ICSA REGISTRARS GROUP GUIDANCE NOTE

PRACTICAL ISSUES AROUND VOTING AT GENERAL MEETINGS

1 Introduction

The Institute of Chartered Secretaries and Administrators Registrars Group (the Group) represents the major service registrars in the United Kingdom and its members are outsourced registrars for more than 99% of all quoted companies in the UK. The three major registrars are Capita Registrars, Computershare Investor Services and Equiniti. The Group is responsible for formulating policy and best practice guidelines in all areas relating to share registration.

In recent years, the members of the Group have seen a steady increase in shareholder voting levels, and in 2011 voting levels at UK FTSE100 General Meetings averaged in excess of 68% of issued capital. This more than bears comparison with other markets especially in the context of an increase to almost 30% of overseas share ownership and given that foreign investors have, historically, been less likely to exercise their vote at UK General Meetings. However, the Group is aware that the voting process in the UK has been criticised in some quarters; and that it has been claimed that cross-border voting is fraught with difficulty and that votes are frequently 'lost'. These claims seem surprising given the high voting levels in the UK compared to other established markets. When examinations of voting records are conducted, such as a detailed study of five annual general meetings in 2007 and by individual registrars, what emerges is a picture of votes most commonly failing to be lodged successfully due to a lack of clarity and control within the intermediated forms of shareholding leading to some mis-communication of voting instructions and voting entitlements.

The purpose of this guidance note is to seek to try and clear up some of the confusion and misconceptions that appear to exist in the market and to offer the Group's experience of the operation of the UK voting process including the system capabilities, key milestones and relevant operational processes such that we believe might facilitate consistent understanding across the market. This may lead to a further increase in voting levels, which we believe is good for the governance of companies. The appendix deals with some of the more common issues on which we receive questions. This guidance note draws on the experience of the members of the Group in managing the voting process for their many hundreds of issuer clients across the UK market, ranging from FTSE100 issuers to Small Cap, AIM and unlisted companies. It does not constitute legal advice, and does not replace the various guidance notes issued by ICSA on issues relating to general meetings.

2 Overview of the voting process

2.1 Notice of Meeting

The Notice of Meeting will be sent to, or made available on a website for, as appropriate, all registered shareholders at least 14 clear days before the date of the meeting. For a public company and where the meeting is an Annual General Meeting and/or where the company does not have shareholder authority for a reduced notice period, the notice must be sent to all shareholders at least 21 clear days before the date of the meeting[1]. *Note that in both cases this refers to clear days – i.e. disregarding the date on which the notice is given and the date of the meeting*[2]. Many companies provide longer notice periods, and the Financial Reporting Council's UK Corporate Governance Code requires at least 20 business days.

The notice will be communicated to shareholders via different media including hard copy, internet and CREST. The Group recommends that all issuers with CREST shareholders announce their meeting via the CREST system which provides electronic and formatted details of the meeting and facilitates straight through processing in line with market best practice and European standard recommendations.

2.2 The Proxy Deadline and Record Date

In the Notice of Meeting, the issuer will stipulate the deadline for lodging a proxy appointment before the meeting (the Proxy Deadline). Under UK law[3], this cannot be more than 48 hours before the meeting and the Articles of Association of the company will, typically, provide that this cannot be less than 48 hours before the meeting. In calculating the deadline, and subject to a company's Articles of Association, UK law permits an issuer to disregard non-working days. The issuer will also state, for the purpose of calculating voting entitlements, the cut-off time and date for eligibility to attend and vote at the meeting (the Record Date[4]). For CREST enabled securities (and as best practice for non-CREST securities) this will be at the close of business on the day on which the Proxy Deadline falls. Rare exceptions can occur, dependent on the Articles of Association of the Issuer and full details are always given in the Notice of Meeting[5]. The Notice of Meeting will also stipulate the address(es) to which proxy appointments and instructions must be submitted and the means by which a proxy may be appointed – any proxy instruction sent to any other address, or by any other means, will be invalid.

---

[1] S307 – Exceptionally, shorter notice can be given if agreed in advance by more than half the shareholders, or shareholders holding more than half the issued capital.
[2] S360 – but note that the Articles of Association will often indicate how long after, for example, posting notice is deemed to be given. Absent any provision in the Articles, S1147will apply.
[3] S327(2) CA2006
[4] S360B CA2006 defines this for a traded company, but see also the Uncertificated Securities Regulations 2001 (SI2001/3755) as amended by Regulation 2(18) of the Companies Act 2006 (Consequential Amendments) (Uncertificated Securities) Order 2009 (SI2009/1889).
[5] Required by s325(1) CA2006

