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Proxy voting at general meetings of ASX200 Companies in 2003 and the growth of ownership responsibilities

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CORPORATE GOVERNANCE INTERNATIONAL

Corporate Governance International Pty Limited ("CGI") was formed in 1993 as a specialist consultant to institutional investors in the field of corporate governance. Its Australian proprietors and principals, Pru Bennett, Frank Burke, Sandy Easterbrook, Ron Lee and Iain Thompson, previously held senior positions in the Australian legal profession and financial services.

CGI has been closely involved with many governance initiatives in Australia for the benefit of investors. They include the development of the investment management industry's *Corporate Governance: A Guide for Investment Managers and Corporations* (IFSA Blue Book, now in its Fourth Edition); the issue by the Australian Securities & Investments Commission of its January 1998 Policy Statement 128 *Collective Action by Institutional Investors*; the introduction into the Australian Corporations Law in July 1998 of six key governance reforms, including best practice remuneration disclosure; and CGI's release last March of its *Remuneration Guidelines for Institutions and Listed Companies* (Green Book).

An important activity of CGI since inception is our subscription-based CGI Proxy Advisory Service, previously operated under the Independent Shareholder Services (ISS Australia) name. The Service was set up by CGI on the instigation of Australia's largest institutional investors to report to them on the governance of the major Australian listed companies. Its reports analyse the key governance issues in ASX200 entities and provide recommendations on constructive communication by institutions with the entity on those issues. The reports also analyse resolutions submitted by management for investor approval at annual or other general meetings and provide voting recommendations on those resolutions. The entities can subscribe for their respective report after it is issued to institutional subscribers.

In 2001 CGI introduced the *CGI Rating Service* for institutional subscribers. That Service rates the governance of each Top 100 Company. Ratings range from 5 (Exhibits all, or nearly all, of the elements of best practice) to 0 (Essentially fails to exhibit any element of best governance practice). Factors assessed in compiling each company's rating include the composition of the board and its committees, remuneration, accounting policy, financial disclosure and audit independence.

Recognising the increasingly international scope and application of best practice in corporate governance and the increasing importance attached to governance analysis in the investment decision, CGI has arrangements in place to exchange information and research with a wide range of international experts and investors.

A CGI principal has served on the Board of Governors of the International Corporate Governance Network and, together with another CGI principal, is active in its committee work. The ICGN represents institutional investors with more than US$10 trillion in assets under management around the world and is recognised as the premier international standard setter on governance issues for institutional investors.

Conclusions and Recommendations

■ CGI draws the following conclusions from the subject matter of this report:

1. The level of proxy voting in major ASX-listed companies has continued to increase, if unspectacularly and not to the levels in the major markets of UK (55%) and USA (80%).

   Proxy instructions in 2003 in a sample of 161 widely held major ASX-listed companies represented on average 44% of total voting capital.

   Comparable results (albeit with some difference in sample companies) were 2002 – 41%, 2000 – 35% and 1999 – 32%.

2. Research by Computershare estimates the level of ownership of ASX200 companies by Australian institutional investors at around 36%. Statistics provided by major Australian custodian JPMorgan indicate a substantial increase in 2003 in the level of proxy voting by its Australian institutional clients – see Appendix 1 on page 24. That increase followed JPMorgan's introduction of arrangements to encourage and facilitate proxy voting by its clients centred on convenient electronic proxy voting. CGI understands that another major Australian custodian is contemplating introducing similar arrangements.

   There is, therefore, considerable scope to lift the Australian level of proxy voting well above the 44% figure.

3. The 161 companies in the 2003 sample held 171 meetings and submitted 880 resolutions in their 2003 notices of meeting for proxy (or other) vote. Except for a handful, including a few board challenges by "external" candidates, all of those resolutions were board sponsored.

   Of those 880 resolutions, 4 companies withdrew a total of 6 board sponsored resolutions from shareholder vote prior to or at their meetings. 5 of those withdrawn resolutions related to remuneration of directors. 4 withdrawals were actually or presumably as a consequence of institutional proxy voting and/or lobbying.

   All 874 of the remaining board sponsored resolutions were submitted to shareholder vote at the meetings and all were passed by the requisite majority of votes (simple majority or 75% majority, depending on the subject matter).

4. The top 5 "Against" proxy votes in the sample (all on board sponsored resolutions related to remuneration of directors submitted to shareholder vote at the meeting) ranged from 29% down to 12% of total voting capital - see page 12 below. While those figures are up on the prior year, none was sufficient to defeat the resolution, all 5 of which, as indicated in 3 above, were passed by the requisite majority of votes.

5. CGI's voting recommendations on those 880 resolutions were "Approve" 76% and "Against" 21%, almost half of the latter being on remuneration resolutions.

   CGI is instructed by its institutional clients to apply the highest standards to its analyses of resolutions submitted to shareholder vote so that the client can take that advice into account as *part* of its own practical decision on how to vote.

Such a practical voting decision will validly take into account a number of other factors and in many cases that may validly result in a vote to support the Board sponsored resolution.

In CGI's experience, however, there is always a hard core of Board sponsored resolutions each year, mainly relating to remuneration, which, in CGI's view, do not merit shareholder support on any rational basis. Those certainly exceed the single digit number of withdrawn resolutions referred to in 3 above.

6. In CGI's view, therefore, it is not merely a matter of getting the overall institutional proxy voting level up but also of improving the quality of the institutional practical voting decision in some cases.

7. In addition, to avoid being left behind in the increasingly global and competitive investment market, we need to pick up in Australia on some important developments overseas.

   Those developments relate, first, to improvements to the proxy voting process and the need for all participants in that process to take specific steps and for the beneficial owners to drive the whole exercise. Introduction of electronic voting capabilities in 2004 is seen as the key to a more efficient voting system in the UK (as indicated, the proxy voting level there is already at 55%). In Australia, the JPMorgan initiative referred to in 2 above needs to be followed by the other members of the local custodial services industry.

   Secondly, the emphasis is being placed on the entirety of institutional shareholders' fiduciary responsibilities to their clients and beneficiaries – not just their responsibility to vote shares.

■ CGI, therefore, makes the following recommendations:

1. The institutional investor bodies, and especially ACSI and ASFA[1] representing major Australian super funds and IFSA[2] representing major Australian fund managers, should immediately appoint appropriately staffed and adequately resourced committees to review the contents of this report and the new Myners report and ICGN Statement on Institutional Shareholder Responsibilities, parts of both of which are quoted in this report (see pages 15 to 20 below).

2. In particular, ACSI, ASFA and IFSA should:

   a. Consider endorsing, jointly if that can be agreed, the new Myners report, and especially the specific steps recommended for each of the participants in the proxy voting process, as equally applicable to the Australian system (on the basis that our system and its participants are essentially identical to those in the UK)

   b. As part of that, agree and publish a target for introduction of electronic voting capabilities by the main 2004 Australian proxy season in October and November of this year. The US based proprietors of two major and competing international electronic voting platforms[3] have each already visited Australia at least once last year and held discussions with leading

[1] Australian Council of Superannuation Investors and Association of Superannuation Funds of Australia

[2] Investment and Financial Services Association

[3] ADP's *'Proxy Edge/Proxy Edge Light'* and ISS's *'Votex'*

custodians and institutional investors (and CGI). So considerable groundwork has already been done

Obviously, achievement of that target will also involve consultation with major custodians, professional share registrars and, probably, the listed companies but, as indicated by Paul Myners in his report, the beneficial owners need to drive the whole exercise.

3. Adoption by institutional shareholders of the best practices set out in the ICGN Statement on Institutional Shareholder Responsibilities will go a long way to lift not only the quantum of overall institutional proxy voting levels in ASX-listed companies but also the associated quality of institutional voting decision-making. ACSI, ASFA and IFSA should, therefore, simultaneously review the ICGN Statement with a view to issuing well prior to the main 2004 Australian proxy season in October and November of this year, again jointly if that can be agreed, a version tailored to Australian conditions.

4. As part of that, ACSI, ASFA and IFSA should specifically consider:

    a. The entirety of institutional shareholders' fiduciary responsibilities to their clients and beneficiaries – not just their responsibility to vote shares

    b. In particular, the conflict of interest provisions and associated safeguards canvassed in the ICGN Statement, and

    c. The further issue of stock lending and other sophisticated arrangements relating to "vote renting" referred to on pages 21 and 22 below.

