



Investment & Financial Services Association Ltd

14 September 2007

Mr David Sullivan
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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Parliament House
Canberra ACT 2600

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Dear David

IFSA Submission: Inquiry into Shareholder Engagement and Participation

Thank you for the invitation to provide input to the Parliamentary Joint Committee on Corporations and Financial Services' inquiry into shareholder engagement and participation.

IFSA is a national not-for-profit organisation which represents the retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 145 members who are responsible for investing over \$1 trillion on behalf of more than ten million Australians.

IFSA's role in encouraging greater shareholder engagement

We strongly believe that in the area of shareholder engagement, IFSA members lead the way. Since 1 January 2005, it has been mandatory for IFSA members to comply with IFSA 'Standard No. 13 Proxy Voting'.

Under Standard No. 13, IFSA members are required to vote on all resolutions regardless of the 'materiality' of a resolution or of the size of their shareholding.

More specifically, Standard No. 13 requires retail public offer schemes to publish, at least annually, an aggregate summary of their proxy voting record using the IFSA table prescribed in the Standard.

The Standard also requires schemes to have a formal Proxy Voting Policy setting out the principles and guidelines under which proxies are voted. This policy must also be made available to scheme members – with many such policies publicly available on IFSA member websites.

A recent IFSA Standard compliance audit found that 82% of IFSA members were in compliance with all aspects of Standard No. 13, with the remainder having notified IFSA of their non-compliance with some aspect of the Standard. Importantly, all such members have already provided undertakings to rectify their non-compliance.

A copy of the Standard is attached for the Committee's information.

Furthermore, the IFSA 'Blue Book' encourages fund managers to establish direct contact with companies including constructive communication with both senior management and board members about performance, corporate governance and other matters affecting shareholders' interests.

The 'Blue Book' can be accessed on IFSA's website at: www.ifsa.com.au.

Improving Australia's proxy voting system

IFSA strongly believes that in order to maintain a sound system of corporate governance, it is imperative that the processes that support proxy voting have a high degree of integrity. As a result, our submission focuses on the operation of the proxy voting system and recommends legislative and industry based reforms which we believe are necessary to improve the present system.

IFSA has not arrived at these recommendations in isolation. Since June 2006, IFSA has convened two full Proxy Voting Roundtables, bringing together a large number of parties who all play a significant role in the proxy voting system. These roundtables have included participation from all of the key stakeholders throughout the proxy voting "chain".

We believe that our submission therefore sets out a series of key recommendations which, if adopted/supported, will result in a significantly improved proxy voting system and therefore lead to enhanced shareholder engagement and participation.

Thank you again for the opportunity to raise these important matters with the Committee. We look forward to progressing our recommendations through the Committee process.

If you have any questions in relation to this submission, please do not hesitate to contact me or Martin Codina on (02) 9299 3022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Gilbert', is positioned to the left of a vertical red line.

Richard Gilbert
Chief Executive Officer



Investment & Financial Services Association Ltd

IMPROVING THE PROXY VOTING SYSTEM IN AUSTRALIA

14 SEPTEMBER 2007

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INTRODUCTION

The Investment and Financial Services Association (IFSA) has now convened two full Proxy Voting Roundtables since June 2006, bringing together a large number of parties who all play a significant role in the proxy voting system.

The Roundtable was initiated by IFSA following a number of reported incidents of “lost votes” and following research undertaken by AMP Capital Investors and others highlighted a number of flaws with the present system.

Collectively, domestic and international institutional investors now hold around 65% of the value of shares listed on the Australian Securities’ Exchange. Both the high level of institutional ownership and their high level of voting relative to individual shareholders has increased the need to better facilitate proxy voting by electronic means. In our view, an “end to end” proxy voting system would be enhanced by electronic lodgement of proxies – a necessary and overdue measure.

For the same reason, in order to maintain a sound system of corporate governance, it is critical that the processes that support proxy voting have a high degree of integrity. Superannuation trustees and investment managers regard this system as being a crucial part of our corporate governance framework.

Consequently, there was strong support from investor groups and other organisations at the Roundtables to address the key risks with the present system which were identified as being:

- Concern from institutional investors at the lack of an audit trail. This particularly concerned confirmation of the number of votes and the manner voted as between Custodians and Registrars.
- The time pressure and potential loss of votes caused by the cut-offs for the receipt of proxy instructions and voting entitlements required to be held no more than 48 hours prior to the meeting date. This requires last minute reconciliation by the issuer of the number of votes lodged against actual holdings (entitlement) at the cut-off date and can result in holdings being excluded when the reconciliation fails.
- Issues around the “tainting” of votes relating to shareholders in ‘omnibus accounts’ held by custodians where some shareholders in the account may not have been entitled/permitted to vote (e.g. as a consequence of participation in a share placement and therefore a voting exclusion exists).
- Concern regarding the inconsistency of processes to determine the validity of proxy forms where those forms are unclear, incomplete or ineligible.
- Present difficulties for share registry service providers in electronically processing split votes from registered shareholders such as custodians that typically hold shares for multiple clients, including superannuation funds.

The main outcome of the Roundtables has been the collective recognition that the system needs to be improved and that there is considerable consensus amongst participants towards finding the best ways of addressing these concerns.

It is our strong belief that if the recommendations in this submission are adopted/supported, the efficiency and effectiveness of the proxy voting system in Australia will be vastly improved, strengthening our already robust corporate governance framework.