2.3 The Voting Period

This guidance note does not look to provide an accurate summary of processing by the shareholder (or their agents) during the period between the despatch of the Notice of Meeting and the Proxy Deadline. However, it is our belief that any voting intention from a shareholder (or an underlying investor in the event of an intermediated shareholding) should be passed on immediately to the issuer or its registrar. This gives the issuer early sight of voting intentions and allows for good governance in practice by allowing the issuer to engage with the underlying investor in accordance with the UK Corporate Governance and Stewardship Codes. In order to keep shareholder costs low our suggestion is that after the initial appointment and intention has been submitted:

- where a holding changes, but the voting intention does not, there is no need to send an immediate update although regular updates are encouraged as the proxy appointment deadline approaches; and
- where a voting intention changes, an updated voting instruction should be passed to the issuer's agent immediately.

Proxy appointments and voting instructions are currently received by three main channels:

1. CREST. It is best practice for issuers that have shareholders in CREST to allow for appointments and instructions via the CREST system and, where this facility is offered, it is best practice that a shareholder who holds shares in CREST should vote via the CREST system because it provides an audit trail from the system that confirms whether the appointment and instruction has been received by the issuer or its agent in time for the meeting deadlines. Provided the number of shares instructed upon is less than or equal to the Record Date holding, this audit trail confirms that the appointment and instruction will be provided to the issuer for use (where applicable) at the meeting.
2. Internet. It is again best practice to allow shareholders to appoint and instruct via the internet. When using this method most issuers/agents will also provide a transaction reference confirming receipt.
3. Hard copy. The majority of issuers provide proxy cards for their shareholders although some companies are now only providing cards should shareholders request them. Where instructions are lodged in hard copy form, receipts will not generally be provided.

Note that more than one proxy may be appointed, subject only to the limit that each proxy must be appointed in respect of a different share or £10 of stock – i.e. a member cannot appoint more proxies than the number of shares (or £10 units of stock) held[6].

[6] S324(2) CA2006

From the viewpoint of the issuer or, more commonly the issuer's agent (usually the registrar), proxy appointments from retail shareholders will begin to be received almost immediately after the despatch of the Notice of Meeting. These will be received either by post or through one of the proprietary internet services offered by the registrar, typically relatively high in volume, but individually low in terms of the number of shares represented as a percentage of an issuer's share capital. Proxy appointments submitted by, or more usually on behalf of, institutional shareholders, which are relatively low in number but represent the overwhelming majority of shares voted, generally only arrive towards the end of the voting period, typically through the CREST system.

During the voting period the registrar will be in liaison with the issuer on a regular basis to provide updates on the voting intentions of shareholders, in order that engagement between the company and those shareholders regarding the business of the meeting is more meaningful and better informed.

2.4 After the Proxy Deadline

Once the Proxy Deadline has passed, and all proxy appointments received prior to the deadline have been processed, the registrar will initiate the preparation of the final voting figures for the issuer. This process involves the reconciliation of voting figures against the Record Date position of the register. In circumstances where a discrepancy would cause the invalidation of a proxy appointment, reasonable attempts will be made to highlight the discrepancy to the party submitting the proxy appointment. Prior to this reconciliation, the registrar must assume that the party lodging the proxy appointment knows its trading position, and that where an instruction relates to more shares than appear on the register, this simply means that they are aware that there are transactions going through the settlement process, and that at Record Date the correct number of shares will have been voted. Where an instruction has been submitted in respect of fewer shares than are held at the Record Date, this is a valid instruction, and will be assumed to be the shareholders' intention. The only proxy cards that will be rejected before the Proxy Deadline are those which are deficient in some way – for example have not been signed or do not indicate the shareholder's intention.

Where issues arise over the validity of a proxy instruction which require the registrar to refer to the shareholder or lodging agent, this can only be done on a reasonable endeavours basis, due to the potentially high volume of meetings and votes being processed at peak times during the year. Once this process has been completed, final proxy figures will be given to the Issuer.

The registrar is responsible for ensuring that, as far as possible, the Chairman of the meeting can carry out his fundamental duty of ensuring that the voting intentions of all shareholders are recognised. Exactly how the registrar manages this function will vary depending on the Articles of Association of the issuer; any legal advice taken by the Issuer and/or the registrar; and the systems and processes that the registrar has in place to ensure that their role as independent scrutineer is properly carried out. These may include, for example, but are not limited to:

- Discussion with the shareholder or lodging agent to resolve difficulties;

- Arranging with the shareholder or lodging agent for a corporate representative to attend the meeting to ensure that the vote is lodged correctly;
- Invalidating votes where the intention is unclear;
- Pro-rating of the voting instruction to the number of shares on the register; and /or
- An assumption that votes against the management recommendation take precedence.

