by post or via the internet.

Proxy appointments submitted by, or on behalf of, institutional shareholders, which are relatively low in number but represent the overwhelming majority of shares voted, generally only start to arrive towards the end of the voting period, typically through the CREST system, three to four business days prior to the meeting date.

Issuers and their registrars/agents are often frustrated by the fact that proxy votes from institutional investors are only received in the last day or two of the voting period. Equally, one of the biggest complaints from investors is that they have very little time in which to consider their vote. This is driven by intermediary voting deadlines which are often shorter than the statutory periods. This is also affected by the significant amount of AGMs they have to vote in a relatively short space of time (between April and July and typically known as voting season).

There are systemic reasons for these apparently contradictory statements. Most institutional investor voting decisions are delayed until the proxy advisor has produced its report. This could be up to two to three weeks after the notice is given depending on the complexity of the issues and the number of reports being created at the time. Fund managers may then also engage with issuers where appropriate. Most are constrained by resource limitations, especially in the voting season. They may prioritise by the size of their holding in the individual issuers.

Custodians and proxy voting agencies set voting deadlines in order to be able to collate voting instructions to forward to the issuer/registrar. The standard proxy voting agency deadline is four days prior to the meeting. However, custodians not using proxy voting agencies, or with overseas clients, tend to set earlier cut-offs.

It is regarded as best practice that any updates to instructions are made by completely cancelling previous votes and submitting a new instruction, rather

than by adding to existing instructions. The impact of this is that where multiple instructions are received for a single account (see section 3.3 on account structures) there is a strong motivation, for shares to be held in pooled accounts in particular, to wait until as many instructions have been received as possible before transmitting any data to the registrar.

Proxy voting agencies will hold onto votes submitted until their voting deadline, at the request of the global custodians, usually four days prior to the meeting. They will then transmit the votes they have received, but will continue to transmit additional votes and amendments from that point right up to the issuer's voting cut-off.

Calls to submit votes earlier and then provide revisions are objected to by custodians and their voting agencies as they have to cover the cost of repeated data transfer, CREST system messages and agency data consolidation.

Broadridge investigated the impact of voting earlier than meeting day minus 4 and identified that there would be a 30% increase in the number of instructions required if vote processing was to start at meeting day minus 10.

To put this in context and give a broad indication of costs associated with message fees only, and assuming an average of 1000 appointments for each FTSE 350 company, giving a total of 350,000 appointments, the majority of which currently only use one message costing £0.30 to transmit. (This is likely to be a high overestimate given the CREST figure of 150,000 appointments lodged by the top two voting agencies in 2013.)

If the number of messages were to increase by 30%, that would make an extra 105,000 messages, costing an additional £31,500 for all the meetings, or an average of £90 per meeting.

This does not seem a particularly high price to pay for transparency.

3.2.1 Record date

Currently, the UK Companies Act stipulates that the deadline for receipt by the issuer of appointments of proxies (whether in writing or by electronic means) cannot be more than 48 hours before the meeting[4].

A "record date" for voting is defined as the date voting entitlements are set and the point at which the eligible registered owners are identified for the purposes of voting and attending meetings. For issuers with shares in CREST this record date, similarly, is not allowed to be more than 48 hours before the time of the meeting. This is required by the Uncertificated Securities Regulations[5] which state "for the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend and vote at the meeting". Typically this is the close of business on the day of the proxy appointment deadline.

As proxy appointments are expected to be with the registrars 48 hours before the meeting, the proxy appointment has to be lodged before voting entitlement is set. When the proxy voting agency submits the final update (usually at meeting day minus 2) they are still working with holding balance data from the previous day and in respect of instructions generated on data from several days prior.

Voting instructions can be amended at any time up to the meeting, as long as a proxy appointment has been correctly lodged prior to the cut-off (subject to over-riding conflicting requirements in individual issuers Articles or Notice of Meeting). Registrars will make reasonable endeavours to process changes right up to the start of the meeting, but there are practical issues that make it difficult to continue to accept frequent large numbers of instructions during the period between the cut-off and the meeting. This is mainly due to the registrar having

[4] Companies Act 2006, section 327 (2) states "any provision of the company's articles is void in so far as it would have the effect of requiring any such appointment [the appointment of a proxy] or document to be received by the company or any other person earlier than……. 48 hours before a meeting or adjourned meeting". No account is to be taken of any part of a day that is not a working day.

[5] The Uncertificated Securities Regulations 2001, Statutory Instrument 2001 NO 3755, Section 41(1).

to download the proxy vote position to a different system to physically transport it to the meeting venue. (Working with live register data at the meeting venue has been attempted on occasion but the data connection required to handle the volume of data makes this too unreliable for the majority of meetings.)

Once the download has taken place, usually the day or night before the meeting, any amendments have to be made manually. Additionally, this time is used for resolving overvoted positions and other queries on large positions, and preparing voting data for the issuer. Investors wishing to amend their vote at the last moment, or who have failed to lodge a proxy, still have the option of attending the meeting by sending a representative and voting on the poll.

It has been suggested that moving the record date for voting at the meeting to an earlier date would be helpful. The ICSA Registrars Group examined this issue in their paper in April 2012[6] and concluded that, in line with the outcome of the consideration of the issue under the Company Law Reform process, whilst moving the record date further away from the meeting, perhaps by a day or two rather than the up to thirty days suggested in some quarters, would make operational arrangements more straightforward throughout the market, this is not, by itself, a reason for making a change.

The Registrars Group concluded that there were good reasons for keeping the record date as close to the meeting as possible, in order to ensure that, as far as practicable, those who are entitled to attend and vote at the meeting are the same as those who have an economic interest in the issuer. This would also reduce instances of what is known as “empty voting”. (This is where an investor has voting rights in company shares without having any economic interest in the security at the time of voting – see Appendix A for glossary.)

There is also a perception that advances in modern technology mean that the industry should no longer need so much time to carry out its functions or to reconcile investments. However, as the analyses in this paper show, a “straight through” vote process does not exist and many parts of the data chain are still complex and involve manual entry of data.

At the same time the volume of data has increased dramatically.

[6] ICSA Registrars Group Guidance Note: Practical Issues Around Voting at General Meetings

The alternative view is that bringing forward the record date to two days before the voting deadline, and separating it from the proxy appointment deadline (which could remain at 48 hours before the meeting) would reduce the likelihood of reconciliation issues and the positives of this may outweigh the negatives of the potential for empty voting. Even in the current system, there is a possibility that votes are being lodged for shareholders who have since sold their shares given the two day settlement period in the UK.

The trade-off of not establishing an earlier record date means that registrars have to identify and resolve overvotes i.e. when an instruction for more votes is given than there are shares in the account. This also impacts the custodians as the fees they pay to their agencies must also cover the resources required to spot and rectify overvotes. In addition, issuers may have to accept that a number of inaccurate votes may be counted (unbeknown to the registrar) where a change in position has occurred that does not create an overvote, but in exchange for a lower possibility of empty votes.

A change in the law to allow moving the record date would require a concerted lobbying effort from all participants in the market. In order to be effective, further data would need to be collected to understand the timing of investors submitting their votes, to position the record date at the optimum point.

