

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 127

Topic: Brokerage Houses

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Senator Cameron asked:

Senator CAMERON—What checks and balances are there against fraud at the brokerage houses?

Ms Gibson—I cannot answer that, I am afraid, Senator.

Senator CAMERON—Do you think that you should be able to answer that?

Mr D'Aloisio—Well, the companies themselves and the chairman—

Senator CAMERON—So is it self-regulation?

Mr D'Aloisio—You would appoint them to carry out the scrutiny and count the votes—and count them properly. You appoint them to perform. So the company itself would want to make sure that there has not been any vote rigging or pushing of votes. The fact that we are not aware of it being a problem, in the sense of complaints and issues to us, would indicate that, by and large, it works very well.

Senator CAMERON—What if there is a vested interest? What if there is a corrupt company director involved in establishing the process and there is corruption in the brokerage house? Is that beyond the realms of possibility?

Mr D'Aloisio—Well, it is possible, but the reality is that shareholders know. Institutional shareholders talk to each other, they put their proxies in, other shareholders vote and there is a show of hands at the meeting. I think they would be alerted to it pretty quickly if there had been any rigging. Where there are people who might have a conflict of interest, those conflicts of interest need to be disclosed. I think we could look at it further, but certainly it is not on our radar as a major problem.

Senator CAMERON—I hope that I am putting it on your radar—

Mr D'Aloisio—I am happy to put it on.

Senator CAMERON—because I intend to continue asking questions about this. You say that you are having a look at this issue within your organisation. Can you come back to me and let me know exactly what you are doing and whether you are prepared to have a look at some different processors where shareholders can be sure that there is some consistency in terms of the process, and there are some checks and balances in terms of ensuring that the votes are fair and above board?

Ms Gibson—We can do that.

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Answer:

The shareholder voting process

Legal framework

Shareholder voting is governed by the *Corporations Act 2001 (Act)*, the company's constitution, the ASX Listing Rules (if the company is listed on the Australian Securities Exchange (ASX)) and general law principles. In administering the company's voting processes, the directors and company secretary will also be bound by their obligation to act in the company's best interests.

Voting in practice

In practice, the procedures adopted by companies to comply with the legal framework governing voting are relatively well established. These procedures are however not identical throughout the market. For example, while most large entities outsource the vote counting tasks to a share registry, smaller entities may perform this task in-house through the company secretary.

Transparency and integrity

Legal mechanisms

The legal framework does provide for specific ways to encourage transparency and integrity in voting processes. For example, the Act requires recording and disclosure of voting outcomes in the company's minutes of meeting, with the record specifying the numbers of proxies received voting for and against and abstaining from voting on each resolution.¹ The ASX Listing Rules also requires a listed company to notify the ASX of the outcome of each resolution immediately.² In the case of related party resolutions, the Act requires voting records to be retained for seven years.³

We note it is relatively common for larger companies to appoint a scrutineer of the votes.⁴

ASIC review of market practice in shareholder voting

2009-2010 Project

ASIC undertook a project in 2009-2010 to investigate the integrity of the shareholder voting process as suggested to do so in the Parliamentary Joint Committee report "*Better Shareholders – Better Companies*".⁵ Among other things, ASIC met with a wide variety of persons involved in the voting process including company officers, share registry service providers, custodians, proxy advisers and bodies representing both institutional and retail shareholders, and also attended a small number of shareholder meetings and reviewed the voting results.

This allowed ASIC to better understand the functions of the participants in the voting process. These participants have expressed different views about whether there are problems with the voting process in Australia.

ASIC's preliminary view is that there are some improvements that could be made to the voting process. We will be testing our conclusion through targeted stakeholder consultation. In practice very few shareholder resolutions pass or fail by a close margin, and complaints to ASIC regarding

¹ Section 251AA of the Act.

² Listing Rule 3.13.2.

³ Subsection 225(5) of the Act.

⁴ ASX Listing Rule 14.8 also enables the ASX to require a company to appoint a scrutineer (whether the company's auditor or another person selected with ASX's approval) to decide the validity of votes cast at general meetings:

⁵ Parliamentary Joint Committee on Corporations and Financial Services report "*Better shareholders – Better company: Shareholder engagement and participation in Australia*", June 2008

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the administration of the voting process have been rare. However the possibility of the reforms to executive remuneration which place new focus on the need for the voting process to operate with integrity means that consulting on these issues now is timely.