5. Parliament and regulators (ASIC and ASX) should:

    - Keep a close watching brief on the progress of 1 to 4 above

    - Promptly amend s251AA of the Corporations Act to close the loophole identified at the foot of page 9 below

    - Police due compliance by ASX-listed companies with the reporting requirements of that section (see page 23 below)

    - Take prompt and effective action to close the "regulatory gap" analysed on page 23 below, and

    - Review whether large-scale professional proxy solicitation and "vote renting" in the Australian market of the type referred to on pages 21 and 22 below should be subject to some form of regulatory oversight, if not control.

6. Trustees of superannuation or investment funds and other fiduciaries who rely on professional investment managers should, for their own and their beneficiaries' protection, take a close interest in, and should push for implementation of, all of these recommendations.

    They should also press their custodians to introduce, if they have not already done so, arrangements to encourage and facilitate proxy voting by institutional investors centred on convenient electronic proxy voting.

Introduction

- This Report describes a study of proxy voting on resolutions submitted to shareholder vote by a sample of major listed Australian companies at annual and general meetings held in 2003. It follows similar studies conducted on 1999, 2000 (in conjunction with the Centre for Corporate Law and Securities Regulation) and 2002 proxy voting results.

- The corporate governance of major listed companies has attracted increased attention worldwide following spectacular collapses of companies such as Enron and Worldcom in the US, Parmalat in Europe and HIH and One.Tel in Australia.

  Those collapses and other "nasty surprises" for public investors involving major destruction of shareholder value short of actual company collapse, all closely linked to bad governance, emphasise the importance to investors of fulfilling their role in the governance of the companies in which they invest.

- Fundamental to that role is properly informed and well considered proxy voting on issues reserved for shareholder decision. Proxy voting is, therefore, an essential part of the engagement between investors and companies. An increasing number of superannuation funds are developing their own guidelines for their fund managers to follow when voting their stock and are monitoring their managers' competence and efficacy in doing so.

- CGI supports one of IFSA's conclusions[4] that constructive communication between fund manager and investee company is of equal importance to well considered voting. Voting is, however, crucial because it provides a backbone to constructive communication by institutional investors with investee companies. It demonstrates that institutional investors are prepared to exercise their voting power if management and the board do not respond positively to constructive communication.

Aim and scope

- The aim of this study is to assess the level of proxy voting in major Australian listed companies in calendar 2003, to compare the results with previous studies and overseas developments and to make some conclusions and recommendations.

- This study reviews proxy voting statistics reported to the ASX under the Corporations Act by 161 major ASX-listed companies in respect of 171 shareholder meetings (both AGMs and GMs) held between 1 January and 31 December 2003. The earlier 1999, 2000 and 2002 studies covered meetings held between 1 July and 31 December, and the sample sizes were smaller at 74, 74 and 124 meetings, respectively.

- For the reason explained below, the core research has been based on companies with a widely held shareholder base - that is, *without* a major non-institutional shareholder - and on resolutions to elect directors, because no shareholders are excluded from voting on those resolutions.

[4] Investment and Financial Services Association Ltd, (IFSA) Fact Sheet "Corporate Governance " 2002

Results

- Over the period that CGI has reviewed statistics, the level of proxy voting has continued to increase, if unspectacularly and not to the levels in the major overseas markets of UK and USA:

    - Proxy instructions in 2003 for director-election resolutions in 100 widely held companies represented on average 44% of total voting capital. Previous results were 1999 – 32%, 2000 – 35% and 2002 – 41%.

    - For the full sample of companies - that is, including those *with* a major non-institutional shareholder - proxy instructions in 2003 for director-election resolutions represented on average 48% of total voting capital. That compares with 39%, 41% and 45% for the full sample of 1999, 2000 and 2002 respectively.

    - In 2003, 10 companies representing 6% of the sample failed to lodge their proxy voting statistics in accordance with section 251AA of the Corporations Act and had to be excluded from the analysis (see further page 23 below). In 2002, 13 companies representing 10% of the sample either failed to lodge statistics or lodged incomplete statistics and were similarly excluded.

- The widely held companies provide the more significant measure because:

    - The scope for institutional investors realistically to influence voting outcomes is much greater in a company without a major non-institutional shareholder.
    - Both the highest and the lowest levels of proxy instruction were in companies with a major non-institutional shareholder. It is clear that, in the highest case, the major shareholder lodged a proxy form and, in the lowest case, that did not occur. Such a wide variation in proxy voting practice by major shareholders substantially affects the average result.
    - The existence of a controlling or major shareholder might discourage the exercise by institutional and other public shareholders of their proxy vote on the basis that the will of the major shareholder would, in any event, ensure passage of the resolutions.

- The present study also revealed that on widely held director-election resolutions in 2003:
    - As in the previous studies, an overwhelming majority of proxy instructions were to vote "For" the proposed resolution. On average, "For" instructions accounted for 37.8% (2002 - 34.1%) of the voting capital.
    - Also as in the previous studies, the percentage of proxies giving their proxy discretion as to how votes may be cast was small, on average, 4.3% (2002 – 5.1%).

    - The percentage of proxy instructions to vote "Against" proposed resolutions in 2003 was, on average, 1.4% (2002 – 1%).

- The percentage of proxy instructions to register an "Abstain" vote on proposed resolutions was, on average, 1% (2002 – 1.2%).

■ Some investment managers have a practice of not voting on resolutions that are deemed to be "routine" and instead voting only on what they consider to be controversial or major resolutions. In addition, some investment managers regard director-election resolutions as in the routine category (although CGI regards that as wrong). Therefore, all controversial[5] resolutions within the sample of widely held companies were also examined to determine whether or not a substantially greater level of proxy voting occurred on those resolutions.

The results reveal no evidence of a substantially higher level of the overall proxy vote (aggregate of "For", "At Proxy's Discretion", "Against" and "Abstain") on controversial resolutions in comparison with the level of the overall proxy vote on director-election resolutions. (The overall proxy vote on controversial resolutions was, on average, 43.6%.)

■ The results do, however, reveal an increase in "Against" votes on some resolutions relating to the remuneration of directors. The highest "Against" vote in a widely held company in 2003 was 28% (see further page 12 below) compared with 12% in 2002.

■ In addition:

- One company (Harvey Norman) cancelled a meeting as a result of pressure from institutional investors. The institutions were successful in lobbying against a proposal, which would have effectively repriced "out of the money" options held by executive directors.

- Four companies, AMP, Brambles, Newscorp and Ten Network, withdrew a total of six resolutions before or at their AGMs – that is, the resolution was not put to the vote at the meeting. In the cases of Newscorp and Ten, institutional lobbying against the proposals was presumably a major factor in the withdrawals. The Newscorp resolution related to the grant of options to executive directors while the Ten Network resolution was a proposal to introduce voting on the re-election of Directors collectively rather than individually. In these cases, it was disclosed that the proxy instructions would have defeated the resolutions.

  In the case of AMP, announcement of the demerger after the release of the notice of meeting meant that resolutions relating to the remuneration of the executive directors were no longer appropriate. In the case of Brambles, the resignation of the CEO meant that resolutions relating to his remuneration were no longer valid.

  The relevant section (251AA) of the Corporations Act does not technically 'catch' – that is, mandate - disclosure of proxy instruction levels if the resolution is not put to the vote at the meeting (the "s251AA loophole"). None of the companies provided that disclosure.

[5] All resolutions where CGI had recommended an Against or Abstain vote

Types of resolutions and CGI's recommendations

- The 880 (2002 – 589) resolutions submitted to shareholder proxy vote by the sample companies fell into the following types:

	2003		2002	
	No	%	No	%
o Election of directors	457	52	344	58
o Executive remuneration	108	12	55	9
o Share capital	70	8	37	6
o Non executive remuneration[6]	61	7	16	3
o Issue re Constitution	51	6	26	4
o Adoption of reports[7]	47	6	46	8
o Schemes of arrangement[8]	14	2	1	-
o Employee equity plans	13	1	17	3
o External Auditor issues[9]	11	1	30	5
o Other[10]	48	5	26	4

- CGI's voting recommendations[11] on those were as follows:

	2003		2002	
	No	%	No	%
o Approve	664	75.5	470	78.0
o Against	184	20.9	89	15.0
o Abstain	32	3.6	36	6.5
o No recommendation[12]			3	0.5

[6] In 2003, a significant number of companies sought shareholder approval to increase the cap on non-executive directors' fees. In most cases the increase was largely to compensate for the phasing out of retirement benefits for non-executive directors in line with international and local best practice principles, including the ASX Corporate Governance Council's new code

[7] Major ASX-listed companies are increasingly dispensing with a shareholder vote on the annual accounts and reports. Technically, they are entitled to do so as the Corporations Act merely requires the accounts etc to be "laid before" the AGM. In the UK, a vote on the accounts etc at the AGM is regarded as de rigeur

[8] The use of schemes of arrangement as a vehicle for company takeover appears to be on the increase. There have been suggestions that schemes provide the bidder with a surer takeover mechanism and, in particular, may discourage higher bids. For that reason, there are also reports of institutional investor opposition to the use of schemes for takeover purposes

[9] In 2002 a significant number of companies changed external auditors as a result of the demise of Arthur Andersen.