As a general rule, the first step is always to seek to make contact with the shareholder or lodging agent to resolve the query, and it is only if that is not possible, or a definitive resolution cannot be obtained, that the registrar will consider applying one of the above rules in accordance with their standard practice and as agreed with the issuer in question or in accordance with the issuers' Articles of Association.

Any new proxy appointments received by the registrar/issuer after the Proxy Deadline will be not be accepted and will not be included in the votes represented at the meeting, as this would be in contravention of company law and the issuer's Articles of Association. Any amendments to the voting instruction being given in relation to a proxy appointment made prior to the deadline may, subject to the Articles of Association of the issuer, be accepted. Though amendments to pre-existing instructions may be valid, shareholders should refer to the issuer's Articles of Association and the Notice of Meeting for any restrictions/deadline for amended instructions. It must be appreciated that final preparations need to be made by the issuer/registrar for the meeting itself and there are practical limitations to how late it is possible to accept updated instructions and ensure the proxy (often the Chairman of the meeting) is able to properly vote in accordance with the amended instruction. The Group would urge the market to do whatever they can to ensure that all instructions/appointments are lodged in advance of the deadline, removing any risk of their votes not being counted.

Amendments to proxy appointments can be lodged in physical form with the relevant registrar and the CREST voting system permits amendments to instructions after the Proxy Deadline, although the ultimate decision regarding acceptance of such amendments is at the discretion of the registrar/issuer. The Notice of Meeting and proxy card should be checked for any specific instructions regarding the procedure for making such amendments. Registrars would urge shareholders and/or their agent to make any amendments as soon as possible because of the need to finalise the voting position for the issuer. Where a registrar's proprietary system is used for appointing proxies, shareholders should refer to the Notice of Meeting or to the registrar in question for details of how this works.

Appendix - The views of the Group on current market issues

1 Notice of Meeting

1.1 Electronic and formatted messages: In addition to the publication of the Notice of Meeting to all shareholders, there is a desire from some professional market participants to receive an electronic notification from the issuer or its agent in order that they do not have to create such a notification for onward transmission to their underlying clients. This requirement has been included in the Market Standards for General Meetings published by the Joint Working Group for General Meetings, which stipulates that this should be "in formatted electronic form using standards defined and used by the securities industry such as the ISO standards, irrespective of the communication channel used." In the UK and Ireland, this functionality is provided through the CREST system, which whilst using a messaging standard 'defined and used by the securities industry' does not use ISO 20022, although it potentially could do so in the future. Following consultation with their members, Euroclear have recently concluded that there is currently no business case, or indeed market appetite, for the replacement of their existing CREST messaging with an ISO 20022 interface.

ICSA Registrars Group Recommendation: Issuers are recommended to communicate the Notice of Meeting via CREST but no change is required to the CREST announcement service.

2 The Proxy Deadline and Record Date

***2.1 Record Date vs Meeting Date*:** There has been some discussion in recent years around the timing of the Record Date in the UK, and suggestions by market intermediaries that it should be moved further away from the meeting date in order to facilitate the operational arrangements of intermediaries between the underlying shareholder and the issuer or its agent. Suggested periods have ranged from thirty or more days before the meeting to five days before the meeting.

Whilst we understand that such a change would make the operational arrangements for both intermediaries and registrars more straightforward in terms of removing the time pressure, we do not believe that this is an acceptable reason for making such a change. There are good governance reasons for the Record Date to be as close to the meeting as practicable, in order to ensure that, as far as possible, those who are entitled to attend and vote at a meeting are those who hold shares in the company (and therefore carry the economic risk) on the date of the meeting. The longer the period is between the Record Date and the meeting, the more shareholders will have bought shares in that period and therefore be disenfranchised, and similarly, the more shareholders will have sold shares in that period and therefore be entitled to vote in respect of shares in which they no longer have an economic interest. In our view this is a far more important consideration than the operational convenience of market intermediaries. Given the prominent role of good governance practices, the close proximity of the voting Record Date and the meeting should be considered a strength of UK market practice. Provided the shareholder has already appointed its proxy and given its initial voting

intention as soon as possible, the operational overhead of reconciling that position to the Record Date balance is not material and should not cause any problems to a party who manages assets.

Furthermore, we also believe that in an age of electronic communication it is inappropriate for any industry to say that it now needs more time to carry out its function or for an organisation to suggest it is unable to reconcile its clients' assets on a daily basis and compare those to an instruction received.

ICSA Registrars Group Recommendation: No change required as it would create more problems than benefits were the Record Date to be moved further away from the meeting date.