Roundtable attendees

In addition to IFSA and IFSA members, the following industry bodies were present:

- Association of Superannuation Funds of Australia
- Australian Council of Superannuation Investors
- Australian Custodial Services Association
- Australian Institute of Company Directors
- Australasian Investor Relations Association
- Chartered Secretaries Australia

Representatives from other organisations were also present including:

- ASX
- Computershare
- Link Market Services
- Registries Limited
- Institutional Shareholder Services
- CGI Glass Lewis

PART 1: IDENTIFYING AND ADDRESSING THE ISSUES

Paper based weaknesses of the present system

There are elements of the present proxy voting system that are largely paper based and consequently manually intensive. The current process requires the lodging of institutional proxy forms by fax with authenticated signatures and those instructions are typically re-keyed by registry staff as part of the counting process. The cumbersome nature of this process has resulted in a number of cases of votes not being correctly counted or lodged.

It is important to note that it is currently not possible to determine the exact number or proportion of lost votes due to the lack of an effective and accurate audit trail whenever votes are lodged.

Indeed, as an example, AMP Capital Investors was only able to ascertain that “votes had gone ‘missing’ when reviewing a small sample where the ‘against’ or ‘abstain’ instructions lodged by AMP Capital, on the shares held in portfolios under our management, exceeded the number of such votes recorded by the company and disclosed to the ASX after the company meeting”.¹

In AMP Capital’s case, after conducting a further review of circumstances where they had instructed in the proxy to either vote ‘against’ or ‘abstain from voting’, they determined that voting instructions had been “lost” in over 4% of instances.

The increasing reliance on ‘Schemes of Arrangement’ to effect takeovers also highlights the importance of complete integrity in the proxy voting system. Changes of control (and consequent compulsory acquisition of minority interests) take place as a consequence of shareholder votes. All investors need to have confidence that vote counting systems in close votes, such as in the recent contested Scheme involving Rebel Sport, were beyond scrutiny.

Given these weaknesses, the investment and superannuation industry believes there is a clear need to establish an effective electronic proxy lodgement system that is capable of providing a meaningful audit trail and removing cumbersome paper based mechanisms from the process.

Recommendation

Superannuation trustees and investment managers should immediately commence requesting issuers in which they hold shares to receive proxy instructions by electronic means as a matter of course at all members’ meetings.

Following the publication of this submission, IFSA, on behalf of willing Roundtable members, will prepare an open letter to all S&P/ASX 300 companies requesting that they put appropriate electronic proxy voting arrangements in place as soon as possible.

¹ August 2006, Corporate Governance: Mid-year update:
<http://www.ampcapital.com.au/pdf/governance/20060802CorporateGovernanceUpdate.pdf?DIRECT>

Clarification of company constitution to facilitate electronic proxy voting

The Corporations Act does not mandate that listed entities must provide for electronic lodgement. Consequently, we are aware of a widespread belief that companies are unable to offer electronic lodgement unless it is provided for in their constitution.

As it is not clear whether all company constitutions require amendment to facilitate electronic lodgement, Roundtable members suggest that ASIC consider issuing a Policy Statement or 'no action position' letter clarifying that any issuer that accepts electronic proxies without a relevant constitutional change will not be taken to have breached the relevant sections of the Corporations Act.

In the event that such a statement is unable to be provided by ASIC, Roundtable members recommend that, given their level of institutional ownership of S&P/ASX300 listed entities, companies seek to amend their constitutions at the next members' meeting to explicitly provide for electronic lodgement if this is not already provided for in their constitution.

Recommendation

We request that the PJC recommend that ASIC issue a Policy Statement or 'no action position' letter clarifying that any issuer that accepts electronic proxies without a relevant constitutional change would not be taken to have breached the relevant sections of the Corporations Act.

Alternatively, in the event that such a statement is unable to be provided by ASIC, Roundtable members recommend that companies seek to amend their constitutions at the next members' meeting to explicitly provide for electronic lodgement if this is not already provided for in their constitution.

Lack of an audit trail

A major issue raised at the initial Roundtable was the lack of an audit trail under the present system. At present, no confirmation is received by a custodian, superannuation fund or investment manager from issuers or their share registrars as to the number of votes lodged and subsequently voted as well as the manner in which they were voted.

In effect, this means that a superannuation fund or investment manager is unable to confirm whether their voting instructions have been accepted by share registry service providers.

This is also the case with existing "online" voting facilities offered by some share registry service providers which do not provide a receipt or confirmation as to the number of votes lodged and subsequently voted as well as the manner in which they were voted.

Increasingly, fund managers and superannuation trustees are being more transparent and reporting openly to their constituents about their proxy voting activity. This process will have more meaning where the existence of an audit trail from the issuer back to the lodgement agent (e.g. a custodian) is in place.

Recommendation

An electronic proxy voting capability needs to be developed that will provide a meaningful audit trail from issuers & their registrars to shareholders so that superannuation funds, investment managers and other appointed proxies are able to confidently declare how they voted in any instance.

The audit capability should allow for acknowledgement within 24 hours of the record cut-off date for any proxy instruction submitted electronically.

Institutional investors recognise that moving to an electronic proxy voting system that provides this level of functionality and audit capability will require an investment by issuers and share registry service providers. However, the industry is prepared to discuss mechanisms to allow issuers and share registry service providers to recoup these costs by charging a fee (based on cost-recovery) for using such a system.

The Roundtable is aware of discussions that are underway between market participants and the ASX regarding the possible use of CHESSE to facilitate such a system. While the Roundtable is not opposed to a CHESSE based system, it is concerned at the possible delays that may arise from the creation of such a system and the risk that it may be superseded by international electronic proxy voting messaging standards currently being tested and refined by SWIFT. Such international messaging standards are also likely to facilitate cross-border voting.²

The Roundtable therefore supports the implementation of the most effective, efficient and timely electronic solution that is most likely to result in widespread adoption.

