CHANGES TO AGMs IN THE UK

Executive Summary

Is the AGM fit for purpose in the 21st century? The origins of the arrangement are historical and were designed long before the listed company environment took its current form and large institutions held large proportions of the share/voting capital of the majority of companies.

AGMs exist to provide two functions:
- Companies need to seek shareholder approval for certain matters as required by the Companies Act and/or Listing Rules – in most cases, institutional investors who hold the majority of shares (but do not physically attend the meetings) will decide the outcome of these votes.
- The AGM provides an opportunity for shareholders to hold the directors to account for the running of the company. The shareholders who physically attend the meetings to do this tend to hold relatively small numbers of shares that, in most instances, will not have an impact on the outcome of the decisions being made at the AGM.

The ICSA Registrars Group has identified two areas for discussion and potential change around AGMs:
- The efficiency and effectiveness of the physical meeting
- The efficiency and effectiveness of the voting process.

Within this context, it is therefore proposed for discussion that individual issuers (or even the same issuer in different years) have different options for holding an AGM or otherwise communicating with shareholders:
- To continue as present;
- To hold a Virtual AGM;
- To hold a Shareholder Meeting (which can be physical or virtual) and a separate vote on the resolutions which would have been put before the AGM if one had been held.

These options are explained and explored below.

Introduction

The ideas in this paper stem from discussions with BIS and some issuers in late 2015 and have been further developed through discussions among registrars and others in the first part of 2016.

The drivers have been many and varied, including:-

A general, but undeveloped, view that the processes around general meetings and proxy appointment/voting could be updated. They had been devised in the 19th century and are still broadly the same now despite some beneficial changes in the Companies Act 2006 (the Act). The FRC, for example, recognised and started looking at this some years ago but the work was sidelined by other priorities.

General meetings, particularly when large numbers of shareholders are involved, can be very expensive and are not considered by some issuers to be a cost-effective method of interacting with shareholders.

The industry-wide Shareholder Voting Working Group (SVWG), which has been in existence for almost 20 years, has overseen improvements in what Lord Myners (the then chairman of the Group) memorably described as the ‘plumbing’ of AGMs which has seen levels of voting in the UK rise to levels which outstrip those in other countries. Recent meetings of the SVWG have explored the potential for changes to the proxy appointment/voting process which could enhance the overall outcome.

BIS held a number of workshops shortly after the 2015 election looking at innovative ways to cut costs for UK companies.

Whilst not directly linked, a number of larger issuers have expressed concern that although dematerialisation, which will change the private investment landscape in the UK, will bring widespread benefits, they may not directly benefit and they are looking for parallel changes which will address their shareholder-related cost base.

The current situation

There are detailed provisions in Part 12 of the Act (ss281 – 361) covering company meetings, including the notice which must be given and the timings of that notice. Recognising that the overwhelming majority of shareholders will not attend the meeting, the Act provides for those who cannot, by allowing them to nominate a proxy (generally the chair of the meeting but it can be any natural person) who is present at the meeting, to vote on their behalf, in accordance with their pre-determined instructions or, in the absence of those, as the proxy decides.

Shareholders who appoint proxies can change their minds at the last minute and attend themselves, should they wish. The collection and counting of proxies, which then have to be checked against those attending and those instructions collated with the voting by members present on the day, is demanding, although robust processes have been developed over the years to manage this requirement. To enable the process to be completed in an accurate and timely way, a cut-off is imposed in advance of the meeting which reduces the amount of time available for information to be passed and voting decisions to be made and communicated within the investment chain of institutional investors who comprise the majority of value but the minority by numbers of shareholders.
The Act further complicated the situation by allowing shareholders to nominate others to enjoy information rights (i.e. request the issuer to send certain information including the notice of meeting and annual report to a third party) and, if the registered shareholder provides such a service, allow the third party to instruct it to appoint multiple proxies in respect of their investment. Typically this is used to allow indirect investors to receive information and either pass their voting preference back to the registered shareholder or attend the meeting. Much private investment is channelled in this way but the changes in the Act are lightly used so the impact to date has not been material.