3.3 Structure of holdings

The structure and complexity of the chain by which shares are held can decrease the transparency of voting data.

Shares held by custodian banks on behalf of their clients can be registered in two principal ways:

1. In an omnibus or “pooled” account in the name of a nominee company (often named after the custodian), with many clients’ shares held under that name. ;
2. In a “segregated” single client account which is a separate legal entity exclusive to the client.

A “designated” account is an account in the name of a nominee company but with a unique designation, that can be operated as either a pooled or segregated account.

Omnibus accounts may be preferred by institutional investors and/or custodians for the following reasons:

- The time frame for investing in new markets may be reduced as the investor does not need to complete extensive documentation. However, it can be seen that in markets where it is a requirement to have segregated accounts, the time to market does not appear to be significantly slowed.
- The omnibus account provides a perceived additional layer of client confidentiality in the course of normal trading activity (although disclosure may be required under local regulations, e.g. the FCA Handbook, Listing Rules, Foreign Ownership Levels and CA s.793);
- It facilitates stock lending and generation of income on deposit by providing a large pool of available shares;
- It allows internal settlement between clients without going into the market, which can reduce trade failures on regular trading;
- The cost to the custodian is lower as the omnibus structure is less process intensive and because of a reduction in the number of accounts that need to be opened and maintained at the sub-custodian or in CREST.

Segregated accounts may be preferred by institutional investors and/or custodians for the following reasons:

- Greater confidence in asset protection;
- Simpler reconciliation;
- Ability to lodge proxy appointment/vote instructions for the ‘whole’ position, negating the risk of over-voting;
- Simplified asset servicing – the investor’s bank account can be lodged with the registrar to facilitate direct payment of dividends and simplification of any election processing (currency/reinvestment options);
- Separating client assets can be beneficial in meeting regulatory obligations.

Using data received from Broadridge's Global Custodian clients, approximately 3,625 designated accounts were identified which have approximately 38,000 underlying accounts. The split of segregated accounts versus omnibus accounts was approximately 3,400 Segregated and 225 Omnibus.

Further analysis of a recent large FTSE 100 AGM can be used to identify the ratio of shares owned by the omnibus accounts versus segregated accounts. For this meeting Broadridge received notification of 1,544 designations which held 12,386 underlying accounts. Of these 1,544 designations 134 were held in omnibus accounts with share positions totalling 6.1bn shares, and 5bn shares were voted. There were 1,410 segregated accounts holding 8.7bn shares of which 3bn shares were voted.

Post the Lehman Brothers collapse and the issues which arose around the unwinding of client/investor holdings, the concept of pooled nominees has been much debated, as from a voting perspective designated accounts are considerably more efficient. There was also a concern that pooled accounts did not protect investors to the degree expected by regulators. As such and under the banner of the Securities Law Legislation (SLL) being considered by the EU, there was a proposal to ban pooled accounts and force designations. This immediately led to a lobbying effort both by voting agencies who thought this was an excellent idea and custodians who did not. The SLL was subsequently shelved and there is no current indication that anything on this topic will be seen by the new EU parliament.

3.3.1 Problems with omnibus accounts

Vote instructions received in the name of the nominee cover a large number of individual client accounts and so the issuer cannot identify which of these individual clients has voted. This happens particularly with pooled accounts.

The omnibus structure can also conceal errors in the vote instruction, the most likely being a discrepancy between the voting entitlement and the number of votes cast. This can result from settlement of trading and stock lending transactions around the vote deadline date. Discrepancies could manifest themselves as overvotes potentially resulting in additional work to reconcile. Or the votes of a client that has not provided an instruction could be used to satisfy

other client's votes where both are held in an omnibus account and the client that submitted the instruction has also transferred their shares.

Specifically, this happens if an investor who originally voted has since sold or lent some/all their shares just before the vote deadline, but this is not detectable by the registrar if there still remain enough shares in the omnibus account (i.e. if other investors in the omnibus account have not voted).

Example. There are two investors within an omnibus account, each holding 500,000 shares in Company X (so 1m shares in total). Investor A decides not to vote. Investor B votes against all resolutions but decides to sell their shares just prior to the vote deadline. As a result, on the vote deadline date and up to the meeting, there are 500,000 shares in the omnibus account and rather than there being no votes submitted at all (which should be the case as the only remaining investor chose not to vote), in actual fact 500,000 shares have voted against all resolutions, as the previous voting instructions remained despite the actual holding being reduced. This is a totally inaccurate reflection of actual investor intentions.

Unless the vote is resubmitted or removed through CREST Proxy Voting, there is currently no visibility back to the submitter or investor of the instruction in the registrar system. The registrars hold the view that subject to market fails (which are low) a CREST participant should know their expected position at the record date. However, the submitter and investor often rely on the registrar to spot the discrepancies, which in fact they cannot identify if there is no resulting overvote, as they do not have visibility of the underlying client positions. In omnibus accounts, it is quite possible that a position change has resulted in certain voting instructions no longer being valid, but if parts of the account are left unvoted this will not be visible to the registrar.

Where over-voting is identified by the registrar the situation can be corrected by the registrars going back to the submitter of the vote (i.e. the custodian or rather typically the proxy vote agency) and asking them to re-instruct to reflect the change of position. The custodian/proxy vote agency will be able to identify where (i.e. which investor) the change of position has originated. However, due to time pressure, or in the event that the registrar cannot get clarification from

the submitter, the registrar will, in the event that the vote is not split, simply reduce the number of votes to the record date position.

If the vote is split, the registrar has no way of automatically reducing the voted amount and would rely totally on an amended instruction. In the absence of this, they have no alternative but either to reduce proportionally or to reject the vote altogether.

Over-voting has been highlighted in prior studies as one of the major causes of failed votes. The primary cause for overvotes is the lack of final voting entitlements in the custodian chain before the voting deadline, resulting in last minute position reconciliations by registrars in the day or two before the meeting, which can leave little or no time to make adjustments for overvoted positions.

Recent analysis of overvoting in the 2014 proxy season by one registrar identified 1662 instances of overvoting, albeit not at material levels as these represented less than 0.5% of the voted share capital. The majority of these were one way overvotes, most of which were resolved, and all the split votes were resolved by resubmission before the meeting. It was estimated that less than 0.1% were left unresolved by the time of the meeting, and these were not material positions or ones where the resolution was contentious.

3.4 Stock lending

3.4.1 High level summary of lending transactions in the CREST system

Stock Loan

A Stock Loan transaction (technically a Sale/Repurchase Agreement) is used in the CREST system to represent a bilateral agreement between two CREST members to lend/borrow a specific security for a specified period of time. The lending agreement may be put in place for a number of reasons, but the most common of these are to permit the borrower to ‘short sell’ the securities or to settle an outstanding bargain for which sufficient securities have not been received. The transaction is security driven.

Delivery By Value (DBV)

A DBV transaction is used in the CREST system to allow parties to exchange a basket of securities against cash. Often these transactions take place overnight although there is an increasing trend towards longer-term DBVs. Typically the value of these transactions is very high and the principal reason for using DBVs is collateralisation of cash balances against the ability to raise cash at a beneficial rate of interest. The 'giver' of securities will hold its available securities in a specifically designated account and when a transaction is input, the CREST system selects from the securities held in this account to match the cash value required. This transaction is cash driven.