Time pressure to reconcile votes lodged against entitlement to vote

For the appointment of a proxy and accompanying voting instructions to be effective, there are two critical timeframes that must be observed:

- Under section 250B(1) of the *Corporations Act 2001*, a proxy appointment must be received by the company at least 48 hours before the meeting (proxy appointment cut-off date); and
- Under regulation 7.11.37(3) of the *Corporations Regulations 2001*, the convenor of a meeting must determine the entitlement to vote at the meeting based on those persons who were shareholders of the company not more than 48 hours prior to the meeting (record cut-off date).

The time pressure caused by the co-existence of these cut-off dates inevitably results in last minute reconciliations by share registry service providers of the number of votes lodged against actual holdings at the record cut-off date – increasing the likelihood of errors in the process.

Critically, the proxy appointment cut-off date can be extended beyond 48 hours, allowing investment managers and superannuation funds to provide earlier notification of a proxy appointment and voting instructions.

The record cut-off date, however, is fixed at not more than 48 hours, meaning that the issuer must reconcile the number of votes lodged against the actual entitlement not more than 48 hours prior to the meeting – effectively removing the flexibility provided by the more flexible proxy appointment cut-off date.

² See: http://www.swift.com/index.cfm?item_id=63149

This record cut-off date presents unique challenges for custodians and share registry service providers when an Annual General Meeting (AGM) is scheduled on a Monday or after a public holiday or series of public holidays for example.

It is interesting to note that in the US and Canada, the record date is normally 60 days prior to the meeting. It would therefore not seem to pose any serious market risks if the record date were moved out to “5 business days before the meeting”.

Consequently, for the reasons outlined above, the Roundtable recommends an amendment to regulation 7.11.37(3) of the *Corporations Regulations 2001* to extend the record cut-off date to “5 business days before the deadline for receipt of proxy appointment set by the company”. The Roundtable also supports the adoption of the ASX Listing Rule definition of “business day” for this purpose.

This will provide sufficient time for the reconciliation process to occur such that a more effective audit can be undertaken between the registered holder (custodian) and share registry service provider to ensure that all votes lodged are received and voted as instructed.

In the event of any discrepancy or uncertainty, this will also allow for the relevant share registry service provider to contact the registered holder (custodian) and for the custodian to then contact the relevant clients who provided the voting instructions.

Issuers should also give careful consideration to the difficulties posed by holding an AGM on a Monday or after a public holiday or series of public holidays.

Roundtable participants acknowledge that an electronic proxy voting capability should facilitate a more timely reconciliation process and remove, to a significant extent, manually intensive aspects of the vote lodgement and reconciliation process by allowing for a “straight through process” that is effectively automated once the votes are lodged.

Nevertheless, Roundtable participants are of the view that in order to comprehensively address the risks posed by a record cut-off date of “not more than 48 hours prior to the meeting”, an amendment to the *Corporations Regulations 2001* is necessary to extend the time period as suggested above.

Recommendation

Regulation 7.11.37(3) of the *Corporations Regulations 2001* should be amended to extend the record cut-off date to “5 business days before the meeting”. The Roundtable also supports the adoption of the ASX Listing Rule definition of “business day” for this purpose.

Such a timeframe will provide more time to reconcile votes lodged against actual holdings and will significantly address issues that currently arise where the AGM is scheduled for a Monday or after a public holiday.

Once a well functioning electronic proxy voting system with a high take-up is operating in the market, these dates can once again be reviewed by ASIC if there are concerns about the time between the record and appointment cut-off dates.

Exercise of discretion by share registries and/or issuers

Roundtable participants also noted that there is currently a lack of consistency between share registry service providers' and/or issuers' approaches to determining how they will deal with:

- unclear proxy appointment forms; or
- cases where the votes lodged by the proxy appointment cut-off date do not reconcile with the number of votes entitled by that proxy holder immediately before the meeting (the record cut-off date).

While the exercise of some discretion may be necessary at times, Roundtable participants strongly support an approach which ensures the boundaries around the exercise of that discretion are well defined and appropriate.

Indeed, it was noted at the Roundtable that there have been cases where a discrepancy in the shareholding has led a share registry service provider to disregard the voting instructions entirely, rather than reduce the number of shares to be voted so that only the actual entitlement is voted.

Recommendation

Issuers should, as soon as practicable, make publicly available on the corporate governance part of their websites a clear policy surrounding how they will deal with unclear proxy forms and cases where the votes lodged do not reconcile at the proxy appointment cut-off with the shares actually held by that registered shareholder at the record cut-off date.

It is strongly advised that the policy provide that in cases where there is a discrepancy in the shareholding, the company will direct its share registry service provider to conduct a reconciliation process so that the correct entitlement is voted as opposed to disregarding the entire number of votes.

In all cases, proxy forms rejected must be advised before the proxy cut-off to ensure there is an opportunity to resolve any confusion or uncertainty.

Standardising the disclosure of proxy results to the ASX

Roundtable attendees also noted that there is no standardised format for disclosure of proxy results by issuers being made to the ASX.

Section 251AA (2) of the Corporations Act and ASX Listing Rule 3.13.2 require listed entities to disclose the results of resolutions passed at member meetings, including the total number of proxy votes validly appointed, the number of proxy votes cast for, against, abstain etc.

However, a listed entity is not required to disclose the percentage of the issued capital voted (in total) and the percentage of the issued capital voted for, against, abstain etc.

Such disclosure would provide improved transparency of the outcome of votes at company meetings. The ASX is represented on the Roundtable and has indicated

that it is willing to consider recommendations that arise out of the Roundtable process.

Recommendation

The Roundtable will continue to work with the ASX to develop a template to facilitate standardised disclosure in this area. The template could include details of the number of votes lodged for/against/abstain for each resolution including as a proportion of issued capital. We seek the support of the PJC in this area.

