



ICGN

International Corporate Governance Network

ICGN Viewpoint

Shareholder Rights Committee view on obstacles to vote execution July 2014

The issue

Share voting is an important share ownership right. The ICGN advocates that investors should seek to vote their shares and make informed and independent voting decisions, applying due care, diligence and judgement. Stewardship Codes around the world also call for enhanced dialogue between companies and investors and encourage informed voting.

Over the last decade the exercise of voting rights by investors has increased however the process is far from straight forward and is subject to costly, time-consuming and inefficient obstacles. Many of such obstacles could be reduced if there were more consensus among market participants around how to eliminate inefficiencies in the voting chain.

Particular impediments include: obstructions to electronic voting, the anachronism of the show of hands which disenfranchises shareholders not present in person at the general meeting in some jurisdictions, opaque fee structures and late disclosure of information pertinent for vote decision making.

Obstacles to vote execution

It is in the interests of all market participants to have confidence in the integrity and reliability of the vote execution system. With this objective, the ICGN held meetings with market participants in London and New York in 2013-14 to discuss how to improve the efficiency of voting particularly in a cross-border context. This included dialogue with a broad range of stakeholders, all with an important role to play in the voting chain. Six issues have been identified which lead to particular problems. In addition, a number of suggestions for improvement have been recommended:

1. Ensuring the reliability of agendas

There is often inconsistency between the General Meeting Agenda (“Agenda”) originally issued by the company (the ‘Golden Copy’) and the Agenda ultimately received by the investor. This can be due to inaccurate translation of information, the aggregation of agenda items, or errors in agenda item numbering not aligning with the Golden Copy. In addition, investors may receive research from more than one governance research provider, all of which may use different numbering. This may cause confusion in the reconciliation of instructions.

In some jurisdictions, national law or regulation may also require companies to announce information regarding general meetings to shareholders via official gazettes or other national newspapers. This is less efficient than the use of electronic means of communication, such as a company website, which is more easily accessible in a global investment environment.



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Recommendations:

- **Companies:** Companies should ensure that the AGM agenda is clear and properly itemized and include information regarding the issues to be decided at the meeting along with the date and location of the meeting at least one month prior to taking place. This should be made available on the company website and any other relevant electronic means. Aggregated agenda items should be avoided, in particular those relating to individual director appointments.
- **Investors:** Investors should hold their agents to account for the accuracy of information received.
- **Intermediaries:** Intermediaries should affirm that any copy of a General Meeting Agenda represents an accurate and correct translation of the original Agenda as issued by the company. Any changes to the original information in the Golden Copy should be clearly highlighted. Only the Agenda issued by the company (or party requisitioning the meeting) should be distributed. Translations provided should be marked as such and the numbering of the Agenda must match that on the vote instruction form.
- **Regulators:** Company law should require companies to send notice of general meetings directly and in internationally standardized format (for example the EU Industry Standard on General Meetings) to the issuer's Central Securities Depository (CSD). This is preferable to relying solely on notification in official gazettes which may have a limited readership, particularly in a global investment environment.

2. Uniform vote deadlines

Late announcements of General Meetings are still common practice in some markets whereby some companies do not allow for sufficient time for investors to make informed voting decisions between the announcement of the meeting and the meeting date itself. This, added to the time taken to transmit information and voting instructions through the voting chain, leads to a squeeze on the time available for investors to read information to make decisions on resolutions ahead of a voting deadline and to engage with the company if necessary. The problem is particularly acute for foreign investors who are subject to a cross-border vote execution chain and thus even earlier vote deadlines.

Recommendations:

- **Companies:** Companies should disclose a clear date for shareholders to cast their voting instructions and should utilize electronic means to publicise and distribute AGM related materials. The setting of the date should take into account the time required by intermediaries (or their agents) to tabulate voting instructions. The practice of share blocking or requirements for lengthy share holdings should be discontinued.
- **Investors:** Investors should encourage the use of electronic voting and should emphasize to their agents the amount of time that they require to read and, if necessary, translate the AGM papers.



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- Intermediaries: Intermediaries should not hold vote instructions for longer than is absolutely necessary to exercise the processing of the vote. The introduction of a universal cut-off date for all intermediaries may be helpful in this regard, while recognising the need for flexibility in some markets.
- Regulators: Regulators should require companies to announce general meetings in a timely manner. In addition, regulators could encourage companies to disperse the holding of AGMs so that they are not 'bunched' in a single jurisdiction within a limited time frame – eg April-May in Europe.

3. Clarifying and disclosing fee structures

The overlay of multiple fees incurred along the voting chain by intermediaries can lead to excessive costs and outweigh the benefit of exercising the right to vote itself. Costs can be inflated, often with no benchmark, and with no clear disclosure around how such fees are justified. Improved disclosure around the level and make-up of fees would help ensure a clear understanding of costs and benefits and allow for discussion around any mechanisms of improvement for vote execution.

Recommendations:

- Companies: Companies are responsible for appointing registrars and equivalent agents and should therefore use this accountability to make this part of the chain as transparent as possible.
- Investors: Investors are encouraged to regularly review their service contracts with agents to include clarification on fee structures and identify execution targets within a specific time frame which may be subject to penalties for non-performance. In large part this will require the structure for fees paid to parties in the investment chain to be more associated with the long-term perspectives which will generate returns over the time-horizon that beneficiaries or clients are seeking.
- Intermediaries: All agents should provide a transparent voting cost structure and fees should be listed by component (registration, translation, meeting attendance, vote lodgement, external service provision, out of pocket expenses, etc). This would allow investors a more comprehensive overview of the costs associated with the voting activity.
- Regulators: Regulators should ensure that they understand the different parts of the voting chain and are able to detect potential problems and take action in terms of market power and other anti-competitive pressures exerted by intermediaries that may affect fees.