3.4.2 Why lending may affect the voting process – and what can be done to stop this?

All forms of stock lending in the CREST system involve a transfer of securities from the lender to the borrower. It follows that, if securities are subject to either a Stock Loan or DBV transaction at the record date for a meeting, the borrower's name will appear on the register rather than the lender's and thus the legal right to vote such securities lies with the borrower.

Clearly if the securities are out on loan or DBV the lender/giver cannot vote on them. However, this situation can be avoided or reversed.

Stock Loan - Firstly and very simply in the short-term this can be achieved by not lending the securities on record date. In the event that a longer-term loan is already in place the lender can recall those securities in advance of the record date and reverse the transaction in the CREST system.

DBVs – the 'giving' party of securities should not include the relevant securities in the 'basket' it allocates for DBVs. If the security already forms part of a Term DBV (i.e. not an overnight transaction), then it can be recalled and the giver can substitute it with another security of the same value.

3.4.3 How it can get more complicated

It is common for Institutional investors to rely on a third party (custodian) to hold their securities. In some cases custodians take a general authority from their clients to use their stock for lending purposes. Where this is the case the

investor will need to ask the underlying client to instruct the custodian not to use their securities over record date for a meeting. Clearly the involvement of two other parties in the chain increases the risk of missed votes and indeed this is compounded by the fact that the beneficial owner may not know whether the securities are out on loan.

In order to release securities from a Term DBV a lender needs to find another security of equal value to substitute into the transaction. It may be that the giver does not have further securities available. At this stage there are two options: either break the contract and rebook the DBV for a lesser cash value, or not to vote.

However, there is an underlying dilemma in this activity – namely that income is earned from lending/giving securities whereas no direct income is derived from voting.

It is an accepted fact that stock lending increases exponentially around the ex/record date period for dividends. If the dividend record date is close to the meeting record date then it is highly likely that the level of securities on loan at the time of the meeting will be far higher than normal. Issuers may therefore wish to adjust the timing of their dividend payment cycle as a way of preventing high stock lending rates interfering with voting at their meeting.

Not all stock loans are underwritten by cash. In some cases equity stock is used as collateral and offered against the loan, as opposed to cash or equivalents. When a borrower puts up equity stock as collateral this must exceed the value of stock or basket of stocks being borrowed and is held by the lender in collateral accounts. Generally the lender receiving collateral does not vote upon the positions although in most cases there is nothing preventing them from doing so. This does however explain why some shares are not being voted as they are held as collateral against a loan and the voting rights are not exercised upon them.

4 POTENTIAL SOLUTIONS

The previous sections have set out the current methods of transmitting voting data, the needs of stakeholders and some of the potential barriers to transparency. While the emphasis may have changed, most of these issues and potential improvements were identified in previous reports. Over the period since these reports were published, the market has continued to evolve and the suggested solutions may be more complex to introduce.

There is a temptation to attempt to replace current methods by imposing a new standalone electronic voting system, but that would be extremely costly and likely to be out of date before implementation. With this in mind, the SVWG therefore has looked at ways of making improvements to existing processes rather than attempting to change the underlying system. It is accepted, for example, that custodians will continue to favour omnibus accounts and investors will continue to use proxy voting agencies. The challenge is to make better use of the existing systems and adjust the current processes so that all participants in the voting chain benefit.

Three main approaches have been identified. The first approach is the establishment of best practice guidelines through various industry bodies to encourage more effective use of the best available processes. The second approach is to use technology to improve current processes and implement new ones. The third approach is to lobby for changes in regulation to alter aspects of the timing and information processing in the voting chain.

The ideas set out below under these headings comprise many of the potential solutions discussed by the SVWG. The SVWG is not specifically advocating any single solution. They are set out here to provoke discussion and assess the level of support or opposition for them. Please see the Executive Summary for how to participate in the debate.

4.1 Best practice

Over the last 10 years the introduction of electronic voting has contributed to an increase in the volume and quality of voting. This could be maximised with some simple steps:

- All Issuers with CREST member shareholders to make CREST voting available;
- The inclusion of a URL link to meeting materials in CREST announcements (Euroclear has committed to increasing the field length to facilitate this);
- CREST participants or their voting agents to always use CREST to transmit voting instructions;
- Where all shares are being voted in a segregated account, the "All Shares" options to be used rather than specifying the number of votes. The All Shares option should not be used on any accounts other than segregated single client accounts. This will remove the need for registrars to alert proxy agencies and custodians to reconcile overvote scenarios;
- Registrars to agree a standard approach to dealing with split overvoted accounts;
- Custodians to agree a standard approach to providing position data to agencies in order to reduce inconsistencies. There are rarely, if ever, problems with such data in the context of a corporate action, so it should be possible to agree on how to handle data for voting purposes;
- Custodians to allow issuers access to the voting decisions within their agencies systems to promote transparency.

It is largely within the power of investors to make their voting decisions available, although as has been seen, timing, resources and system issues currently stand in the way. Some recommended best practices could be implemented via the Stewardship Code, including:

- Investors to notify issuers of voting intentions when they are not voting in accordance with management recommendations, or to make vote decisions available on their website in a more timely manner, specifically with enough time to allow issuers to engage with investors on the issue before the meeting;
- Investors to publicly disclose their voting record/votes submitted, on a regular basis e.g. annually;
- Investors to ensure votes submitted in a manner consistent with ICSA guidelines e.g. including contact details.

While taking into account cost implications, voting instructions should be passed up the chain as early as possible. In addition the following further best practice is suggested:

- Where all shares are voted on an account, indicating that it is a segregated single client account, proxy voting agencies should transmit the instruction to CREST immediately;
- Large votes on omnibus accounts should be lodged immediately and refreshed on receipt of additional instructions (the definition of "large" to be debated).

In order to minimise the impact of stock lending on voting, it is suggested that:

- Issuers should consider keeping voting cut-off dates and dividend record dates separate by a minimum period of five days.

4.2 Technology and new processes

As the overwhelming majority of vote instructions pass through CREST, the SVWG considers that making small improvements to usability would benefit the largest number of people, whilst making it a more cost effective solution to some of the voting issues identified. Improvements in this area include:

- Increasing the field length for a URL link to meeting materials in the CREST meeting announcement (Euroclear has indicated this will be implemented in November 2015);
- Including the voting service provider (VSP) CREST participant ID in voting messages in order that registrars can easily identify who submitted the vote, to enable them to return queries and confirmations to the correct party;
- Considering reducing or eliminating the cost of voting messages to encourage sending of earlier and multiple messages.

New systems would be required to implement other potential solutions. The potential cost and issue of who would pay for these would need to be considered.

- The introduction of a UK online gazette for distributing meeting information; this could also be a central point for investors to disclose voting activities;
- The provision of automated vote confirmation from the registrar back to the submitting party;
- Issuer access to custodian and voting agency systems.