PART 2: DESIGNING AN ELECTRONIC PROXY VOTING SYSTEM

The key elements of the electronic proxy lodgement system sought by investors and institutional shareholders are:

- meeting the relevant legal requirements under the *Corporations Act 2001*;
- accepting and processing aggregated split votes received from custodians; and
- providing an audit trail that clearly identifies the number of votes received and the number of votes lodged.

Additionally, there is a desire to ensure that there is a standard, non-proprietary, set of data protocols to underpin any automated electronic proxy voting system.

At present, there is a number of electronic voting platforms operating in the market however they only allow institutional investors to lodge an instruction electronically up to the registered holder (e.g. the custodian), with paper-based manual process (such as a fax) forming the mechanism to communicate the electronic instructions from the custodian to the issuer's share registry service provider.

While this system is partially electronic, it still contains manual elements which have been responsible for errors and "lost" votes as described earlier.

Legal requirements under the Corporations Act

The *Corporations Act 2001* and *Corporations Regulations 2001* together allow for the appointment of a proxy by electronic means (s250A) and for proxy documents to be received by the company at an electronic address (ss250B and 250BA).

More specifically, in relation to listed companies, the Act provides that they *may* specify:

- an electronic address for the purposes of receipt of proxy appointments and proxy appointment authorities; and
- other electronic means by which a member may give the company a proxy appointment or proxy appointment authority.

Consequently, the development and adoption of an electronic proxy voting system is entirely consistent with the legal obligations imposed on companies under the Act and Regulations.

While Roundtable members recognise that due care needs to be taken to develop a system that meets the legal requirements around authentication and security as set out in Regulation 2G.2.01, these are matters of design which are not insurmountable and which are not seen as precluding the widespread adoption of an electronic proxy voting system.

See [Attachment A](#) for relevant extracts of sections/regulations discussed above.

CONCLUSION AND RECOMMENDATIONS

The proxy voting process represents a key element of our corporate governance framework. Ensuring that the process operates effectively and with a high degree of integrity is of vital importance to maintaining confidence in the mechanisms that allow shareholders to exercise their voting rights.

Roundtable participants have therefore collectively agreed that the system needs to be improved and that key flaws with the present system need to be addressed.

This paper sets out a series of recommendations which, if adopted, will result in a significantly improved proxy voting system.

Roundtable participants seek the support of all stakeholders in the proxy voting system to implement the recommendations and work towards achieving a more robust and efficient proxy voting system.

Recommendations by affected stakeholder

Superannuation trustees and investment managers

1. Superannuation trustees and investment managers should immediately commence requesting issuers in which they hold shares to receive proxy instructions by electronic means as a matter of course at all members' meetings.
2. IFSA, on behalf of willing Roundtable members, will prepare an open letter to all S&P/ASX 300 companies requesting that they put appropriate electronic proxy voting arrangements in place as soon as possible.

Issuers

3. Should develop an electronic proxy voting capability that will provide a meaningful audit trail from issuers & their registrars to shareholders so that superannuation funds, investment managers and other appointed proxies are able to confidently declare how they voted in any instance. The audit capability should allow for acknowledgement within 24 hours of the record cut-off date for any proxy instruction submitted electronically. Industry is prepared to discuss mechanisms to allow issuers and share registry service providers to recoup any development costs by charging a fee (based on cost-recovery) for using such a system.
4. Should, as soon as practicable, make publicly available on the corporate governance part of their websites a clear policy surrounding how they will deal with unclear proxy forms and cases where the votes lodged do not reconcile at the proxy appointment cut-off date with the shares actually held by that registered shareholder at the record cut-off date. The policy should also provide that in cases where there is a discrepancy in the shareholding, the company will direct its share registry service provider to conduct a reconciliation process so that the correct entitlement is voted as opposed to disregarding the entire number of votes; and

ASX

5. In consultation with issuers and institutional and retail shareholders, we will continue to work with the ASX towards the development of a template to facilitate standardized disclosure of proxy voting results. The template could include details of the number of votes lodged against each resolution including as a proportion of issued capital. We seek the support of the PJC in this area.

Government (Treasury/ASIC)

6. Regulation 7.11.37(3) of the *Corporations Regulations 2001* should be amended to extend the record cut-off date to “5 business days before the meeting”. The ASX Listing Rule definition of “business day” should be adopted for this purpose.
7. Additionally, Roundtable members request that the PJC recommend that ASIC issue a Policy Statement or ‘no action’ position letter clarifying that any issuer that accepts electronic proxies without a relevant company constitution change will not be taken to have breached the relevant sections of the Corporations Act. Alternatively, in the event that such a statement is unable to be provided by ASIC, Roundtable members recommend that companies seek to amend their constitutions at the next meeting of members to explicitly provide for electronic lodgement if this is not already included in their constitution.

Attachment A

Extracts – Corporations Act 2001 and Corporations Regulations 2001

Corporations Act 2001

Section 250A: Appointing a proxy

(1) An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the regulations, by the member of the company making the appointment and contains the following information:

- (a) the member's name and address;
- (b) the company's name;
- (c) the proxy's name or the name of the office held by the proxy;
- (d) the meetings at which the appointment may be used.

An appointment may be a standing one.

(1A) The regulations made for the purposes of subsection (1) may prescribe different requirements for the authentication of an appointment given to the company by different means (electronic or otherwise).

Section 250B: Proxy documents

Documents to be received by company before meeting

(1) For an appointment of a proxy for a meeting of a company's members to be effective, the following documents must be received by the company at least 48 hours before the meeting:

- (a) the proxy's appointment;
- (b) if the appointment is signed, or otherwise authenticated in a manner prescribed by regulations made for the purposes of subsection 250A(1), by the appointor's attorney--the authority under which the appointment was signed or authenticated or a certified copy of the authority.

...