[10] The "Other" category comprised mainly issues specifically related to DLC structures (16) and renewal of partial takeover provisions.

[11] See Appendices 2 and 3 for explanation of CGI's voting recommendations

- Of the 457 (2002 – 344) resolutions relating to election of directors, CGI's recommendations were as follows:

	2003		2002	
	No	%	No	%
o Approve incumbents	355	77	261	76
o Against incumbents	67	15	37[13]	11
o Abstain incumbents	25	6	28	8
o Approve challengers[14]	0		0	
o Against challengers	11	2	13	4
o Abstain challengers	0		4	1

- Of the 108 (2002 – 55) resolutions relating to executive remuneration, CGI's recommendations[15] were as follows:

	2003		2002	
	No	%	No	%
o Approve	61	56	35	64
o Against[16]	45	42	19	34
o Abstain	2	2	1	2

- Of the 61 (2002 – 16) resolutions relating to non-executive director remuneration[17], CGI's recommendations were as follows:

	2003		2002	
	No	%	No	%
o Approve	39	64	11	69
o Against[18]	22	36	5	31

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[12] Owing to a late change in the proxy voting form

[13] Including one recommendation "Against" the re-election of an incumbent director whose re-election was opposed by the majority of the board

[14] CGI advocates that director performance assessment, nomination and renewal be conducted through a transparent best practice nomination process usually presided over by a board committee staffed and controlled by a majority of independent directors. For that and other reasons, we do not normally support isolated challengers who are not supported by the incumbent board

[15] See Appendix 3 regarding CGI's assessment of executive remuneration issues

[16] See Appendix 2 for analysis of Against and Abstain resolutions.

[17] See Appendix 3 regarding CGI's assessment of non-executive remuneration.

[18] See Appendix 2 for analysis of Against and Abstain recommendations.

Largest "Against" votes

In the sample of 100 widely held companies in 2003 the top 5 "Against" votes on board sponsored resolutions were as follows:

Company	Resolution	Against Vote 2003	Against Vote 2002 %
Foodland Associated Ltd	Grant of shares to MD	28.9%	12.0%
Patrick Corporation Ltd	Grant of options to MD	24.3%	No resolution
Iress Market Technology Ltd	Grant of performance rights to MD	16.7%	1.7%
Ridley Corporation Ltd	Grant of options to MD	16.0%	6.4%
Coles Myer Ltd	Grant of options to MD	12.2%	No resolution
News Corporation Ltd	Grant of options to executive directors	Withdrawn	12.5%
News Corporation Ltd	Grant of options to non-executive directors	No resolution	11.3%

CGI recommended voting against all of the above resolutions.

Overseas Comparatives

■ The US proxy voting level has been around the 80% mark for a number of years.

US private-sector pension plans are effectively required to exercise voting rights. The US Department of Labor, which is the regulator under the ERISA legislation, has long held the view that the vote is a plan asset which needs to be managed by or on behalf of a plan's trustee with the same care and diligence as other plan assets.

■ With regard to UK proxy voting levels:

- In 1999, the Newbold Committee[19] in its investigation of institutional investor voting in the UK stated that failure to achieve an increase in the UK level from 50% to 60% over the next few years would "justify further investigation by the Government".

  Additional key recommendations in the Committee's report were that:

  1. Regular, considered voting should be regarded as a fiduciary responsibility
  2. Trustee boards should record their policy position on voting in their statement of investment principles (a set of principles with which their investment managers must comply) – this recommendation is now mandated by regulation; and
  3. The institutional investors' industry bodies should continue to encourage and provide practical help to their members to adopt or review considered corporate governance and voting policies.

  At the time the UK Secretary of State and Minister for Trade and Industry stated:

  > I very much agree that responsible voting involves the application of informed decisions reached within the framework of a considered corporate governance policy. High voting levels are important; but it is essential that voting is considered rather than just simple "box-ticking" if it is to benefit British companies.

- The recent "Proxy Voting 2003" report by Pensions Investment Research Consultants Ltd[20] revealed that the average proxy voting level for FTSE 350 companies in respect of meetings held between August 2002 and July 2003 remained static at 55% when compared with results for the previous 12 month period.

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[19] Committee of Inquiry into UK Vote Execution (Y Newbold, Chair)), *Report* (National Association of Pension Funds, London, 1999)

[20] Pensions Investment Research Consultants, "*PIRC's annual survey of proxy voting trends in FTSE All Share companies*" October 2003 www.pirc.co.uk

- A comparison of proxy voting levels based on election of directors in the three UK/Australia dual listed companies (DLCs) reveals the following:

    - In the BHP Billiton DLC, the level of proxy instructions in the Australian company was about 45% (2002 – 41%), significantly lower than the level of proxy instructions in the UK company, which was about 64% (2002 – 62%).

    - In the Brambles DLC, the difference in the level of proxy instructions was much smaller at 43.2% for the Australian Brambles Limited and 49.0% for the UK Brambles Plc. In 2002, Brambles lodged voting results for the combined entity with the overall average being 48.8%.

    - At Rio Tinto, the third Australian/UK DLC, proxy instructions were disclosed only in respect of the Australian company at 23.5% (2002 – 29.3%).

New Myners Report

- The very recent Myners report[21] (Mark II[22]) has reviewed the structural problems in the voting of UK proxies and recommended a package of actions for tackling them.

- Myners concluded that:

> The problems are largely the product of a process that is still quite manually intensive, where the chain of accountability is complex, where there is a lack of transparency and where there is a large number of different participants, each of whom may give a different priority to voting.

He referred to seven participants overall in the voting process with:

> ...typically...four parties between the beneficial owner and the issuer, all with distinct and important roles. For voting instructions to be recorded, they therefore need to pass along a complex chain.

(His) overall assessment, following the review, is that there is not one structural weakness that needs to be addressed. Rather, it is like old pipe work, which could have been more effectively maintained over the years, and is now leaking at various points. It does not need to be ripped out and replaced, but instead the points of weakness need to be overhauled and upgraded.

- While accepting that "[t]he complexity of the voting process is undoubtedly a problem", Myners has put the onus on the beneficial owners :

> However, the routing of corporate actions frequently involves the same process as does voting, but appears to be more effective and efficient. This would suggest that the act of voting shares is not given the importance it deserves and the standards operated are deficient in some way.
>
> For standards to improve, I consider it important for the beneficial owners, as the end beneficiaries of shares, to drive those standards and ensure that any deficiencies are addressed. It is the beneficial owners who are responsible for ensuring that there is a clear chain of responsibility for voting their shares and that this is set out in the various agreements between the participants. They should also have a clear voting policy and be aware of the implications of other activities and arrangements on their ability to exercise voting rights. For example, stocklending affects the voting rights attached to the shares, as the lender does not retain the right to vote. When a resolution is contentious I recommend that the stock lent is automatically recalled, unless there are good economic reasons for not doing so[23].

- Monitoring the investment managers, including requiring reporting back, questioning the manager's report and holding the manager to account for the manner in which votes have been cast are also emphasised.

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[21] "*Review of the impediments to voting UK shares*" Report by Paul Myners (a member of the UK Financial Reporting Council, non-executive director of a number of major UK listed companies and former CEO of the major UK Gartmore Investment Management group) to the Shareholder Voting Working Group January 2004

[22] See his earlier seminal report to the Chancellor of the Exchequer **"***Institutional Investment in the United Kingdom: A Review*" 6 March 2001

[23] But see the ICGN's and CGI's comments on stock lending on pages 20 to 22 below

- The report recommends specific steps to be taken by each of the different participants, including beneficial owners, issuers, registrars, investment consultants and the various trade associations (see pages 33 and 34 below).

- Fast tracking electronic voting capabilities for 2004 "remains the key to a more efficient voting system".