4.3 Legislative changes

As outlined in section 3.2.1, a key change that could be proposed in the area of legislation would be an amendment to the record date regulations. In order to balance the various requirements, it is suggested that the record date could be permitted to be set two to three days prior to the proxy appointment deadline. Issuers that have particular concerns about empty voting would not be forced to move it away from the current arrangements. If there is a genuine appetite for this across the voting stakeholders, further research would be required to recommend the most effective timings.

Other areas where changes to legislation could be helpful relate to requirements for investors to disclose their voting intentions. These could include:

- Including voting decision data under s.793 powers (see Appendix B3 section on Australia);
- Requiring investors to disclose voting activities as part of an annual report.

4.4 Request for feedback

The voting chain comprises a large number of different participants who each have different drivers and requirements. The various proposed solutions set out above have differing levels of support both amongst the group membership and market participants as a whole.

The SVWG recognises that there is a much larger constituency that has not yet been reached. Feedback is therefore sought on the processes described in this paper and the potential solutions suggested from all interested parties. The goal is to publish a paper of specific recommendations by the end of 2015.

All feedback should be submitted by the end of September 2015. The following questions are offered to guide feedback but all comments are welcome:

- Have we adequately captured your needs as a stakeholder in the voting chain?
- Do you have any recent examples of the current system working well or badly?
- Do you think our suggested solutions will help fulfil your needs?
- Do you think any of them would be detrimental or unworkable, or give rise to unintended consequences?
- Can you offer any other solutions that we have not thought of?
- What do you think the cost of implementation of any of the solutions would be?
- Who should (or should not) pay for implementation?

Please forward comments and suggestions to Jude Moore preferably via email to: Jude.tomalin@uk.bp.com

If you are unable to email, hard copy comments may be posted to Jude at:
BP p.l.c.
1 St. James's Square
London
SW1Y 4PD.

APPENDIX A: DEFINITIONS

Asset manager: A person or investment advisory firm making investment decisions on behalf of a client.

Beneficial ownership: The entitlement to receive some or all of the benefits of ownership of a security (e.g. income, voting rights, power to transfer). Beneficial ownership is usually distinguished from 'legal ownership' of a security.

Blocking market: A stock market in which shares, when voted, can be temporarily blocked from trading. (This does not apply in the UK market.)

Central Securities Depository (CSD): A specialist financial organization that provides a securities settlement system facilitating the holding and transfer of securities such as shares in uncertificated (dematerialized) form so that ownership can be transferred through a book entry rather than the transfer of physical certificates.

Corporate representative: An individual appointed by a shareholder which is a corporation to act on its behalf at general meetings.

CREST participant: This is the equivalent of the nominee.

CREST Member Account: Multiple member accounts 'belong' to the CREST participant (or nominee) and are the equivalent to designated nominee accounts. It should be noted that a CREST member account can still be used to pool holdings for multiple beneficial owners.

Custodian: The party that safe keeps and administers assets on behalf of the owner.

Designated nominee account: Sub-division of the main nominee holding typically used to provide separation of nominee clients or pools of clients. Designated nominee accounts are reflected in CREST as CREST member accounts. It should be noted that a designated nominee account can still be used to pool holdings for multiple beneficial owners.

Electronic voting: the appointment of proxies and delivery of voting instructions by electronic means (as opposed to the use of handheld poll voting devices at meetings which is out of scope for the purposes of this paper).

Empty Voting: Empty voting is a term used to describe transactions in which an investor acquires voting rights in company shares without having any economic interest in the same security. The most common form of empty voting is called "record date recapture," in which an investor borrows company shares before a record date and then returns these same shares to the beneficial owner after the record date. The investor who possesses the shares on the record date is entitled to vote at the shareholder meeting, even though he or she does not have any ongoing economic interest in the company.

Institutional investor: A business devoted to holding and managing assets, either for clients or for itself. Examples include mutual funds, banks, holding companies, and brokerages.

Intermediaries: Term used for each link in the chain from end investor to the Issuer with respect to the meeting notification and voting process. For example custodians and proxy voting agencies would be considered to be intermediaries.

Issuer: A company which is incorporated in the UK with shares traded on a regulated market or a multilateral trading facility in the UK.

Nominee: A person in whose name assets (for example, a nominee shareholder of company shares) are held, but who does not have any beneficial entitlement to those assets.

Omnibus account: A single securities account within which the securities account holder co-mingles the assets of two or more underlying clients, rather than in separate accounts with designation.

Pooled nominee account: see “omnibus account”.

Proxy advisor: Entity providing research recommendations and other services to institutional investors, typically asset managers and / or asset owners.

Proxy appointment deadline: the time limit for receipt by the issuer of appointments of proxies (whether in writing or by electronic means).

Proxy voting agency: Entity providing outsourced processing solutions to intermediaries, typically custodians.

Record date: The time when entitlement to attend a meeting and the balance of shares that can be voted is determined by the issuer under UK law. Positions considered are taken at the close of business on this date.

Recording / registering proxy votes: the receipt of the proxy appointment and the acknowledgement of its validity and eligibility.

Retail shareholder: Generally refers to individual shareholders who hold (usually) certificated positions directly registered with the issuer. With the rise of the use of brokers it can also now include individuals who hold via a nominee and who therefore do not appear on the register of members.

Segregated account: A nominee account (or CREST Member Account) used specifically for a single beneficial owner.

Split vote: A vote instruction where votes are cast differently for specific share amounts for the same account. This is typically associated with instructions for omnibus accounts where multiple underlying clients will submit differing instructions on their holdings, which is then consolidated.

Sub-custodian: This is the local market entity (typically a bank) providing administration and actual safe keeping of securities (and associated asset servicing) in the local market.

Voting: The process by which registered holders and proxies submit votes via a poll card or show of hands at a meeting. For the purpose of this paper, voting is defined more widely as the process whereby investors appoint proxies and submit voting instructions which are implemented at a shareholders' meeting even though the investor is not physically present.

APPENDIX B: FURTHER BACKGROUND

B1: THE ORIGINS OF THE SHAREHOLDER VOTING WORKING GROUP

In 1998/9, the National Association of Pension Funds sponsored an independent inquiry into proxy voting, the Newbold Inquiry, which examined the system for voting by institutional shareholders and sought to make recommendations to raise voting levels. To take the recommendations from the Newbold Inquiry forward, the Shareholder Voting Working Group (SVWG) was established in September 1999 under the chairmanship of Terry Pearson, an experienced investment custodian. This established the first industry-wide body to address the issue of improving the voting process in the UK and brought together all the relevant stakeholders. It focused on the process of lodging proxies so that institutional investors could have confidence that their voting intentions would be successfully lodged. In 2001, the Group produced a report which made recommendations on how this process could be streamlined so as to improve the level and quality of voting in the UK by both domestic and overseas shareholders.

Nevertheless there were still concerns that the system for recording proxy votes in company meetings was not as efficient as it should be. It was complicated by the number of different stakeholders involved and by confusing lines of responsibility. For example, while it is generally considered to be the role of the investment manager to exercise voting rights on behalf of investors, (technically, this is a matter for contractual agreement between the investor and his investment manager), the achievement of this is not straightforward because the shareholder recorded on the company's register (and thus the person who is legally entitled to exercise the voting rights), is not the investment manager, nor even the ultimate beneficial owner, but normally the custodian's nominee company. Other parties in the process include the registrar acting on behalf of the issuing company and the various proxy voting agencies available to custodians, investment managers and others.