Receipt of documents

(3) A company receives a document referred to in subsection (1):

- (a) when the document is received at any of the following:
 - (i) the company's registered office;
 - (ii) a fax number at the company's registered office;
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting; and
- (b) if the notice of meeting specifies other electronic means by which a member may give the document--when the document given by those means is received by the company as prescribed by the regulations.

Section 250BA: Proxy documents -- listed companies

- (1) In a notice of meeting for a meeting of the members of the company, the company:
 - (a) must specify a place and a fax number for the purposes of receipt of proxy appointments and proxy appointment authorities; and
 - (b) may specify:
 - (i) an electronic address for the purposes of receipt of proxy appointments and proxy appointment authorities; and
 - (ii) other electronic means by which a member may give the company a proxy appointment or proxy appointment authority.
- (2) This section only applies to a company that is listed.
- (3) This section applies despite anything in the company's constitution.

Corporations Regulations 2001

Regulation 2G.2.01: Authentication of appointment of proxy (Act s 250A)

- (1) For subsection 250A (1) of the Act, an electronic authentication of an appointment of a proxy must include:
 - (a) a method of identifying the member; and
 - (b) an indication of the member's approval of the information communicated.
- (2) If a member appoints a proxy by e-mail or Internet-based voting:
 - (a) the member must be identified by personal details (for example, the member's name, address and date of birth); and
 - (b) the member's approval of the information communicated must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

Regulation 7.11.37: Determination of who holds Division 4 financial products for the purposes of meeting

- (1) This regulation applies to a meeting of the holders of securities of a body corporate if some or all of the securities are Division 4 financial products.
- (2) The convener of the meeting may determine that all the securities of the body corporate that are Division 4 financial products at a specified time before the meeting are taken, for the purposes of the meeting, to be held by the persons who held them at the specified time.
- (3) The specified time:
 - (a) must satisfy any applicable requirements of the ASTC operating rules; but
 - (b) in any case, must not be more than 48 hours before the meeting.

- (4) The convenor must make a determination:
 - (a) in accordance with any applicable requirements of the ASTC operating rules as to the way in which it must be made; but
 - (b) in any case, before notice of the meeting is given.
- (5) The convenor must include particulars of the determination in the notice of the meeting.
- (6) However, a failure to include particulars of the determination in the notice of the meeting does not invalidate the determination.
- (7) The convenor's determination has effect accordingly despite anything in:
 - (a) the Act; and
 - (b) these Regulations; and
 - (c) any other law (written or unwritten) that applies to the meeting; and
 - (d) any document that applies to the meeting (for example, the body corporate's constitution or any relevant trust deed).



Information Paper

SWIFTNet Proxy Voting

Facilitating investor participation
in corporate governance by automating
the proxy voting lifecycle

The pressure to improve participatory corporate governance is increasing. International investment across all markets is expanding. When combined with increasing attention from regulatory bodies, proxy voting standardisation and automation has now become a critical industry need.

The problem: regulatory and reputational risk

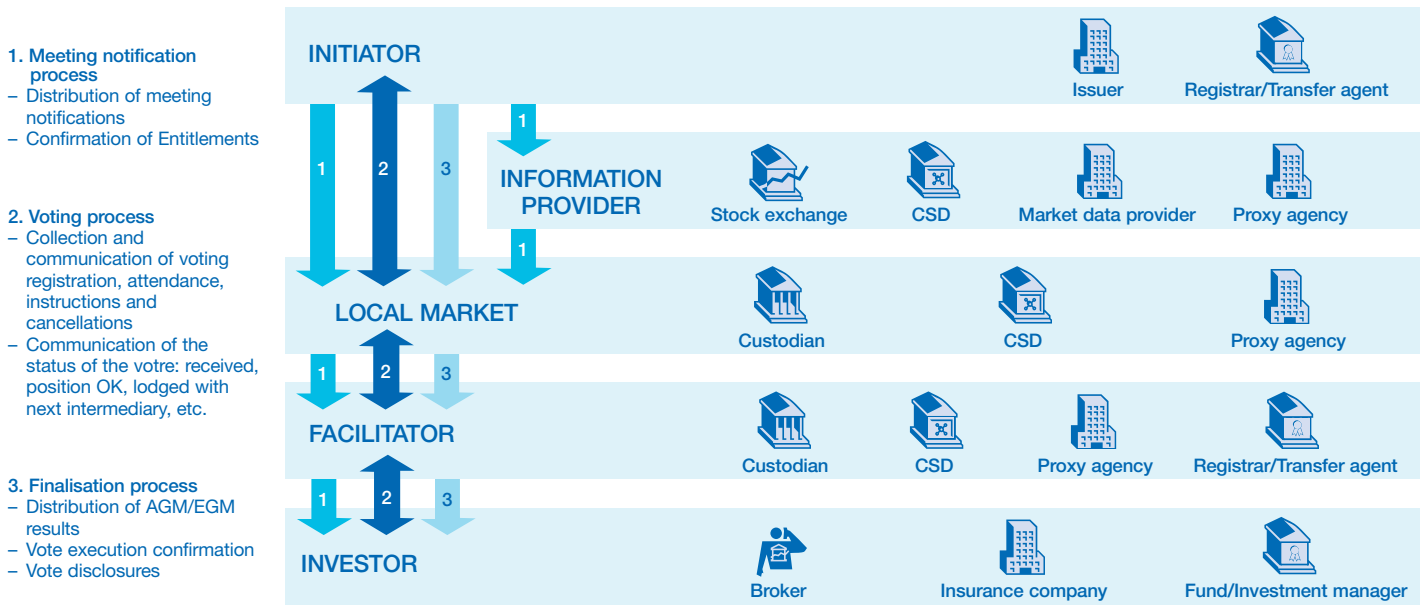
The current landscape makes compliance with growing regulatory requirements costly with its non-standard processes, frequent manual requirements, and multiple proprietary solutions. Until now, industry processes have failed to provide a standardised end-to-end audit trail that could prove that a vote was lodged with every intermediary in the process.