Myners is critical of the "disappointing take up in its first year" (2003) of the London Stock Exchange's CRESTCo electronic system and states:

> …all parties – issuers, institutional investors and the intermediaries – need to make conscious efforts to introduce electronic voting capabilities in 2004. I therefore urge that issuers in at least the FTSE 350, investment managers, custodians and proxy voting agencies should all have introduced the necessary system changes so that electronic voting capabilities are universally available. I also recommend that beneficial owners should over the next three months make direct and specific enquiries of their agents and others to establish the extent to which they have, or will have, introduced electronic voting capabilities to be used this year.
>
> Given the importance I attach to electronic voting, I propose to revisit this subject in a year's time to assess the extent to which the relevant participants in the voting process, particularly the proxy voting agencies and custodians, have introduced electronic voting capabilities.

- The use by custodians of a designated account for each client rather than an omnibus pooled account for clients is also encouraged for the benefit of transparency and accountability.

- The Australian proxy voting system and its participants are essentially identical to those in the UK. Therefore, the gist of Paul Myners' analysis and recommendations will also hold good here.

For that reason and the topicality of his report, its Executive Summary and Table of Contents is incorporated as Appendix 4. The full report is available on CGI's website www.cgi.au.com

ICGN Statement on Institutional Shareholder Responsibilities

- The International Corporate Governance Network (the "ICGN") is the premier investor-driven world wide organization for corporate governance. A large number of its members are officers of investors, both institutional and private, and their advisors, with assets of approximately US$10 trillion. Members also include leading experts and commentators on governance from all the major and many of the emerging markets.

  The ICGN seeks to represent a global consensus on the role of corporate governance in capital markets and, in particular, on what is required by investors in respect of corporate governance. In addition, the ICGN produces reports on current issues and comments on developments. Recent documents may be accessed on its website (www.icgn.org).

- At the 2003 AGM in Amsterdam, the members of the ICGN debated a report from its Committee on Shareholder Responsibilities and endorsed finalisation and issue of an ICGN statement on institutional shareholder responsibilities, a draft of which was contained in the Committee's report.

  The resulting ICGN Statement[24] was issued in December 2003. Of its type, the Statement is the most comprehensive to date and, given the international reach and status of the ICGN and the weight of money its members represent, it is also the most authoritative. The Statement is very frank on the issue of institutional conflict of interest and how it must be tackled.

  As the preamble to the Statement says:

  > …many institutional shareholders, along with the ICGN itself, have taken steps to outline best practices for the governance of …companies. However, institutional shareholders as a class have an equal responsibility to address their own roles as fiduciaries and owners of equity on behalf of savers.
  >
  > This ICGN Statement sets out a framework of best practices on the implementation of fiduciary responsibilities in relation to equity shareholdings. As such it is meant to apply to institutional shareholders and their agents around the world. Further, it addresses the entirety of those relations—not just the shareholder's responsibility to vote shares…
  >
  > It needs to be stressed that this Statement considers governance and investor responsibilities associated with it, not as ends in themselves but means to achievement of optimum interests of beneficiaries.

- The first section of the Statement emphasises the general responsibilities of institutional shareholders and their agents to "ensure that investments are managed exclusively in the financial interests of their beneficiaries" and that "[t]he general objective of these activities is to stimulate the preservation and growth of the companies' long-term value".

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[24] International Corporate Governance Network *'Statement on Institutional Shareholder Responsibilities'* issued 10/12/2003

"Appropriate actions to give effect to these ownership responsibilities" begin with "Voting" but may extend to up to ten other actions, including:

- Maintaining constructive communication with the board on governance policies and practices in general
- Expressing specific concerns to the board, either directly or in a shareholders' meeting
- Making a public statement
- Submitting proposals for the agenda of a shareholders' meeting
- Submitting one or more nominees for election to the board as appropriate
- Convening a shareholders' meeting
- Consulting other investors and local investment associations either in general or in specific cases
- Incorporating corporate governance analysis in the investment process
- Outsourcing any or all of these powers to specialized agents, for instance in the event the institutional shareholder concludes that it does not have the ability to muster necessary skills in-house.

Furthermore, it is "clear that institutions risk failing to meet their responsibilities as fiduciaries if they disregard serious corporate governance concerns that may affect the long-term value of their investment. They should follow up on these concerns and assume their responsibility to deal with them properly."

Fifteen areas of "such concerns" are instanced, including:

- The level and quality of transparency
- The company's financial and operational performance, including significant strategic issues
- Substantial changes in the financial or control structure of the company
- The role, independence and suitability of non-executives and/or supervisory directors
- The quality of succession practices and procedures
- The remuneration policy of the company
- Conflicts of interest with large shareholders and other related parties
- The independence of third party fairness opinions rendered on transactions
- The accounting and auditing practices
- The composition of…committees…

CGI's Proxy Advisory Service covering major ASX-listed entities has routinely analysed all of those areas of concern, where they are material.

- The second section of the Statement addresses "Voting" specifically, including the need for votes to be "cast on the basis of careful analysis, consistent with an institutional shareholder's well-considered policy and with a view towards improving and upholding the corporate governance of companies and markets. Automatic voting should be avoided."

- Section III deals with "Accountability of the institutional shareholder…to the beneficiaries of their investments for the way they execute their ownership responsibilities. To show how they discharge these responsibilities, institutional shareholders should as a matter of best practice disclose to these beneficiaries" ten different matters, including:

  a. Their corporate governance policy outlining how they deal with their ownership responsibilities, how corporate governance aspects are taken into account in their investment policy, and their voting guidelines;

  b. How companies in which they invest are regularly monitored, and how they periodically measure and review the effects of their monitoring and ownership activities;

  c. An annual summary of their voting records together with their full voting records in important cases, e.g. cases of conflict or controversy;

  d. An explanation of specific action taken in important cases;

  f. What resources they have allocated to execute their corporate governance policy;

  h. A list of conflicts of interest that may impede an independent approach towards the companies in which they have invested;

  i. What procedures they have in place to deal adequately with these conflicts…

- A separate fourth section addresses the prickly issue (among some institutional shareholders) of "Conflicts of interest" head on:

  Some institutional shareholders have conflicts of interest that could impair an independent approach towards the companies in which they have invested, generally because they directly or indirectly have other actual or prospective relationships with the companies concerned. In all such cases, the institutional shareholder should ensure full transparency as outlined in III.1 h. and i. above…

  Institutional shareholders should also be aware of possible conflicts faced by their agents…the institutional shareholder should ensure that the agent acts fully independently from corporate management or other conflicting business relationships…in particular, that votes are cast in an informed manner and on the basis of voting guidelines that are materially consistent with its own. It should furthermore regularly evaluate the performance of the agent on the basis of detailed reports and ensure that the institutional shareholder can override agent decisions if need be. In case of doubt regarding the independence of an agent, the institutional shareholder may consider as one possible solution outsourcing the power to perform the ownership responsibilities to a separate independent agent…

- The January 2004 draft revised text[25] of the OECD Principles of Corporate Governance is principally concerned with the governance of companies and the rights and equitable treatment of investors. It does, however, make some references to the responsibilities of institutional investors, including their need to manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

- The final fifth section of the ICGN Statement records the ICGN's belief that:

  > …if institutional shareholders take their responsibilities seriously then this can contribute significantly to the creation of an environment suited for solid long-term investment performance".

  It concludes with specific reference to the stock lending issue:

  > Although share lending in many cases is useful and appropriate, there are negative effects and abuses that require attention. The ICGN is committed to investigate developing a Code of Best Practice to deal with these issues. The ICGN will subsequently determine whether this Statement requires any amendments in that respect.[26]

- The full text of the ICGN Statement is incorporated as Appendix 5 and is also available on CGI's website, www.cgi.au.com.

[25] The closing date for submissions on the draft revised text has now passed and release of the final text is awaited

[26] A separate ICGN Committee is addressing this issue and is due to report on it to the July 2004 Annual Conference

Stock lending and "vote renting"

- As indicated earlier, the January 2004 Myners report states:

  > When a resolution is contentious I recommend that the stock lent is automatically recalled, unless there are good economic reasons for not doing so.

- At the 2001 AGM of ASX Top 20 Company Coles Myer Limited the level of proxy voting was some 32%. The level jumped to 61% in 2002 and subsided again to 37% last year. See Appendix 6.

  The huge voting spike in 2002 was attributable to a "proxy fight" over the re-election to the CML Board of substantial shareholder, long-standing Director and former Chairman, Solomon Lew. Mr Lew was due to retire by rotation at the 2002 AGM and the majority of the Board opposed his re-election. In response, Mr Lew and interests associated with him embarked on a determined and high profile campaign to obtain his re-election. That campaign included active solicitation of proxy votes "For" Mr Lew's re-election for which, inter alia, the Australian arm of the major US proxy solicitation house, Georgeson (now part of the major ASX-listed Computershare group), was retained.