This multiplicity of parties, in a system that is not fully automated, inevitably creates inefficiencies. For many years, there have been anecdotal stories about investment managers submitting votes which appear not to have been

recorded; in other words the votes are "lost". Unilever undertook an ad hoc analysis into voting for its 2003 Annual General Meeting where it wrote to ten of its major institutional shareholders who appeared to have voted 50 per cent or less of their holdings to establish why they had not voted their entire holding. This revealed that three had given instructions to vote which were never received by the issuer. There were a number of reasons why this occurred which appeared to be generic to the wider process rather than to involve one specific structural weakness.

Thus in 2003, Paul Myners was invited to chair the SVWG and published his report[7] at the start of 2004. The report identified a number of areas of specific interest and focus, many of which have been resolved, but in some cases remain outstanding.

The key areas examined were: Beneficial Ownership; Electronic Voting; Designation; the Record Date and the impact of Stock Lending. A number of recommendations were made to address the problems highlighted. Substantial progress has been made in implementing the recommendations, key areas being the introduction of voting in CREST, changes to the Companies Act in 2006 around the rights of proxies and disclosure of poll results, and new best practice guidelines for investors under the Stewardship Code (see below). However little or no change has been seen on issues such as the use of omnibus accounts and around stock lending.

Appendix C sets out the Myners Report recommendations in detail, along with notes on what has and hasn't been implemented further to this and the follow-up reports published in March 2005, November 2005 and July 2007.

[7] Review of the impediments to voting UK shares: Report by Paul Myners to the SVWG (January 2004)

B2: UK AND EUROPEAN REGULATORY DEVELOPMENTS AND GUIDELINES

Throughout Europe issues relating to voting and, in particular, the processes required leading up to a General Meeting are being reviewed. There are a number of initiatives and ideas being discussed and it is important that any harmonisation or law produces the best model for Europe as a whole and that those different initiatives are complementary. The SVWG is an important part of this overall debate and should be used as input to any future developments in this area.

- **EU Central Securities Depositary Regulation.** The EU Central Securities Depositories Regulation (EU 909/2014) which came into force in September 2014 requires all shares of traded companies in the UK to be issued and traded in dematerialised form. This will mean an end to the share certificate system in the UK for traded companies. Under the CSD Regulation, new shares issued by traded companies must be in dematerialised form after 1 January 2023 and existing shares must be dematerialised by 1 January 2025. In its latest progress report on the Kay Review (see below) the Department for Business, Innovation & Skills, said that as part of the UK's implementation of dematerialisation as required by the Regulation, the UK government will consider whether the current system for holdings of dematerialised securities works effectively and efficiently for investors and issuers and will explore the most cost effective means for individual investors to hold shares directly on an electronic register. In December 2014 an industry working group published details of a proposed model for introducing full dematerialisation in the UK.

- **EU Securities Law Legislation**. Although unlikely to be progressed in this European Parliament initial discussions focused on a number of aspects that impact the voting process. The most important of these was a debate (triggered by asset protection concerns) regarding the use of pooled nominees and the potential to move towards designated accounts.

- **EU Shareholder Rights Directive**. In April 2014, the European Commission published a draft Directive to revise the Shareholder Rights Directive

(2007/36/EC). This includes a wide variety of different proposed measures, including a number of new provisions relating to identifying shareholdings and facilitating the exercise of shareholder rights such as shareholder voting, and enhancing the transparency of proxy advisors.

- **Best practice principles for proxy advisers.** Following ESMA's report into the role of the proxy advisory industry, a group of six proxy advisers has published a set of best practice principles for the industry in March 2014. The three main principles, which are supplemented by additional guidance, are service quality, conflicts of interest, and communications, and they apply on a "comply or explain" basis. The group will monitor implementation of the principles and will formally review them within the next two years. ESMA is currently conducting a review of the operation of the best practice principles.

- **The European Post Trade Group**. Since the Giovannini report was published in 2001 there has been a focus on removing cross border barriers relating to various parts of the industry. Voting is one of these areas and work is continuing to improve the process flow throughout Europe.

- **European Market Standards for General Meetings.** It is important to be aware of the existence of the European Market Standards for General Meetings, endorsed by key market infrastructure bodies and trade associations across major EU markets. The purpose of the standards is ultimately to harmonise how company general meetings occur within those Member States in terms of meeting announcements, notification of entitlement and voting arrangements. Whilst harmonisation to the standards by Member States is purely voluntary at this time, there is the potential for legislation in the absence of progress being made in the coming years. A European Market Infrastructure Group (E-MIG) meets regularly to check the progress of individual Member States in increasing their level of compliance with the standards.

- **Stewardship Code.** In the UK the Stewardship Code has followed the Walker review (2009). The latest version of the Code was published in September 2012 (effective from 1 October 2012). Like the Corporate

Governance Code, the Stewardship Code adopts a "comply or explain" approach against 7 principles and is intended to encourage and help investors be better stewards of the assets they manage. As at the beginning of December 2014, the Stewardship Code had 294 signatories. 201 signatories are asset managers, 80 asset owners and 13 service providers.

- **ICSA Guidelines**. ICSA Registrars Group published a guidance note in April 2012 titled "Practical Issues around Voting at General Meetings". The purpose of this guidance note was to remove the confusion around the practical issues of voting at general meetings and ensure that the market as a whole has a common understanding of how the process works. Areas covered by the guidance note include:
  - The notice of meeting
  - The proxy deadline and record date
  - The voting period
  - What should happen after the proxy deadline has passed

- **Kay Review on UK equity markets.** A review was carried out in 2011/2012 by Professor John Kay to look at investment in UK equity markets and its impact on the long-term performance and corporate governance of UK quoted companies, with a final report published in July 2012. One of the recommendations of the report was that there should be a review of the role and fiduciary duties of investment intermediaries. The Law Commission was asked to conduct a review and issued a report in July 2014 which examined how the law of fiduciary duties currently applies to investment intermediaries. The Law Commission recommended that the UK government should review the current operation of the system of intermediated shareholding, with a view to taking the lead in negotiating solutions at a European or international level. In its latest progress report on the implementation of the recommendations in the Kay Review in October 2014, the Department for Business, Innovation & Skills said that its review of the system for electronic share ownership, as part of the implementation of dematerialisation required by the EU Central Securities Depositary Regulation (as described above), will also seek to improve its

understanding of individual and institutional investors' experiences of intermediated share ownership and whether reform would be desirable.

B3: EXPERIENCE IN OTHER JURISDICTIONS

General meeting practice varies considerably by market as a consequence of a variety of factors, including history, securities legislation and the manner in which people hold their shares. It should not be assumed that practices employed in one jurisdiction can necessarily be 'lifted' and applied in another, particularly one such as the UK where there is a high proportion of shareholders holding their shares directly on an issuer's register.

Even in markets where there is the ability to hold shares directly on an issuers books in the same way as the UK, there can sometimes be significant challenges associated with other elements of the voting process. A few examples of jurisdictions that have significantly different approaches are given below.