Success has been isolated and limited in the several attempts to automate and standardise Proxy Voting. Proprietary methods, inadequate standardisation, and manual requirements create a laborious and costly exercise for investors and intermediaries.

A quick world survey

- Foreign investment is more than 31% in Taiwan and 26% in Japan. US investment in Hong Kong exceeds 29% and is growing at 8% to 15% per year [ACGA Asian Proxy Voting Survey – 2006].
- Japan's Pension Fund Association has actually enhanced returns by aggressively promoting proxy voting to influence and improve corporate performance.
- The European Commissioner for Internal Market and Services, Charlie McCreevy indicated that on average 29% of share capital of listed companies is in the hands of shareholders not resident in the same country as the company, and that such holdings can range up to 80% non-resident [speech in Brussels, 27 June 2006]. Legislation on shareholder rights in the EU is in the works.
- The removal of Giovannini Barrier 1 requires market players to support the use of ISO messaging for communication with cross-border players. The scope of Giovannini Barrier 1 includes asset servicing and proxy voting falls into this category as well as Barrier 3 for improving corporate actions.
- In the UK, the Company Law Reform bill significantly strengthens shareholder voting rights.
- Even the US, with high participation in proxy voting, has levied multi-million dollar fines for over-voting, a situation that arises when holdings are on loan and both the lender and borrower vote.





Proxy Voting flows: core activities

The solution: standardise and automate the process

In June 2005, the SWIFT Board of Directors endorsed the community request for SWIFT to develop new ISO 20022 Proxy Voting messages and to deliver a SWIFTNet-based solution using these messages.

In concert with a group of industry practitioners, SWIFT is in the process of finalising the message standards and ISO registering the business elements of the proxy voting process. The SWIFT Proxy Voting Solution is going through a pilot to address the use of the new messages and the process flow, from initiator to investor, through all intermediaries.

Value proposition

The SWIFTNet Proxy Voting Solution implements end-to-end standardised messaging on a service that validates and delivers those messages with security and reliability for the benefit all participants involved in proxy voting.

The Proxy Voting core activities are described in the diagram above.

The benefits of the solution

The use of this solution will enable the industry to:

- minimise risk associated with errors
- reduce costs due to less manual intervention, thus fewer errors
- streamline and standardise deadlines
- help eliminate ‘under’/’over’ voting with increased precision in vote execution
- accommodate funds voting
- maintain audit trails
- provide transparency
- increase voting levels
- comply with regulatory requirements
- integrate new customers/agents rapidly

Global custodians and proxy voting agencies will be able to:

- provide a better service to their clients
- manage reputational and financial risk
- give more reasonable deadlines

Issuers will be able to:

- better comply with corporate governance requirements
- have better access to shareholders, and enhance shareholder value

Investors will be in a position to:

- have more time to monitor positions and recall shares in time to vote
- confidently comply with fiduciary responsibility
- increase their participation in cross border voting
- make better and more thoroughly informed decisions
- increase confidence in voting for their clients
- reduce financial and reputational risk

“Voting is probably the only event where the fund manager or owner cannot see that their decision has been successfully delivered to the party at the other end of the chain.”

Allen Harris, head of product development for HSBC Securities Services, London

Function of message	Category	MT	MX-UNIFI candidate messages
Meeting announcement or modification	Meeting notification	MT 564 (+ MT 568)	MeetingNotification seev.001.001.01
Cancellation of meeting or meeting notification		MT 564	MeetingCancellation seev.002.001.01
Confirmation of entitlement			MeetingEntitlementNotification seev.003.001.01
Voting instruction	Voting	MT 565	MeetingInstruction seev.004.001.01
Cancellation of voting instruction			MeetingInstructionCancellationRequest seev.005.001.01
Status on voting instruction		MT 567	MeetingInstructionStatus seev.006.001.01
Confirmation of vote execution	Results	None (except MT 568)	MeetingVoteExecutionConfirmation seev.007.001.01
Results of meeting			MeetingResultDissemination seev.008.001.01

New ISO 20022 UNIFI Proxy Voting MX messages, by function, compared to ISO 15022 MT messages

The components of the solution

SWIFTNet Proxy Voting enables the issuers, investors, and all intermediaries in the proxy voting chain to communicate with each other in a fully standardised way. This facilitates straight-through processing in an area that, to a large extent, is still manual.

Standards

The eight new XML message standards were developed according to the procedure as defined by UNIFI (ISO 20022). They were designed to fully support the communication needs for core proxy voting activities. This is in contrast to ISO 15022 Corporate Action messages that neither fully accommodate today's proxy voting complexity nor the full life cycle of messaging that is required to provide a defensible audit trail. The delivery of ISO 20022 messages is also part of the recommended solution resulting from the Giovannini Barrier 1 gap analysis.

SWIFTNet

The Proxy Voting solution uses SWIFTNet InterAct. Used in the store-and-forward mode on a dedicated Closed User Group (CUG), the counterparties will share the same security infrastructure and a common service for which the features have been selected according to business needs:

- central message validation
- end-to-end signature
- nonrepudiation of origin, emission and reception

- Proxy Agency membership and access via the CUG
- business and operational rules agreed by all correspondents

Service users should be able to reduce their total cost of ownership, as they will be able to reuse their current SWIFTNet infrastructure.

The way forward

The pilot phase will be complete by the end of the 1st Quarter 2007.

During the 2007 Proxy Voting season, the standards will be refined by implementing priority changes identified by a business validation group of global leaders in proxy voting.