The theory of meetings is to allow those who attend to listen to the chairman’s remarks, ask questions and listen to the answers, and then base their voting decision on what they have heard. In practice, any information provided will already be in the public domain because of the strict disclosure regime in place, and it is rare (though not unheard of – particularly where there are controlling shareholders) for the outcome of any vote to be determined by those attending, as the vast majority of votes cast at company meetings are the result of proxy appointments. There is also a considerable amount of anecdotal evidence about the extent to which private shareholders do or do not engage with the company at such meetings. That is not to say that there should not be the opportunity for shareholders to put questions to the company in a public forum, (or for companies to meet private shareholders if they wish to do so), but there could be more efficient, and effective ways of achieving this than the current annual general meeting.

One of the points of contention extensively debated in the SVWG, is ‘vote confirmation’ i.e. a request to an issuer to confirm after the meeting the votes cast for, against and withheld, by individual shareholders, on each resolution. This is not by any means a universal requirement but is strongly argued by some institutional investors. There are currently mechanisms which partially provide this – receipts are given for proxy appointments via the CREST system (reflecting the pre-meeting instructions), covering the vast majority of institutional investment holdings but intermediaries do not always pass these back down the chain of investors – and there are a number of options for delivering more but, under the present arrangements, full vote confirmation is difficult to achieve without significant system enhancements throughout the investment chain.

Alternatives to the current AGM set-up are discussed in the remainder of this paper.

Virtual AGMs

The idea of a virtual AGM where the structure of the meeting is the same as currently, but the shareholders ‘attend’ and vote, not at a physical meeting but through a combination of tele-conferencing, webinar and electronic voting application is currently permissible, if the company’s constitution allows. Various terms have been used to describe such meetings – virtual, electronic and digital but for the remainder of this paper we have used the term virtual AGM.
It has the advantage of there being no need to hire a venue and the attendant costs which accompany that e.g. security, catering, travel etc. However there are additional considerations which result from this format as outlined below:

- Enhanced telephony provision and contingency because of the fear that the meeting could be invalidated by such a failure, requiring adjournment and reconvening with the attendant costs and embarrassment. This can erode the risk assessment/cost benefit of not having to hold a physical meeting.
- Whilst this approach is feasible for smaller companies, particularly those who are relatively recent start-ups or have just gone public, the constitutional change required for long-established companies, having entrenched shareholder bases, with higher levels of more mature (in every sense of the word) individual shareholders will be more difficult, costly because of the extended communication programme, and risks potential adverse publicity by taking such a step into the unknown, especially if there is a viable alternative.

Jimmy Choo PLC amended their Articles of Association in 2015 in order to facilitate the change and delivered the company’s first electronic AGM – which is how they chose to describe it – on 15th June 2016. They were seeking a way of increasing investor access to their annual general meeting whilst saving travel costs for investors as well as the cost to the company of hiring a venue and collecting the board in one physical location.

The AGM was much better attended than Jimmy Choo’s first physical AGM in 2015, which evidences the greater appeal and accessibility of an electronic AGM. Peter Harf, Chairman of Jimmy Choo plc, added: “We are very pleased with the outcome of this process, which achieved its aim of broadening shareholder access to our AGM in the most convenient way possible.”

**A new approach – separating the voting and the shareholder meeting**

This option allows companies to have a separate shareholder meeting during which management, members of the Board and shareholders can discuss issues relating to the company ahead of a vote.

Currently most companies have meetings with large investors at which presentations are made, discussions held and questions asked about performance and strategy. Not all the directors are present; those who are will depend upon the circumstances of the company at that moment but, as well as the CEO and chairman, may include some or all of the Finance Director, the Senior NED, Audit & Risk committee chair etc. Such meetings are seen as an essential ingredient of shareholder engagement and stewardship.