USA

In the US, exchange rules reflect more of a depositary-type arrangement, with issuers required to fund dissemination of meeting documentation by third party providers to shareholders holding a beneficial interest in the company without the requisite visibility of who those investors are. The distribution is charged at a predetermined rate and not subject to competition. The same is true of votes returned to issuers from those same investors, with limited visibility of who those votes relate to and therefore little opportunity to effectively engage.

Germany

Germany has both registered and bearer shares. All securities are dematerialized. While there are registers, the ownership structure is very dependent on the banks how hold shares for all end investors. Registers are not updated daily in the same way as the UK. They include the name of the end beneficiaries as long as they are resident in Germany. For any shareholder outside of Germany they only contain the name of the banks and custodians.

Owing to the changes in German law (following a ruling by the higher district court in Cologne in June 2012), there have been additional disclosure and registration requirements introduced for shareholder meetings of some German issuers that have issued registered shares. Whilst this provides greater transparency to the issuer on who their investors are, it also makes the voting process more cumbersome and manual and has discouraged investor

participation due to the approach of 'soft blocking' or 'ear marking' that some Custodians are taking due to the potentially liquidity risk around settlement in the event of a trade, transfer or loan.

Broadridge identified a decline in vote returns from institutional investors of approximately 10%. After the ruling various meetings were held with sub-custodians, clients and proxy agencies where the sub custodians advised that in order to mitigate the risks associated with the court decision, shares must be registered at the beneficial owner name level for voting to ensure they are successfully counted. The impact of this registration process can lead to a delay in trade settlement should the mechanism to de-register the shares for the vote process not go smoothly, potentially ending up with a failed trade. As market practice, where there is any impediment to trading or settlement, global custodian clients generally will take a cautious approach and therefore treat Germany as a blocking market. It is readily agreed that this restriction has been the main reason why vote returns have declined in Germany as well as the requirement to disclose the beneficial owners as part of the process. In addition to the court ruling the various Sub-Custodians in the German market cannot agree on a single process and have in turn created extra layers of complexity to the voting process.

Portugal

Number 6 of article 23º C of the Decree Law 49/2010 states that in the event of split voting (for example where multiple clients shares are held in omnibus accounts or where the client of the Custodian has a segregated account but is submitting vote instructions for a variety of underlying clients) the following information must be provided:

a) The identification of each Beneficial Owner and the number of shares each is instructing (and occasionally their Tax ID)

b) The voting instructions specific to each item on the agenda, given by each Beneficial Owner

Despite the voting instruction being sent to the Local Custodian via ISO15022 message, the above data must be sent directly to the Issuer often via e-mail. A signed declaration (intention to participate/professional shareholders) and

meeting-specific Power of Attorney printed on letter headed paper must also be included as well, with the original POA needing to be sent by courier to Portugal for arrival before the meeting date.

The identification of the beneficial owner can lead to decreased participation in some instances. However, the greater cost levied by the local custodians and other agencies to cover the additional cost of administering this can also have a negative effect on both participation and timely deadlines. There are also some concerns around the security of sending this data via email. The message chain between Intermediaries is secure and data is protected. Processes that require data to be sent to Issuers often do not consider or address this point as is the case here.

Austria

Austria implemented measures in order to be compliant with the Shareholder Rights Directive effective August 1, 2009. It transformed Austria into a record date market (clearly a positive step), so shares are now only blocked between the voting deadline and the record date (typically just a day or two).

It is now necessary to disclose the identity of the Beneficial Owner to the Issuer and also to provide a Holdings Certification of the record date entitlement and that the voted portion has been blocked. In addition, a meeting specific (i.e. valid only for a single meeting) Power of Attorney (PoA), signed by the Beneficial Owner (although sometimes the custodians may sign this at the Issuers discretion). The Holdings Certification can only be provided by the Custodian and cannot be delegated to a third party (e.g. a voting agency) and the format of the certification varies across the sub-custodians. For example, some use a 'Certificate of Deposits' alongside the PoA; whereas other would instead use 'Confirmation of Holdings' which may or may not be incorporated within the POA.

The positive impact is a much reduced blocking period and meetings are announced earlier providing investors more time, however, steps highlighted in 3-5 above have added significant complexity to the process once the investor has entered their voting intention. The extra documentation and lack of a standardized approach / format means greatly increased operational effort and risk. This of course leads to increased cost (which is always passed back to the

end investor in terms of fees) and of course earlier deadlines as the intermediaries need more time to manage the extra documentation in a way that mitigates the increased operational risk.

Australia

Section 672 of the Corporations Act, 2001 enables issuers to identify votes made at beneficial owner level both in the run up to a shareholder meeting and post the event. The process generally assists issuers in identifying if and how beneficial owners have voted prior to the meeting itself. It also used by issuers to ensure that votes are not lost in the custodial chain prior to being received at the registrar.

Disclosure requests can be issued to registered holders (a member) or anyone named in a previous disclosure under s672B known to be holding shares. Disclosure of the voting instructions is pursuant to the provisions of s672B(1)(c)(ii) & (iii) under subsection 672B of the Act regarding the voting instructions received in relation to the securities held under its ownership and/or custodianship.

There is a statutory fee of 5 AUD per disclosure request which is payable to the respondent if a notice is responded to within the legislative timeframe. If the person to whom the notice is served does not comply on time, the fee can be recovered by the issuer. Under the law, as it is written, a payment would need to be remitted with every notice issued and the payment is necessary to ensure the recipient is legally obliged to respond. Furthermore, the response would need to be monitored to ensure it was provided within the statutory timeframe of two business days after the notice is given.

Custodians are asked to disclose information on the exercise of any voting rights attached to the shares or interests held. The disclosure should include a breakdown of:

- Beneficial owner details
- The exercise of any voting or other rights attached to the shares or interests, i.e., breakdown of For, Against, Abstain votes for each resolution, together with the
- Number of shares voted by each

In practice, custodians will generally request this information from their proxy voting agency and pass this information on to the issuer. The issuer can also make multiple requests meaning that the disclosure process can technically begin once the meeting and its resolutions have been announced.

Issuers find this valuable and many make these requests on an annual basis. There was a little resistance from custodians, mostly when it was first discovered that this type of analysis was possible. However, once the custodians had liaised with their compliance and legal teams and realised that this was an obligation, the resistance subsided. Only one global custodian still refuses to disclose but the impact of this has been minimal. The only other area of resentment relates to the frequency of requests in the run up to a meeting, but this is a common complaint anyway in the world of share register analysis especially when there is a high frequency of analysis requested by an issuer.

B4: DEVELOPMENTS IN MARKET PRACTICE

The trading landscape has changed quite drastically over the last 10 years. The use of 'traditional' trading methods (i.e. dealing over the phone with brokers) has been affected by an increase in automation and electronic trading is now prevalent. This has led to far less personal interaction between individuals in the trading world and the increased use of algorithms and dark liquidity in order to execute trades is now common. Most institutions now have a split of around 60% traditional trading to 40% electronic.