ISO registration (UNIFI) of the messages is expected to take place in the 3rd Quarter 2007. An advanced release of the final standards with early solution documents such as the integration guide and service description will be published at that time.

Live operations are scheduled for December 2007.

For more information, please contact your local SWIFT representative. Go to www.swift.com and click on "Contact" at the footer for a list of SWIFT offices.

“Using the SWIFT messages will ensure consistent and automated communications. It will also provide a robust, potentially transparent audit trail and should increase the rate of cross-border voting.”

Allen Harris, head of product development for HSBC Securities Services, London

Proxy Voting by investment advisers

Final Rule by the Securities Exchange Commission - March 2003

The rule and rule amendments are designed to ensure that advisers vote proxies in the best interest of their clients and provide clients with information about how their proxies are voted.

Extracts:

Advisers are in a position to significantly affect the future of corporations and, as a result, the future value of corporate securities held by their clients.

An adviser is a fiduciary that owes each of its clients duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting. The duty of care requires an adviser with proxy voting authority to monitor corporate events and to vote the proxies.

NYSE fines banks over voting procedures (Second quarter 2006)

The New York Stock Exchange (NYSE) has fined three high-profile banks at total of USD 1.4 million for failing to properly handle voting procedures in corporate elections.

In a statement, NYSE Regulation said: "Inadequate processing and supervision of customer proxies undermine a fundamental principle of stock ownership."

"We remind member firms that they must ensure that shareholders' votes are not threatened by inattention, careless systems or insufficient reviews, and that outsourcing of the proxy function does not lessen a firm's responsibilities."

Shareholders typically have certain voting rights when it comes to corporate ballots, and these rights need to be moved with shares as they are bought and sold or lent to others.

European Commission

Directive of the European parliament and of the council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market

Extracts:

Terms of the Problem

The complexity of cross-border voting mechanisms across the EU not only discourages institutional shareholders from voting in several circumstances, but it also translates directly into higher voting costs (compared to domestic voting) charged by intermediaries to shareholders in case they vote. Moreover, an important part of the costs of the present situation are the opportunity costs of not intervening: the removal of obstacles to cross-border voting would significantly increase the cross-border voting record of institutional shareholders and would make cross-border voting for small individual shareholders a real possibility in a near future.

Removing obstacles to domestic and cross-border shareholder rights is a key prerequisite for the development of stock markets in the EU and to facilitate financial market integration in the EU. This is all the more true since in EU Member States stock markets still play a lesser role in corporate finance compared to the US.

Objectives of the Directive

General objectives:

- to strengthen shareholders' rights and the protection of third parties
- to foster efficiency and competitiveness of business

Specific objectives:

- to allow shareholders to play their full role in the decision-making process of the company

Operational objectives:

- to reduce cross-border voting costs
- to allow an increase in voting rates by cross-border shareholders
- to increase cross-border share ownership



IFSA Standard No.13.00



Proxy Voting

October 2004

Main features of this Standard are:

- **to require disclosure of Proxy Voting policy;**
- **to require publication at least annually of Australian Proxy Voting record;**
- **to standardise disclosure of Proxy Voting record.**

IFSA Standard No.13.00

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IFSA Standard No.13.00

1 Title

- 1.1 **This Standard (the “Standard”) may be cited as IFSA Standard No. 13.00 ‘Proxy Voting’.**

2 Standards and Commentary

- 2.1 **The standards set out in this Standard are shown in bold print.** Commentary is shown in normal print immediately after the Standard to which it relates, as an aid to interpretation of the Standard.

3 Date of Issue

- 3.1 **21 October 2004**

4 Effective Date

- 4.1 **This Standard must be applied to IFSA member companies operations on and after 1 January 2005. Early application of this Standard is encouraged.**

5 Definitions

- 5.1 Unless otherwise defined in this Standard, IFSA Guidance Note No. 5.00 ‘Industry Terms and Definitions’ provides the definition of any industry terms used. For the purposes of this Standard:

“**Proxy Voting**” means the exercise by the Scheme Operator or its authorised agent of voting rights for Scheme assets.

6 Application

- 6.1 **This Standard applies to all IFSA members**

- 6.2 Where there is a conflict between the requirements of this Standard and any applicable legislation, the requirements of this Standard should, having regard to the purpose of the Standard, be modified appropriately so that, as far as is practicable, the Scheme Operator complies with the requirements of this Standard.

- 6.3 This Standard should be read in conjunction with IFSA Standard No.1.00 Code of Ethics & Code of Conduct.

6.4 Scope of the Standard

- 6.5 This Standard applies in respect of retail public offer Schemes where the Scheme Operator has the ability to participate in the governance of underlying investments. It does not apply to IDPS and IDPS-like arrangements where the client has the responsibility for investment selection, or to private client or discrete wholesale

IFSA Standard No.13.00

mandates. Proxy Voting requirements are matters to be determined by the Scheme Operator and client in private client and wholesale mandate arrangements.

- 6.6 The Standard does not apply to a 'manage the manager' or 'fund of funds' investment style unless the Scheme Operator requires the fund manager to vote on company resolutions as directed by the Scheme Operator, or the fund manager is a related body corporate (as defined in the Corporations Act 2001) of the Scheme Operator. In circumstances where a Scheme Operator directs the investments of various Schemes to an underlying investment trust operated by the Scheme Operator or related body corporate, the reporting of proxy votes as required by clause 10 of this Standard should be made at the underlying investment trust level and disclosed at the Scheme level.
- 6.7 The primary objective of a fund manager is to generate investment returns. Their performance is generally benchmarked against the performance of their peers or a relevant index. Where a fund manager is engaged by a Scheme Operator on the basis of its investment style or sector expertise, the fund manager and not the Operator will make the investment selections. The Scheme Operator is primarily concerned with the investment performance and returns generated by the fund manager.