  Media reporting at the time also indicated the use by the Lew camp of sophisticated transactions and instruments, which effectively "rented" over the AGM period the voting component of the CML stock the subject of the arrangements.

  In the end, Mr Lew was not successful and was voted off the Board on a poll.

  But the proxy voting results on his re-election indicate a level of support for his re-election (almost 23% per Item 3g in the 2002 AGM results in Appendix 6) a number of times greater than his group's known economic interest in the Company. Of course, how much of that was due to the proxy solicitation campaign and how much to "vote renting" type arrangements is not public knowledge.

- To date, "proxy fights" have been very rare in the Australian market but, particularly if voting levels increase, they may follow the US example, where such contests are more familiar.

- In any event, the CML experience highlights the conflict of interest that faces public - and especially institutional - investors between short term gain for "renting" out the votes that they control to a protagonist (or the highest bidder) in a "proxy fight" and their duty to preserve and grow investee companies' long term value for their clients and beneficiaries. That duty would require them, especially in such contests, to be in a position to make and execute a well-considered proxy voting decision in respect of their clients' and beneficiaries' underlying long term economic interest in the stock.

- The issue of principle, therefore, needs to be tackled and decided whether, in contentious cases, stock lending or other sophisticated arrangements which can be used for effective "vote renting" should be banned or, at least, subject to some form of regulatory oversight.

  As also indicated earlier, a special ICGN Committee is reviewing the stock lending and associated topics and is due to report in July to this year's ICGN Conference.

  There is the further issue whether large scale professional proxy solicitation in the Australian market should be subject to some form of regulatory oversight.

Section 251AA of the Corporations Act

- Following a protracted period of lobbying by leaders of the investment community, the Company Law Review Act 1998 introduced six key corporate governance reforms into the Australian Corporations Law (now the Corporations Act).

  One of those reforms was Section 251AA. The section requires each listed Australian company to disclose to the ASX (and hence to the market) the aggregate proxy instructions received by the company in each category ("For", "Against", "At proxy's discretion" and "Abstain") on each resolution put to the vote at the annual or other general meeting of the company's shareholders.

  This study, and the preceding 1999, 2000 and 2002 studies, were made possible by and based on those Section 251AA disclosures.

- 171 major ASX-listed companies, which held annual, or other general meetings in 2003 were originally selected for this study.

  10 of those companies, however, had to be excluded from the study because their proxy instructions disclosure to the ASX either was non-existent or did not contain all of the information required by section 251AA.

  Of those 10 companies, four did not disclose any proxy instruction statistics whatever to the ASX. Three of those were foreign incorporated companies, which are not technically subject to the Corporations Act. The other six, all Australian incorporated and, therefore, subject to the Act, lodged incomplete statistics by omitting the total of either "At proxy's discretion" or "Abstain" proxy instructions.

- That considerable degree of non-compliance by Australian incorporated companies merits attention and remedy both by the regulators, ASX and ASIC, and by parliament.

- In the case of the three foreign companies, it also highlights the "regulatory gap" through which ASX-listed but foreign incorporated companies can "slip". In Australia, certain governance and other protections of public shareholders are contained in the ASX Listing Rules. Thereby, all ASX-listed entities - regardless of their place of incorporation - are obliged to comply with them. Other protections, however, are contained in our Corporations Act (such as section 251AA and the other five key corporate governance reforms introduced in 1998) but apply only to Australian incorporated entities.

  Given that:

  > Australian public investors are unlikely to be aware of such nuances when they buy an ASX-listed stock, and
  >
  > Further governance reforms are likely to be inserted into the Corporations Act under the CLERP 9 programme

  Such matters warrant further attention and remedy by both parliament and regulators.

APPENDIX 1

SCOPE TO LIFT AUSTRALIAN LEVEL OF PROXY VOTING

Company	% Held by JPMorgan as Custodian	% Voted by JPM Australian Clients	% Voted by JPM International Clients	% Voted by JPM Australian & International Clients	% Voted of Total Voting Capital (CGI Statistics)
Amcor	14%	85%	66%	73%	47%
AMP	8%	78%	56%	70%	27%
ANZ	15%	87%	56%	72%	45%
BHP Steel	14%	85%	37%	60%	41%
BHP Billiton	15%	70%	51%	60%	45%
Brambles	13%	67%	57%	61%	43%
CBA	11%	78%	36%	55%	32%
Coles Myer	9%	64%	54%	58%	37%
Fosters	17%	70%	75%	73%	43%
IAG	12%	83%	54%	76%	39%
NAB	12%	88%	44%	67%	42%
News Corp	11%	79%	48%	58%	67%
Qantas	16%	76%	42%	57%	31%
St George	8%	85%	27%	77%	41%
Telstra	9%	73%	41%	64%	33%
Toll Holding	10%	83%	35%	62%	39%
Wesfarmers	9%	87%	28%	62%	35%
Westfield	10%	77%	39%	61%	56%
Westpac	17%	83%	62%	72%	49%
Woolworths	13%	54%	74%	66%	17%

Source: JPMorgan

APPENDIX 2

DETERMINATION OF CGI VOTING RECOMMENDATIONS (GENERALLY)

Each resolution is analysed by CGI on the basis of:

> The explanation provided and information disclosed to shareholders by the company in its Notice of Meeting (and any accompanying explanatory memorandum or notes), latest annual report and other public disclosure, and
>
> International and Australian best practice in corporate governance and, where applicable, CGI's own guidelines[27].

If the company fails to provide the requisite public explanation and disclosure to enable its shareholders to make a logical and fully informed decision[28] on the resolution, CGI usually recommends against the proposal with specific reference to the missing information.

A final assessment is made based on CGI's ten years of experience reviewing the governance of major Australian listed companies. On that basis, a voting recommendation of either "Approve" or "Against" is made. Very occasionally, for reasons explained in the analysis, a voting recommendation is made to "Abstain".

Overall, CGI is instructed by its institutional clients to apply the highest standards to its analyses of resolutions submitted to shareholder vote so that the client can take that advice into account as *part* of its own practical decision on how to vote.

Over CGI's ten year history of analysing and providing voting recommendations on resolutions submitted by major ASX-listed companies for shareholder vote, our "Against" recommendations each year have tended to range between 15% and 20% of all resolutions reviewed.

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[27] For example, in the case of a resolution relating to the remuneration of executives or non-executives, CGI's "Remuneration Guidelines for Institutions and Listed Companies" (the 'Green Book' developed out of CGI's practical experience since 1994 in reviewing remuneration issues in major ASX-listed companies)

[28] This is especially necessary in the case of institutional investors who are paid and responsible for the competent and expert management and stewardship of their clients' and beneficiaries' funds invested in the company and who possess the financial, human and other resources to make a logical and fully informed voting decision if they are provided with the requisite public explanation and disclosure

APPENDIX 3

DETERMINATION OF CGI VOTING RECOMMENDATIONS (REMUNERATION)

Executive Remuneration

When analysing resolutions relating to executive remuneration, CGI focuses on the quality of the proposal in terms of its structure and explanation and disclosure of relevant information.

As previously indicated (see Footnote 27 to Appendix 2, CGI has developed its own 'Green Book' guidelines which it applies in its analysis of remuneration resolutions. In the case of equity awards to executives, for example, issues that are of importance include the design of performance hurdles, vesting and exercise periods and disclosure of all information required to make an informed decision.

In one or two recent cases, CGI has also raised the issue of quantum, which seemed very high to CGI.

An analysis of 45 "Against" and 2 "Abstain" recommendations in 2003 on executive director remuneration issues is overleaf.

"Against" or "Abstain" recommendations in 2003 on executive director remuneration issues

No of resolutions	Description	Reason for "Against" or "Abstain" Recommendation
20	Grant of options	Inadequate/inadequately justified performance hurdles
5	Grant of options	No performance hurdles
5	Grant of shares	Grant involved the provision of a zero or low interest, limited recourse loan to an executive director. Such a structure fails to align the director's interests with those of the shareholders (no downside for director)
3	Grant of options	Lack of transparency regarding performance hurdles
3	Grant of performance shares	Inadequate disclosure of policies
2	Grant of performance rights	Inadequate/inadequately justified performance hurdles
2	Grant of performance rights	Inadequate disclosure for shareholders to make an informed voting decision
2	Grant of shares or share rights	Change of circumstances after issue of Notice of Meeting which meant that proposed grants were inappropriate– both resolutions were withdrawn at the meeting
1	Executive participation in share plan	Inadequate performance hurdles and inadequate disclosure of executive's total remuneration package
1	Executive performance share plan	Lack of transparency of the plan
1	Grant of deferred shares	Inadequate disclosure for shareholders to make an informed voting decision
1	Grant of options	Inadequate performance hurdles and inadequate disclosure for shareholders to make an informed voting decision
1	Grant of options	Excessive dilution
47		

Non-Executive Director Remuneration

When analysing resolutions relating to the remuneration of non-executive directors ("NEDs"), CGI again focuses on the quality of the proposal and applies the principles of the 'Green Book'.