Electronic trading has two main benefits. Firstly, from a financial perspective the cost of trading electronically is approximately half the cost of traditional trading. Secondly, trades can be executed extremely quickly. However this has also led to changes in the trading landscape as participants seek to obtain a competitive advantage by relying on ever increasing trading speeds. In particular, institutional investors face challenges in interaction with market participants using high frequency trading (HFT). This utilises very high speed (i.e. hundreds of thousandths of a second) connections to trading venues in order trade ahead of and around other investors but their speed means actually interacting with them is nearly impossible. This leads to increased stock price volatility.

Complexity has increased as markets have become more fragmented in terms of venues. Ten years ago stocks were either traded on the primary exchange or over the counter (OTC). In Europe now these venues have been supplemented by multiple exchanges and multilateral trading facilities (MFT's), electronic crossing networks and dark pools. Complexity is further increased by new regulation within equity markets and demand to develop the existing framework in order to increase transparency in the markets (MIFID II initiative). This changing market structure has led to investors finding it very difficult to source liquidity as pre and post trade transparency in Europe especially still has much room for improvement.

Meanwhile, equity volumes over the last ten years have diminished substantially. The events following the collapse of Lehman Brothers saw retail investors deeply scarred by the losses and general volatility experienced. The macro environment over the following years with peripheral Europe was a second blow to equity investors and has led to equity volumes globally reducing

by 50% over the last 10 years as investors looked to source safe havens in fixed income and cash deposits. Only recently have volumes started to increase again in Europe as investors cautiously become more comfortable with the current economic environment. This has led to an increase in the proportion of overseas ownership in Europe stocks, as foreign investors return.

Another modern feature is the use of dark pools to match buyers and sellers of stocks with complete anonymity. These pools are run predominantly by brokers and contain a variety of trading flows from within brokers such as derivatives, cash, proprietary and client business. Dark pools have resulted in a lot of business being taken away from the primary exchanges or 'lit' market.

B5: PREVIOUSLY CONDUCTED VOTE AUDITS

Georgeson conducted a vote Audit for a large PLC in 2006 looking at the results of their AGM held in 2005, with the express purpose of determining whether their institutional shareholders were successful in voting at their AGM. As part of that analysis the nominees were approached with specific voting details to match against what they had submitted in advance. This was chased in parallel with direct outreach to the top 25 institutional shareholders to determine if their votes were received and counted at the meeting. It was identified that 195 million votes or 6.7% of the issued share capital did not get counted at the meeting . The reasons were detailed as follows:

A. Over Voting
    - Voting more shares than available in account on record day.
B. Problems with Corporate Reps
    - No defined protocol from registrar and/or nominees.
C. Human Error
    - Manual keystroke error during processing
D. 3rd Party Issues
    - Voting Agent failed to execute nominee instructions.
E. Breakdown at Nominee Level
    - Investment Manager Instructions not processed.

In 2007, Georgeson did a wider analysis looking at 5 FTSE100 Issuers. The methodology was the same looking to compare actual voted files from each of the issuers to the specific voting data as provided by the largest investors. Of note it has to be said that there was quite a few investors who were unwilling to provide their voting data. The objective was to determine:

- Are votes going missing?
- To what order of magnitude are votes going missing?
- Why are votes going missing?
- Are there problems with over voting
- Is there something Issuers can do to prevent leakage of votes?

The results demonstrated that there remained problems around:

- Over Voting

- Split Voting
- 3rd Party Issue e.g. agent failed to execute nominee instructions
- Human error e.g. manual keystroke error during processing)

The impact of the above problems ranged from 1.24% to 9.07% of issued share capital that did not get voted at those meetings. The largest single issue affecting the votes, related to overvoting positions where voting instructions exceed the number of shares in the account at the 48 hour cut off deadline. The timing around the voting deadlines for the institutional investors coming in advance of the actual record date is the window that creates the greatest loss of votes.

APPENDIX C: MYNERS REPORT RECOMMENDATIONS AND PROGRESS

Beneficial owners will need to:

• ensure that the agreements between the various participants who are accountable to them:

- include specific service standards for voting;

- establish a chain of responsibility for voting and an information flow which enables all parties to meet their responsibilities;

- require those responsible to report back on the discharge of their obligations;

• determine a voting policy and ensure it is implemented;

• make enquiries in the next three months as to whether their agents and others will have introduced electronic voting facilities this year;

• ensure that, when voting through CREST, their agents complete the necessary details of source;

• consider requiring their shares to be registered in a nominee company with a designation in their name or some other unique identification;

• be fully aware of the implications for voting if their shares are lent and when a resolution is contentious automatically recall the related stock, unless there are good economic reasons for not doing so, and not vote shares held as collateral; and

• question the manager's report and hold him to account for the manner in which the votes have been cast.

Some of these issues have now been addressed, at least to some extent, through the Stewardship Code which places considerable responsibility on the Fund Manager and Beneficial Owner to ensure that their engagement with the

company in the interests of their clients translates into action where appropriate. However the Code is voluntary and not all investors have signed up to it. As at the beginning of December 2013, the Stewardship Code had 290 signatories, a modest overall increase from 259 at the same point in 2012. 203 signatories are asset managers, 73 asset owners and 14 service providers.

The position on electronic voting is vastly improved, particularly through the development of functionality in the CREST system through which the overwhelming majority of votes are lodged are submitted. The whole of the FTSE100, and the overwhelming majority of the FTSE350, now offer electronic voting as a matter of course. However there is no obligation or guidance recommending investors use CREST to vote when it is made available.

The points on stock lending and use of designated accounts have not been adopted; these are discussed in more detail in Section 3.

Issuers will need to:

• ensure that voting reflects the shareholders' views and that the vote is administered in a fair manner;

• introduce electronic voting capabilities during 2004 if they have not already done so;

• call a poll on all resolutions at company meetings;

• disclose the results of polls and, where an issuer decides not to call a poll, they should disclose the level of proxies lodged on each resolution;

• when declaring the results, publish the total number of votes or proxies received, the votes or proxies "for" and "against", and the number of votes or proxies consciously withheld; and

• allow proxies to speak and vote on a show of hands and amend their articles if this is not currently permitted.

These issues have largely been addressed.

There remains a common law requirement for the Chairman of the meeting to ensure that voting reflects the shareholders' views and that the vote is administered in a fair manner, and this has been enhanced by the right under s342 of the Companies Act 2006 for shareholders to call for an audit of any poll vote;

S333A of the Companies Act 2006 (introduced by the Companies (Shareholders Rights) Regulations 2009 SI2009/1632) requires that all traded companies 'provide an electronic address for the receipt of any document or information relating to proxies for a general meeting';

S341 of the Companies Act 2006 requires that the results of a poll be disclosed on a website, and that these include details of votes for and against and the number of abstentions (votes withheld); and

S324 provides that the rights of the proxy are the same as those of a shareholder.

However, where no poll is taken the publication of proxy results remains a matter of good practice.

Registrars will need to:

• enable participants to check that instructions have been received and votes registered where electronic voting is used;

• confirm the receipt of electronic voting instructions;

• report the late receipt of instructions, or if the instruction will not be voted the reasons why; and

• query instructions which appear on their face to be incorrect or invalid.

Some of these issues have been addressed.

Where voting instructions are lodged electronically through the CREST system, participants are able to confirm that the registrar has received the instruction by checking their CREST GUI (graphical user interface) where an appropriate change of status is recorded.