4. Improving the transparency of share ownership

It is often not clear who the underlying shareowner is or the number of shares actually held. This can cause variance between the number of shares on the company register and the number of votes executed. This is amplified by the use of omnibus accounts.



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The overall effect of this is a discrepancy on the reconciliation of the real number of shares relevant to a vote on a resolution.

Voting infrastructures that are unable to determine with certainty, the number of votes that are eligible to be voted on a corporate matter, and do not have the right to exercise those votes, are unwelcome. Vote entitlements in lists of beneficial shareholders must be fully reconciled, so that one individual can provide instructions for voting relating to each share.

Recommendations:

- **Companies:** Companies should maintain a record of the registered owners of its shares or those holding voting rights over its shares. This information should be made available to shareholders should they wish to view this record of registered owners of shares or those holding voting rights over shares.
- **Investors:** Registered shareholders should provide the company, where anonymity rules do not preclude this, with the identity of beneficial owners or holders of voting rights where applicable. Investors should also insist (in their service agreements with voting agents) that a reconciliation of the agent's holdings is made with Registrars/ CSDs at least before submitting votes to ensure the correct information is ultimately transmitted to companies, or that reconciliation is made daily.
- **Intermediaries:** Daily reconciliation by intermediaries will help ensure that the holdings at each level of the voting chain are consistent and the problems associated with over- or under-voting are avoided. In addition, custodians should provide an identified investor with a holdings certificate upon request with any other documentation to enable the investor to attend a general meeting, speak and vote, where this is required in the home jurisdiction of the company.
- **Regulators:** Regulators should seek to discourage the establishment and use of pooled nominee accounts offered by custodian banks.

5. Promoting efficient electronic communications

Over the last decade the exercise of voting rights by electronic means has been widely adopted worldwide and has enabled investors with international equity portfolios to increasingly vote their shares cross border. However, there is no commonly applied system for voting by electronic means and human intervention is still regularly employed in many jurisdictions and by many participants. This increases the time required by all intermediaries in the chain to execute the vote and also increases the risk of error.

Recommendation:

- **Companies:** Companies should promote efficient and accessible voting mechanisms that allow shareholders to participate in general meetings either in person or remotely, preferably by electronic means or by post. A system of "all poll" voting should be embraced as a matter of best practice rather than the show of hands as a means to determine the outcome of a vote which is used in some jurisdictions.



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- Investors: Investors should ask their custodians and service providers to send all information (meeting notice, annual report and other documents) in an electronic format. They should use an electronic terminal to execute votes and ask intermediaries to do likewise. On a national level investors should ask issuers to accept their electronic instructions.
- Intermediaries: All intermediaries should develop a mutually beneficial, universally applicable, cost free interface to accept and process electronic votes throughout the chain.
- Regulators: Regulators should encourage the adoption of a common open-access approach to improve the accuracy and timeliness of vote execution. Common electronic communication systems, protocols, such as ISO Message Standards, enable direct processing by all agents and thus allow for efficient processing on a real time basis.

6. Creating a reliable vote confirmation system

Investors currently do not receive a confirmation that their votes have been cast in accordance with their instructions. This creates uncertainty and impedes an investors' ability to report to beneficiaries that their votes have been lodged and taken into account by the company.

Recommendations:

- Companies: Companies should ensure that equal effect is given to votes whether cast in person or in absentia and all votes should be properly counted and recorded via ballot/ poll. The outcome of the vote, the vote instruction (reported separately for, against or abstain) and voting levels for each resolution should be published promptly after the meeting on the company website. If a resolution has been opposed by a significant proportion of votes, the company should explain subsequently what actions were taken to understand and respond to the concerns that led shareholders to vote against management.
- Investors: Investors should actively seek vote confirmation of all votes cast in order to report accurately to beneficiaries. Vote confirmation should become standard in every service contract. In this respect a dialogue with the shareholder's auditor could be sought to clarify potential obligations.
- Intermediaries: Relevant parties, including custodians, sub-custodians, vote aggregators and registrars, should continue to work towards a system where investors are able to obtain confirmation that voting instructions have been received and properly recorded by the company.
- Regulators: An independent, operational audit by regulators should be undertaken of the proxy voting system on a regular basis, to confirm the integrity of the system, or identify any material deficiencies, so that corrective action may be taken.



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Next steps

The ICGN welcomes comments from ICGN members regarding the issues and potential solutions outlined in this viewpoint paper. Following discussions with ICGN Members in Amsterdam in June 2014, the Shareholder Rights Committee intends to submit a comment letter to the European Working Group for 'Market Standards for General Meetings.' The aim is to help generate action in relation to some of the issues raised and to make regulators aware of the obstacles from an investor perspective.

In a parallel initiative, the Committee is also developing a set of recommendations regarding the responsibility and accountability of all actors within the vote execution chain. The experience learnt from this project will be referenced as relevant in the parallel initiative.

The ICGN also intends to monitor a test-case exemplar of straight through vote processing mechanism by a number of European-based voting agencies which will take place this year. The aim is to execute the vote almost directly to the company's registrar. In addition, the Committee is commenting on the idea of an open platform mainly owned by investors. The open platform, which discloses all elements in the voting chain, would create a win-win situation for investors and their agents as well as companies. Through standardization of the global voting process investors could vote their complete cross-border portfolio resulting in increased information requirements and higher quorums, while costs could be significantly reduced.

About ICGN Viewpoints

ICGN Viewpoints provide opinion on emerging corporate governance issues and are intended to generate debate, whilst not defining a formal ICGN position on the subject. ICGN Viewpoints are produced by our member-led Policy Committees and we encourage dialogue by contacting the ICGN Shareholder Rights Committee Co-chairs, or ICGN Managing Director as follows:

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