Issues considered contrary to best practice include the issue of options and retirement benefits.

In two recent cases, CGI has also raised the issue of quantum, which seemed very high to CGI.

CGI strongly supports NEDs taking all or part of their fees as fully paid shares.

An analysis of 22 "Against" recommendations in 2003 on NED remuneration issues follows.

"Against" Recommendations in 2003 on NED Remuneration Issues

No of resolutions	Description	Reason for "Against" Recommendation
6	Increase in the cap on NEDs' fees	Inadequate justification/disclosure of proposal to increase cap by **100% or more of the current level**
6	Increase in the cap on NEDs' fees	Inadequate justification/disclosure of proposal to increase cap by **60% - 99% of the current level**
3	Increase in the cap on NEDs' fees	Inadequate justification/disclosure of proposal to increase cap by **up to 39% of the current level**
2	Increase in the cap on NEDs' fees	Inadequate justification/disclosure of proposal to increase cap by **50% - 59% of the current level**
2	Increase in the cap on NEDs' fees	Recommendation that subscribers vote "Against" an increase in the fee cap until the NEDs address major governance issues in the company
2	Structure of the NED's share scheme	Inconsistent with best practice
1	Shareholder resolution	Inconsistent with best practice
22		

APPENDIX 4

Review of the impediments to voting UK shares

Report by Paul Myners
to the Shareholder
Voting Working Group

January 2004

EXECUTIVE SUMMARY

Background

This review has been undertaken following persistent concerns that the system for voting the shares of UK issuers is not as effective and efficient as it should be. Votes are "lost". In the past, this was the subject of detailed study by the Newbold Inquiry in 1998/99[29] and the Shareholder Voting Working Group in 2001[30]. Most recently, a report by Unilever plc highlighted the problems encountered by some shareholders in recording proxy votes at its 2003 Annual General Meeting.

The problems are largely the product of a process that is still quite manually intensive, where the chain of accountability is complex, where there is a lack of transparency and where there is a large number of different participants, each of whom may give a different priority to voting. The participants in the process are:

- The beneficial owners (pension fund trustees, mutual funds, life assurance funds, and so on) ultimately own the shares, but frequently delegate voting decisions to their investment managers.
- Pension fund trustees look to investment consultants to advise them in relation to investment matters. However, in the main, this advice centres on economic and financial, rather than governance and voting, issues.
- The registered owner of the shares is often a nominee company, owned and operated by a custodian. The custodian will have a contract directly with the beneficial owner or with his investment manager. Its key priority is – quite properly – the safe custody of the assets of the beneficial owner.
- Investment managers may issue voting instructions, but can only do so indirectly since they are not the registered owners of the shares.
- Proxy voting agencies may contract with the custodian, the investment manager and/or the beneficial owner to advise on voting, and/or to issue voting instructions on each client's behalf.
- The registrar will manage the share register on behalf of the issuer.
- Finally, the issuer has responsibility under the Companies Acts for the proper conduct of its business, including general meetings and voting.

Thus, there may typically be four parties between the beneficial owner and the issuer, all with distinct and important roles. For voting instructions to be recorded, they therefore need to pass along a complex chain.

My overall assessment, following the review, is that there is not one structural weakness that needs to be addressed. Rather, it is like old pipe work, which could have been more effectively maintained over the years, and is now leaking at various points. It does not need to be ripped out and replaced, but instead the points of weakness need to be overhauled and upgraded.

It is sometimes suggested that the level of voting in company general meetings is too low and that this is a reflection of shareholder apathy. I agree that higher voting levels are a very desirable outcome. I would, however, counsel caution as to what can be achieved in

[29] In 1998/99, the National Association of Pension Funds sponsored an independent inquiry into proxy voting, the Newbold Inquiry.
[30] The Shareholder Voting Working group was established in September 1999 to take recommendations of the Newbold Inquiry forward.

practice, given the number of overseas investors in UK companies who are outside the jurisdiction of UK regulation or best practice guidance and the complications imposed by legitimate market practices, such as stock lending. Nevertheless, I believe that my recommendations will help to achieve a significant increase in shareholder participation, particularly on contentious or other important resolutions.

Key Issues

Four key issues have been raised with me.

Beneficial owners

The complexity of the voting process is undoubtedly a problem. However, the routing of corporate actions frequently involves the same process as does voting, but appears to be more effective and efficient. This would suggest that the act of voting shares is not given the importance it deserves and the standards operated are deficient in some way.

For standards to improve, I consider it important for the beneficial owners, as the end beneficiaries of shares, to drive those standards and ensure that any deficiencies are addressed. It is the beneficial owners who are responsible for ensuring that there is a clear chain of responsibility for voting their shares and that this is set out in the various agreements between the participants. They should also have a clear voting policy and be aware of the implications of other activities and arrangements on their ability to exercise voting rights. For example, stocklending affects the voting rights attached to the shares, as the lender does not retain the right to vote. When a resolution is contentious I recommend that the stock lent is automatically recalled, unless there are good economic reasons for not doing so.

Electronic voting

The existing system is predominately paper based, making it cumbersome and prone to processing errors. To address this, one of the key recommendations of both the Newbold Inquiry and the Shareholder Voting Working Group's report in 2001 was the need to establish a means by which voting intentions could be recorded electronically. In January 2003, CRESTCo[31] introduced such a system, which had a disappointing take up in its first year. There are several explanations for this. It is not part of my task to point the finger of blame at particular participants.

It is nevertheless my conclusion that electronic voting remains the key to a more efficient voting system, and all parties – issuers, institutional investors and the intermediaries – need to make conscious efforts to introduce electronic voting capabilities in 2004. I therefore urge that issuers in at least the FTSE 350, investment managers, custodians and proxy voting agencies should all have introduced the necessary system changes so that electronic voting capabilities are universally available. I also recommend that beneficial owners should over the next three months make direct and specific enquiries of their agents and others to establish the extent to which they have, or will have, introduced electronic voting capabilities to be used this year.

Given the importance I attach to electronic voting, I propose to revisit this subject in a year's time to assess the extent to which the relevant participants in the voting process, particularly the proxy voting agencies and custodians, have introduced electronic voting capabilities.

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[31] There are other operators of electronic voting, including the standard electronic message format that was developed in 2001 by the registrars and Manifest, but for convenience throughout this report we refer to CREST or CRESTCo to cover CREST and similar service providers.

Registering shares in a nominee company in a designated account

It was also put to me that there was a greater need for transparency in the voting process. In this respect, many custodians pool their clients' shareholdings such that the shares of several beneficial owners are registered in the name of one nominee company in an omnibus account. A number of those I consulted suggested that, once held in an omnibus account, there is not a clear audit trail as to who is the true owner. Some custodians maintain a designated account for each client, and it was suggested that voting works much more smoothly in such cases because, depending on the designation used, there can be clarity about who owns the shares facilitating a much more transparent voting process.

I considered very carefully whether I should recommend the universal adoption of designated accounts. For institutional investors, there are benefits in registering title in the name of a nominee company with a specific designation, although it may be more costly. While I find myself disposed to designation from a governance and voting perspective, I accept that other issues have to be taken into account when clients determine the form of custody most appropriate to their requirements. Decisions on custody arrangements must, however, include a full evaluation of the consequences for governance and voting.

The private investor's position is somewhat different. There are greater numbers of private investors whose investments are generally small scale, and designation is unlikely to be practical on cost grounds. I do not, therefore, recommend designated accounts as absolutely necessary for private clients, but note that any such client who wishes shares to be registered in a designated account is at liberty to use a custodian who offers that service.

My conclusion is that investors who wish to establish a direct relationship between the issuer and the person making the voting decision, with the resulting benefits of transparency and accountability, should consider arranging for their shares to be registered in the name of a nominee with a specific designation. This does not preclude the use of nominee companies offering only omnibus accounts if the beneficial owner concludes, in the round, that this is more appropriate to their particular needs.