Where voting instructions are lodged electronically through other means, a receipt can usually be automatically obtained.

Electronic proxy instructions received after the close of the proxy task will be time stamped by the system and the lodging agent will therefore be aware that they have been received too late.

The ICSA Registrars Group have published a detailed note on the procedures adopted where instructions are received which appear to be invalid or incorrect. This almost always relates to cases where a specific number of shares is being voted, rather than 'vote all' and this is an effect of the use by investors of pooled rather than designated custodial accounts. The registrar will always seek, where time allows, contacting the lodging agent in such cases, but this is not always possible where, for example, the proxy form has been submitted at the last minute or without clear contact details.

Investment managers will need to:

• introduce electronic voting capabilities for 2004;

• when voting through CREST, complete the necessary details of source;

• where a resolution is contentious, automatically recall lent stock and not vote shares held as collateral;

• include the voting process in FRAG 21/94 reports; and

• report to their clients how they have executed their voting responsibilities.

Most investment managers do not vote directly into CREST, so the requirement to complete "details of source" i.e. contact details now falls with the voting agencies.

FRAG 21/94 reports no longer exist but voting is included in the audit process.

Stock lending is discussed in Section 2; automatic recall rarely happens, and in fact investment managers often do not know that stock they are managing has been lent out (if being lent out by custodians). In cases where the manger is aware of the loan, they may not have authority to request that the custodian recalls it. However where there is a contentious issue, stock is more likely to be recalled, dependent on house criteria.

Proxy voting agencies will need to introduce electronic voting capabilities for 2004 if they have not already done so.

All have done so in one shape or form, although for a variety of reasons not all always use them.

Voting is still not a straight through process, with many instances of data needed to be rekeyed from one system to another.

Custodians will need to:

- introduce electronic voting capabilities for 2004;
- when voting through CREST, complete the necessary details of source;
- offer all customers the choice of a nominee company with a specific designation; and
- include the voting process in FRAG 21/94 reports.

The majority have introduced electronic voting capabilities; however clients are sometimes resistant to use them, still preferring to send faxes etc.

Choice of designated account depends on account opening process; investors are often not informed of pros and cons. Voting is still not a straight through process, with many instances of data needed to be rekeyed from one system to another. This is due to incompatibility between the systems exacerbated by a lack of use of messaging standards

The most common current message used to convey meeting notifications and voting instructions between intermediaries globally is the ISO15022 standard messaging that can also be conveyed across the SWIFT network. These messages are specific to the Corporate Actions process but not to any specific type of action and can be used for a wide variety of events. As a result they are largely free text based with less emphasis on structured fields and flexible enough to cater for all the differing variances in terms options and event data. This is particularly an issue meeting events where the agenda must be placed in the free text area due to the absence of any meeting flow based structured fields. The downside to this is that for a specific event type (proxy for example) it is very hard to achieve standardised formats across all users.

Meeting notices will be sent in a variety of formats of the ISO15022 message (MT564) to a Custodian (or Voting Agency acted on behalf of multiple Custodians) that uses multiple Local Custodians for the same meeting. This presents challenges in automatically ingesting this data.

Similarly, Local Custodians and Voting Agencies may for instance receive instruction messages using the ISO15022 message (MT565) from different clients in varying formats for the same meeting. This makes it very difficult for them to automate the ingestion of the instructions and in many cases there is a high proportion of manual keying if instructions.

In 2005, an Industry group, co-ordinated by SWIFT, came together to attempt to address this by designing a new xml based messaging format and chain of messages specifically designed for the meeting workflow. This included two new message types that were not included with the ISO15022 set; post meeting vote confirmation and meeting results. This new dedicated message set was registered with ISO under the 20022 standard and are much more structured in

nature with less emphasis on free text (free text capability will always be necessary to some extent). A set of usage rules was also drafted to try to define best use standards. These messages were implemented on the SWIFT network in 2007/ 2008 and can be used today (either across the SWIFT network or via other file exchange mechanisms such as FTP / SFTP.

There remains, however, little adoption and usage of these messages, largely as a result of the financial climate since 2008 and increasing regulation impacting the sector driving development budgets and priorities in what are considered to be more critical areas.

Investment consultants will need to advise their clients on:

• the voting process, ensuring that they are better skilled in understanding and questioning the manner in which their shares are registered;

• determining a voting policy;

• including enquires about electronic voting in any "Request for Proposal"; and

• questioning their investment managers on their reports as to how they have discharged their voting responsibilities.

These issues have improved but there are still relatively low levels of education among clients.

The Financial Services Authority will also need to consider amending the Listing Rules to make it a listing requirement:

• for the full results of polls to be disclosed; and

• that quoted companies publish their annual reporting documents on the Internet as soon as they have been published.

Both issues have been addressed under the Companies Act 2006:

- Disclosure of polls is a requirement under s341; and
- Prompt website publication of annual financial reports is a requirement under s430.

The Government will need to consider the introduction of various legislative changes to:

• change the time limit for the appointment of proxies under the Companies Act and the record date in the Uncertificated Securities Regulations so that:

- the current 48 hour limit is amended to two clear business days to take account of bank holidays and weekends; and

- it is standardised by issuers as the close of business on the day that is a clear two business days before the day the meeting is held;

• give more rights to proxies so that they can speak at meetings and vote on a show of hands as well as a poll;

•allow corporate members to appoint more than one corporate representative (each for a specified number of shares); and

• provide that sufficient shareholders could require an independent scrutiny of a poll.

All issues have been largely addressed under the Companies Act 2006:

- The 48 hour proxy appointment deadline excludes non-working days under s327, although this is subject to the Articles of Association of the Company and as a maximum there is no standardisation. However, any deadlines are clearly stated in the AGM notice and on the proxy card, so there should be no excuse for confusion;
- The rights of the proxy are the same as those of a shareholder under s324;
- Multiple corporate representatives are permitted under s323; and
- An independent scrutiny of a poll can be required under s342 subject to certain conditions.

APPENDIX D: REFERENCES AND FURTHER READING

Paul Myners progress report to the SVWG (2007):

www.investmentfunds.org.uk/assets/files/press/2007/20070730-01.pdf

ICSA

ICSA Guidance Note: Enhancing Stewardship Dialogue

ICSA Registrars Group Guidance Note: Practical Issues Around Voting at General Meetings

Other UK and EU Developments

CSD Regulation : http://ec.europa.eu/finance/financial-markets/central_securities_depositories/index_en.htm

BIS Kay Progress Report : https://www.gov.uk/government/publications/kay-review-of-uk-equity-markets-and-long-term-decision-making-implementation-progress-report

Law Commission Report on Fiduciary Duties of intermediaries : http://lawcommission.justice.gov.uk/areas/fiduciary_duties.htm

Proxy Advisers Best Practice Principals: http://bppgrp.info
Stewardship Code : https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Stewardship-Code.aspx

European Market Standards for Meetings: http://www.ebf-fbe.eu/european-industry-standards/

APPENDIX E: SVWG PARTICIPANTS

The following people have attended meetings or otherwise participated in the work of the SVWG in 2013/4. The views expressed in this paper are not necessarily those of any individual listed.

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