The format would be different, but the same principle could apply to other shareholders or their representatives. Such meetings could be physical, virtual or a combination of both and the likelihood of them being a valuable communication channel compared to the current AGM which is strait-jacketed by the constraints of the general meeting format.
could be significantly enhanced. Although a venue would be required if a physical meeting were held, the costs of organising it could be slightly less than a current AGM because the IT capability and support could be reduced, subject to the comment above, the poll count would not take place and some legal costs, e.g. drafting scripts etc could be avoided.

There is a question as to whether they would be a statutory requirement and, if so whether the format would be defined. Our view is that a company would be required to hold such a meeting if it decided to dispense with the physical AGM, but the format would be at the company’s discretion, subject either to a change in its constitution or, as a minimum, by shareholder resolution before the change from the current arrangements.

Any new provisions would be permissive and would allow a company to continue to hold a traditional AGM on an ongoing basis or if there was felt to be a one-off need because of particular circumstances. There would need to be specific arrangements for general meetings and votes in relation to corporate actions and those aspects are not considered in detail in this paper.

In the event that a company went down the route of a shareholder meeting instead of a traditional AGM, then the business of the AGM – the resolutions which are currently required to be put before the meeting – would be subject to a vote which was entirely separate from the meeting. There is an argument to say that such a vote should ideally be held within a certain period of the shareholder meeting. This would allow informed voting based on ‘attendance’ at the shareholder meeting or perusal of any internet-based output from it.

Such a vote could use any or all of the channels currently available to appoint proxies (not all of which can be used for every company meeting). These include paper, internet (both through a secure one-off portal and through individual shareholder ‘on-line’ accounts with the registrar or company) and the CREST system, and, in the past, on the phone. Channels could be expanded to include by text and apps. The only channel which would no longer be available would be voting in person at the meeting.

There does appear to be at least one disadvantage. There could be new information which comes to light in the period between the shareholder meeting and the close of the vote. However, whilst this would not allow shareholders to raise questions with the directors about it, in practice that is denied to most shareholders now. Under the current arrangements, most private shareholders who will not attend the meeting send their proxies in during the first few days after they have received them but there are already arrangements for proxy appointments to be overridden by subsequent instructions and any new processes could involve a facility for votes to be changed up to a point before the vote.

Advantages include:-
Simplifying the process by removing potential duplications (shareholders who have submitted a proxy and then attend) and not collating proxies and votes at the meeting.

The cost savings and process simplification of not having to carry out the count at the meeting venue, remote from the registrars’ systems.

Whether there were any benefits due to changes in the voting as opposed to proxy appointment timetable would depend on final agreement on this important detail. A proposed timetable for discussion is included as an appendix to this paper.

Vote confirmation would be simplified as there would be a direct correlation between the receipted instruction and the vote on the resolution.

Because the resolutions would not be ‘put to the meeting’, there might be an opportunity to simplify the presentation of them, particularly in the light of the number which are sometimes put to shareholders.

**Conclusion**

We have no doubt there is an appetite among some issuers, particularly those with a large shareholder base or well-attended AGMs, and those institutional investors who have lobbied for vote confirmation to effect such a change. However, no work has yet been done on costs and benefits across the board, and this would need to be carried out, including system tweaks among those investors (and their agents who currently carry out the proxy appointment process on their behalf), in CREST and by registrars. In addition institutional investors and their agents would need to ensure that their systems could cope with the two alternatives (from a proxy appointment perspective traditional and virtual meetings are the same).

If the additional option were adopted – a separate shareholder meeting and vote – as an alternative to either a traditional meeting or virtual meeting were to be adopted, there would be the potential for shareholder confusion. However, as research has shown that multi-company direct investment is not the norm and tends to be done by only relatively sophisticated shareholders then, provided the communication was clear and the changes were well flagged in advance, it should not prove a major stumbling block.

Although the effect would be deregulatory, a key factor will be the appetite to effect the necessary changes to the Act by BEIS. This in turn would depend on aligning this with other priorities e.g. dematerialisation, BREXIT etc. However, at the very least, we feel that the ideas are worth exploring.

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**Appendix 1 – Proposed timeline for a separate meeting and vote**