An advanced record date

At present, a company may specify a time no more than 48 hours before a meeting for the receipt of proxies and for determining entitlements to vote. I asked myself the question whether this timetable is too compressed and leaves insufficient time to conclude checks, which would improve the efficiency of the system by, for example, permitting earlier identification of discrepancies in the number of shares in respect of which proxy appointments have been received and of share transfers since the notice was circulated.

I consider these arguments have merit, and most of those I consulted would have no objection to a record date for voting entitlements and receipt of proxies at least, say, five days ahead of the meeting. This would, however, require legislative change and I believe that the required improvements could be achieved by the other, non-statutory, recommendations in this report, particularly electronic voting. While there may be a case for an advanced record date as an interim measure, I am satisfied that such a change is not necessary.

I do, however, recommend that:

- the current 48 hour limit should be amended to two business days to take account of bank holidays and weekends; and
- the time limit should be standardised by issuers as the close of business on the day that is two working days before the day the meeting is held. Issuers should not be able to set a shorter time frame.

I have written to the Secretary of State for Trade and Industry and to the Financial Secretary to the Treasury setting out this recommendation.

Recommendations

Throughout the course of this project, it has been apparent to me that there is a great willingness to improve the voting process. I believe there is now an opportunity to build on this to bring about a noticeable improvement in voting practice. In order to achieve this, the different parties need to take the following steps.

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.

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.

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.

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.

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

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.

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.

In addition, the various trade associations have been supportive of this initiative and I invite them to ensure that their members are informed of the key conclusions of the review and their association's response. Various other parties should also take specific measures. In particular, 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 week ends; 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.

Furthermore, 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.

I now pass this report to the Shareholder Voting Working Group and its sponsor organisations for their consideration.

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APPENDIX 5

International Corporate Governance Network
Statement on Institutional Shareholder Responsibilities

Preamble

Millions of households worldwide depend on the growth in long-term value of investments made by institutional shareholders, be it for their saving schemes, life insurance, retirement provisions or otherwise. As trustees of these investments, which may include shares in listed companies, institutional shareholders have a general responsibility to use best efforts to preserve and increase this value. Improving the corporate governance of companies is increasingly understood as an important means of enhancing the long-term value of equity investments. As a result, many institutional shareholders, along with the ICGN itself, have taken steps to outline best practices for the governance of such companies. However, institutional shareholders as a class have an equal responsibility to address their own roles as fiduciaries and owners of equity on behalf of savers.

This ICGN Statement sets out a framework of best practices on the implementation of fiduciary responsibilities in relation to equity shareholdings. As such it is meant to apply to institutional shareholders and their agents around the world. Further, it addresses the entirety of those relations—not just the shareholder's responsibility to vote shares. At the same time, the principles as described herein should be dealt with pragmatically. Different legal systems, different contractual relations and different markets will require different approaches. This Statement describes general responsibilities. Rather than taking these literally, institutional shareholders and their agents should determine the implications for them and consider the suggestions made on how to implement these responsibilities. It will be up to them to decide what action is appropriate in what situation. The Statement further describes how these decisions should be accounted for. It needs to be stressed that this Statement considers governance and investor responsibilities associated with it, not ends in themselves but means to achievement of optimum interests of beneficiaries. It should not be taken to encourage any form of rote compliance with excessively detailed guidelines that might inhibit the ability to make decisions on the merits.

This Statement outlines the general responsibilities of institutional shareholders and their agents in respect of their shareholdings. In order to facilitate the proper discharge of these responsibilities, shareholders require certain minimum rights. The ICGN intends to develop principles that describe these in a separate document.

A precondition for the proper discharge of institutional shareholders´ responsibilities is, furthermore, a well-functioning fund governance system with adequate checks and balances. Such a system should, for example, safeguard the independence of trustees and ensure that they have available adequate skills and expertise. ICGN will investigate developing global standards of best practice to give guidance to institutional shareholders in that respect.

In this Statement the term “institutional shareholder” includes pension funds, insurance companies, mutual funds and other collective investment schemes. The term furthermore includes those agents to whom the responsibilities as described herein are outsourced in any way, unless the text indicates otherwise. The term “beneficiaries” includes the beneficiaries of institutional shareholders and clients of agents respectively, unless the text indicates otherwise.

I. General responsibilities

1. Institutional shareholders have a general responsibility to ensure that investments are managed exclusively in the financial interests of their beneficiaries, as amplified - where relevant - by contract or law.

2. As a matter of best practice, in discharging this responsibility, institutional shareholders should contribute to improving and upholding the corporate governance of companies and markets in which they invest, with the understanding that institutional shareholders´ policies may indicate *de minimis* limits for reasons of cost-effectiveness or practicability and that they disclose details of all cases where this is invoked. Such limits may include the impracticability or disproportionate expenses of voting in certain jurisdictions with inefficient voting procedures.

The general objective of these activities is to stimulate the preservation and growth of the companies’ long-term value. Institutional shareholders should judge which actions are suitable and effective to that end, taking into account the specific circumstances of the case at hand.

Appropriate actions to give effect to these ownership responsibilities may include:

? Voting;

Supporting the company in respect of good governance;

Maintaining constructive communication with the board on governance policies and practices in general;

Expressing specific concerns to the board, either directly or in a shareholders meeting;

Making a public statement;

Submitting proposals for the agenda of a shareholders meeting;

Submitting one or more nominees for election to the board as appropriate;

Convening a shareholders meeting;

Consulting other investors and local investment associations either in general or in specific cases;

Taking legal actions, such as legal investigations and class actions;

Lobbying governmental bodies and other authoritative organisations;

Incorporating corporate governance analysis in the investment process;

Stimulating independent buy-side research;

Outsourcing any or all of these powers to specialized agents, for instance in the event the institutional shareholder concludes that it does not have the ability to muster necessary skills in-house.

3. These ownership responsibilities should be dealt with diligently and pragmatically. This Statement, for instance, encourages the support of good corporate management initiatives, as much as opposition to bad ones. Furthermore, as a general rule, institutional shareholders should not interfere with the day-to-day management of companies.

4. However, it is clear that institutions risk failing to meet their responsibilities as fiduciaries if they disregard serious corporate governance concerns that may affect the long-term value of their investment. They should follow up on these concerns and assume their responsibility to deal with them properly.

Such concerns may, for instance, relate to:

The level and quality of transparency;

The company's financial and operational performance, including significant strategic issues;

Substantial changes in the financial or control structure of the company;

The role, independence and suitability of non-executives and/or supervisory directors;

The quality of succession practices and procedures;

The remuneration policy of the company;

Conflicts of interest with large shareholders and other related parties;

The level and protection of shareholder rights;

Minority investor protection;

Proxy voting;

The independence of third party fairness opinions rendered on transactions;

The accounting and auditing practices;

The composition of the audit- and remuneration committees;

The adequacy of internal control systems and procedures;

The management of environmental, ethical and social risks.

II. Voting

1. Voting forms a prominent part of institutional shareholder's approach to corporate governance. It should be assumed that all votes cast - regardless of their number - contribute to

a stronger management focus on the interests of shareholders in the case at hand, as well as in general.

2. To strengthen this focus, votes should be cast on the basis of careful analysis, consistent with an institutional shareholder's well-considered policy and with a view towards improving and upholding the corporate governance of companies and markets. Automatic voting should be avoided.

3. In this respect, voting guidelines need to be adopted to support the applied policy. In developing these, institutional shareholders are advised to take due account of already existing international and national influential standards, including the ICGN´s own Statements.

III. Accountability of the institutional shareholder

1. Institutional shareholders are accountable to the beneficiaries of their investments for the way they execute their ownership responsibilities. To show how they discharge these responsibilities, institutional shareholders should as a matter of best practice disclose to these beneficiaries:

a. Their corporate governance policy outlining how they deal with their ownership responsibilities, how corporate governance aspects are taken into account in their investment policy, and their voting guidelines;

b. How companies in which they invest are regularly monitored, and how they periodically measure and review the effects of their monitoring and ownership activities;

c. An annual summary of their voting records together with their full voting records in important cases, e.g. cases of conflict or controversy. Voting records should include an indication whether the votes were cast for or against the recommendations of company management. The summary should at least include the percentage of shares voted and the extent to which votes have been cast with or against management;

d. An explanation of specific action taken in important cases;

e. A list of all companies in which they are a shareholder, preferably together with the number of shares held;

f. What resources they have allocated to execute their corporate governance policy;

g. In case no (material) resources have been allocated: how they have weighed the various arguments coming to this decision and an indication of what developments would make them reconsider their position;

h. A list of conflicts of interest that may impede an independent approach towards the companies in which they have invested;

i. What procedures they have in place to deal adequately with these conflicts;

j. The names of the agents to which they have outsourced ownership responsibilities together with a description of the nature and extent of this outsourcing and how it is regularly monitored.