7. Statement of Purpose

- 7.1 This Standard on Proxy Voting specifies requirements for disclosure of Proxy Voting policies, including the summary disclosure of proxy votes to the Members of each Scheme operated by IFSA member companies.
- 7.2 Scheme Operators have fiduciary responsibilities to Scheme Members to act in their best interests and to prefer the interests of Scheme Members to their own interests.
- 7.3 In managing investments on behalf of Scheme Members, Scheme Operators must ensure that investments are managed exclusively in the financial interests of Scheme Members. As the trustees of investments, Scheme Operators have a general responsibility to use best efforts to preserve and increase the value of investments.
- 7.4 As a matter of best practice, the Scheme Operator should contribute to improving and upholding the governance of entities and markets in which they invest¹. Voting, by Scheme Operators, is one way in which the interests of Scheme Members can be represented. Other ways include open and constructive communication about governance issues with the board and management of entities in which the interests are held.
- 7.5 Scheme Operators and Investment Managers may issue voting instructions where they do not hold the investment interests directly, but through a custodian. In addition, Proxy Voting agencies may contract with the Scheme Operator, Investment Manager, custodian or beneficial owner of the interests to advise on voting and the issuing of voting instructions.

¹ International Corporate Governance Network, *Statement on Institutional Shareholder Responsibilities* issued 10 December 2003.

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8. Proxy Voting Policy

- 8.1 Scheme Operators must have a formal Proxy Voting policy approved by the Board and that sets out the principles and guidelines under which proxies are voted.**
- 8.2 The Proxy Voting policy may form part of the written Corporate Governance policy of a Scheme Operator². Scheme Members should be aware of the Proxy Voting policy and voting practices of the Scheme Operator.
- 8.3 The Proxy Voting policy must be made available to a Scheme Member on request.**
- 8.4 This requirement can be satisfied either by publishing the Proxy Voting policy on the website of the Scheme Operator, including it in the Offer Document for the Scheme, or by making a printed copy of the policy available to the Scheme Member on request.
- 8.5 The disclosure by a Scheme Operator of their Proxy Voting policy to Scheme Members is considered to be an important aspect of the governance and management of investments on behalf of those Scheme Members.

9. Voting of Proxies

- 9.1. Scheme Operators should vote on all Australian company resolutions where they have voting authority and responsibility to do so³.**
- 9.2. Consistent with the high governance standards expected of Scheme Operators, a Scheme Operator should vote on all resolutions considered at general meetings of an Australian listed company regardless of the ‘materiality’ of a resolution. Where a Scheme Operator does not vote, that decision must be disclosed as part of the Proxy Voting reporting requirements required under this Standard.

10. Reporting of Proxy Votes

- 10.1. Scheme Operators must publish, at least annually, a summary of their Australian Proxy Voting record for the previous year. Publication should be made as soon as practicable but within two months of the end of the relevant year for the Scheme**
- 10.2. The aggregate summary of the Australian proxy voting activity of the Scheme Operator must be disclosed to Scheme Members. The summary should include:

² IFSA Guideline 3 – Corporate Governance Policy and Procedures – states “Fund managers should have a written Corporate Governance policy, including policies regarding the exercising of proxy votes. This policy should be approved by the board of the fund manager and should include formal internal procedures to ensure that the policy is applied consistently”.

³ This requirement was previously included in IFSA Guideline 2 for Fund Managers that provided that “Fund Managers should vote on all material issues at all Australian company meetings at which they have voting authority and responsibility to do so.” This Standard differs in so far as it requires the reporting of voting action regardless of the ‘materiality’ of a resolution.

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- the number of resolutions for which the Scheme Operator exercised its voting discretion;
- the number of resolutions for which the Scheme Operator voted in favour;
- the number of resolutions for which the Scheme Operator voted against;
- the number of resolutions for which the Scheme Operator abstained⁴; and
- the number of resolutions for which the Scheme Operator took no action.

The summary should be presented both as numbers and as percentages of the total number of resolutions considered at a general meeting of the entities in which the Scheme Operator has discretion to vote on interests held on behalf of Scheme Members.

10.3. The following table should be used to standardise the disclosure of the Scheme Operator’s Proxy Voting record.

	Resolutions⁵	For⁶	Against⁷	Abstain⁸	No Action
Number					
%					

10.4 The Scheme Operator may provide additional information in respect of its Proxy Voting record and may choose, for example, to provide explanations of its vote on contentious or material issues; where it has abstained from voting; or, delegated the voting of non-contentious issues to the Chair of the shareholder meeting. The Scheme Operator may also choose to distinguish between resolutions put forward by management and resolutions put forward by Scheme Members. This Standard does not limit the type or nature of the disclosures that a Scheme Operator may provide to its Scheme Members.

10.5 The standardised Proxy Voting table should be published on the website of the Scheme Operator. If the Scheme Operator does not have a website, the publication requirement may be satisfied by including the report of Proxy Voting record in the Offer Document for the Scheme, or making a printed copy of the report of Proxy Voting record available to a Member on request.

⁴ A Scheme Operator will be taken to have “abstained” from voting rather than to have taken “No Action” where they have considered the resolution(s) but decided to neither support nor oppose the resolution(s). A Scheme Operator must retain evidence of their consideration of a resolution and the basis for the decision to abstain from voting.

⁵ Only resolutions for which the Scheme Operator has discretion to vote are to be included.

⁶ The Scheme Operator may choose to distinguish between resolutions put forward by management and resolutions put forward by Scheme members.

⁷ The Scheme Operator may choose to distinguish between resolutions put forward by management and resolutions put forward by Scheme Members.

⁸ Includes the delegation of voting decisions on non-contentious issues to the Chair of the shareholder meeting.