2. Disclosures should be made at least once a year on the shareholder's website and, preferably, simultaneously in or with the annual reports. The shareholder may choose, however,

to provide voting records alternatively to requesting beneficiaries at no cost directly on an annual basis. So far as the responsibilities described herein are outsourced by the institutional investor, it should agree with the relevant agent how the disclosures to the beneficiaries of the institutional investor can be safeguarded.

IV. Conflicts of interest

1. Some institutional shareholders have conflicts of interest that could impair an independent approach towards the companies in which they have invested, generally because they directly or indirectly have other actual or prospective relationships with the companies concerned. In all such cases, the institutional shareholder should ensure full transparency as outlined in III.1 (h) and (i) above. Where such a conflict has the potential to harm the interests of the beneficiaries of their investment in the company, they may consider as one possible solution outsourcing the power to perform their ownership responsibility to a separate independent agent or trust company set up for that purpose.

2. Institutional shareholders should also be aware of possible conflicts faced by their agents. If the casting of votes or the performance of other ownership responsibilities is outsourced (whether or not together with asset management), the institutional shareholder should ensure that the agent acts fully independently from corporate management or other conflicting business relationships. The investing institution should ensure, in particular, that votes are cast in an informed manner and on the basis of voting guidelines that are materially consistent with its own. It should furthermore regularly evaluate the performance of the agent on the basis of detailed reports and ensure that the institutional shareholder can override agent decisions if need be. In case of doubt regarding the independence of an agent, the institutional shareholder may consider as one possible solution outsourcing the power to perform the ownership responsibilities to a separate independent agent or trust company set up for that purpose.

IV. Other Responsibilities

1. Given the large differences in market development around the world, it is apparent that the implementation of the provisions of this Statement in day-to-day practice will be more straightforward for some institutions than others. However, the ICGN believes that if institutional shareholders take their responsibilities seriously then this can contribute significantly to the creation of an environment suited for solid long-term investment performance. Therefore, all institutional shareholders are encouraged to establish an action plan working towards full implementation of the Statement's recommendations as soon as is practicable.

2. Although share lending in many cases is useful and appropriate, there are negative effects and abuses that require attention. The ICGN is committed to investigate developing a Code of Best Practice to deal with these issues. The ICGN will subsequently determine whether this Statement requires any amendments in that respect.

To ensure that the Statement on Institutional Shareholder Responsibilities reflects future developments in the market, the ICGN intends to evaluate the Statement's relevance periodically.

10/12/2003

APPENDIX 6

CML Proxy Voting Results 2001 AGM

		For	Against	Discretionary	Abstained	Total Votes Cast
2a	**Election of Director - Martyn Myer**					
	No.	276,048,572	4,660,783	76,765,825	13,692,455	371,167,635
	Pct.	23.5%	0.4%	6.5%	1.2%	31.55%
2b	**Election of Director - Patricia Akopiantz**					
	No.	276,669,955	3,422,564	77,278,648	13,796,468	371,167,635
	Pct.	23.5%	0.3%	6.6%	1.2%	31.55%
2c	**Election of Director - Helen Lynch**					
	No.	275,868,448	4,726,927	76,842,865	13,729,395	371,167,635
	Pct.	23.4%	0.4%	6.5%	1.2%	31.55%
2d	**Election of Director - Angelos Kenos**					
	No.	18,250,861	255,664,476	82,350,641	14,848,813	371,114,791
	Pct.	1.6%	21.7%	7.0%	1.3%	31.54%
2e	**Election of Director - William Gurry**					
	No.	277,455,432	2,928,577	77,129,412	13,054,826	370,568,247
	Pct.	23.6%	0.2%	6.6%	1.1%	31.49%

Note: The above percentages are calculated on total voting shares of: 1,176,611,000 as at 28/11/2001

CML Proxy Voting Results 2002 AGM

		For	Against	Discretion	Abstained	Total Votes
3a	**Election of Director - Mr Peter Shepherd**					
	No.	81,478,83	270,212,4	356,803,1	8,342,469	716,836,858
	Pct.	6.9%	22.8%	30.1%	0.7%	60.51%
3b	**Election of Director - Wilhelmus Boerkamp**					
	No.	54,780,53	284,795,6	365,719,1	11,538,72	716,834,108
	Pct.	4.6%	24.0%	30.9%	1.0%	60.51%
3c	**Election of Director - Angelos Kenos**					
	No.	25,169,44	296,406,6	368,893,4	26,286,38	716,755,931
	Pct.	2.1%	25.0%	31.1%	2.2%	60.51%
3d	**Election of Director - Rodnet McRae**					
	No.	29,526,55	292,492,8	367,985,5	26,762,85	716,767,841
	Pct.	2.5%	24.7%	31.1%	2.3%	60.51%
3e	**Election of Director - Lynette Small**					
	No.	51,339,49	288,496,0	364,553,0	12,375,70	716,764,297
	Pct.	4.3%	24.4%	30.8%	1.0%	60.51%

		For	Against	Discretion	Abstained	Total Votes
3f	**Election of Director - Jeffrey Morris**					
	No.	34,386,01	288,406,5	367,389,5	26,585,57	716,767,669
	Pct.	2.9%	24.3%	31.0%	2.2%	60.51%
3g	***Election of Director - Solomon Lew***					
	No.	269,386,9	331,478,3	94,624,72	20,625,30	716,115,296
	Pct.	***22.7%***	***28.0%***	***8.0%***	***1.7%***	***60.45%***
3h	**Election of Director - Aldo Cunial**					
	No.	39,889,59	293,416,1	367,888,2	26,685,96	727,879,952
	Pct.	3.4%	24.8%	31.1%	2.3%	61.45%
3i	**Election of Director - Desmond Ryan**					
	No.	37,244,02	286,682,6	366,738,4	26,094,26	716,759,389
	Pct.	3.1%	24.2%	31.0%	2.2%	60.51%
3j	**Election of Director - Mark Leibler**					
	No.	280,264,8	283,189,8	114,566,8	38,572,62	716,594,182
	Pct.	23.7%	23.9%	9.7%	3.3%	60.49%
3k	**Election of Director - Kenneth Allister**					
	No.	33,228,69	288,387,2	368,019,4	26,448,35	716,083,800
	Pct.	2.8%	24.3%	31.1%	2.2%	60.45%

Note: The above percentages are calculated on total voting shares of: 1,184,579,882 as at 30 June 2002

CML Proxy Voting Results 2003 AGM

		For	Against	Discretionary	Abstained	Total Votes Cast
3a	**Election of Director - Mr Richard H Allert**					
	No.	335,472,435	80,698,897	29,924,616	6,502,000	452,597,948
	Pct.	27.6%	6.6%	2.5%	0.5%	37.21%
3b	**Election of Director - Dr R Keith Barton**					
	No.	344,499,423	3,916,513	30,309,386	73,861,612	452,586,934
	Pct.	28.3%	0.3%	2.5%	6.1%	37.21%
3c	**Election of Director - Mr William P Gurry**					
	No.	345,143,993	72,667,625	30,491,121	4,291,762	452,594,501
	Pct.	28.4%	6.0%	2.5%	0.4%	37.21%
3d	**Election of Director - Mr Anthony G Hodgson**					
	No.	341,803,462	6,259,509	30,517,474	74,017,003	452,597,448
	Pct.	28.1%	0.5%	2.5%	6.1%	37.21%
3e	**Election of Director - Ms Sandra V McPhee**					
	No.	342,650,313	6,102,275	30,061,139	73,772,963	452,586,690
	Pct.	28.2%	0.5%	2.5%	6.1%	37.21%

Note: The above percentages are calculated on total voting shares of: 1,216,300,000 as at 26/11/2003

		For	Against	Discretionary	Abstained	Total Votes Cast
3f	**Election of Director - Mr J Michael Wemms**					
	No.	344,460,517	3,555,516	30,645,728	73,919,378	452,581,139
	Pct.	28.3%	0.3%	2.5%	6.1%	37.21%
4	**Issue of 1,500,000 options to MD & CEO, Mr John E Fletcher**					
	No.	266,592,734	148,112,824	34,523,124	3,347,930	452,576,612
		21.9%	12.2%	2.8%	0.3%	37.21%

Note: The above percentages are calculated on total voting shares of: 1,216,300,000 as at 26/11/2003