2.2 Time period for client communication: It is regularly suggested by some investors and their agents that it is unreasonable for them to have to submit their voting instructions within a very short turnaround, where an intermediary deadline might be ten or, in some cases, more days before the meeting. As explained above, this is not an issuer requirement, but is a requirement imposed by some participants in the proxy voting chain, a requirement increasingly difficult to justify in an age of modern communications.

ICSA Registrars Group Recommendation: No change required. Company law ensures sufficient time is available. Shareholders should be prepared to exercise discretion over their choice of intermediary to ensure that they do not have an unnecessarily early deadline imposed upon them.

2.3 Order of Dates: The Market Standards for General Meetings, published by the European Joint Working Group for General Meetings (a forum appointed by CESAME), recommend that the Record Date precedes the issuer deadline for notification of participation (interpreted as the deadline for receipt of proxy appointments because, of course, there is no requirement under UK law for shareholders to give notice of their intention to participate in a meeting). This is not the case under UK law as explained above. Whilst an argument can be made that changing the UK practice will assist shareholders to know their voting entitlement, it does seem to run counter to the argument for retaining a model where the voting Record Date and meeting are in close proximity, with the resultant governance benefits. Given that settlement takes place typically on a T+3 basis (and likely soon to be T+2), it is logical that investors should be expected to know how many shares they will hold on the Record Date three days earlier. It has been suggested that this is not as straightforward as it seems owing to the risk of settlement failure, but we have sought guidance from Euroclear UK & Ireland on this point and are advised that current settlement failure rates are so low as to render this risk negligible. Where settlement failures do occur, the respective parties can take corrective measures on the record date. Furthermore, settlement discipline is also likely to improve following an increased focus by the European Commission.

ICSA Registrars Group Recommendation: No change required.

3 The voting period

***3.1 Issuer feedback on invalid votes prior to the Record Date*:** As noted above, the registrar will scrutinise all proxy appointments and instructions received during the voting period for validity – i.e. that they have been signed, and that they give a clear indication of the shareholders' voting intentions. Whilst the number of shares for which the instruction is made is recorded by the relevant registrar, it is only at the Record Date that a final determination is made of the validity of the vote based on the number of shares that instruction represents, as this is the time at which the register is struck for this purpose. As mentioned above, registrars will use reasonable endeavours to contact shareholders or their agent who have submitted invalid appointments or instructions.

ICSA Registrars Group Recommendation: No change required but intermediaries and shareholders should ensure that their operational teams are fully conversant with the proxy voting process. Using electronic means to vote and reconcile should mean this becomes a non-issue.

3.2 Inconsistent media usage. A number of shareholders are using multiple media to vote on the same holding. Whilst this is allowed it is not efficient and encouragement should be given to consistency. Some parties have suggested that voting be brought in line with corporate actions and that shareholders in CREST should only be able to appoint proxies and give instruction to them via CREST. Whilst this is a matter for further debate we do believe strongly that a shareholder should use the same medium for appointments and instructions during a voting period e.g. a shareholder should not vote via the internet and hard copy for the same event.

ICSA Registrars Group Recommendation: Consideration to be given to the market view that certificated holders should vote by the internet or hard copy and CREST holders via CREST. In any event, holders should use electronic voting channels wherever possible.

3.3 Poor governance practices: Appointments and instructions relating to the majority of shares are only received very close to the Proxy Deadline. This leads to poor corporate governance as it leaves no time for an issuer and shareholder to discuss any perceived issues.

The current reality is that proxy appointments from retail shareholders will begin to be received almost immediately, either by post or through one of the proprietary internet services offered by the registrars, typically relatively high in volume, but individually low in terms of percentage of capital. As noted above, proxy appointments relating to institutional shareholdings are generally received much closer to the deadline set by the issuer. An analysis carried out by one registrar in 2011 revealed that 48 hours before the Proxy Deadline most companies had received proxy appointments in respect of only 20% of capital; 24 hours before the proxy deadline this had risen to 50%; and by the Proxy Deadline itself had risen to almost 70%.

ICSA Registrars Group Recommendation: All proxy appointments and initial instructions should be passed to the registrar as soon as possible. Updates to any instruction should follow the rules set out above which are that post the initial appointment and intention being submitted:

- *where a holding changes, but the intention does not, there is no need to send an immediate update although regular updates are encouraged as the proxy deadline approaches; and*
- *where a voting intention changes, an updated voting instruction should be passed to the issuer's agent immediately.*

4 After the Proxy Deadline

4.1 Voting Confirmations: Registrars are sometimes asked to provide confirmation that a proxy instruction has been received and/or that the vote has been counted. It may be feasible to obtain a confirmation that an instruction has been sent/received, either automatically through an 'electronic' delivery mechanism such as CREST (or 'proprietary' registrar systems) or by contacting the registrar in question. For example, the registrars by reasonable endeavour will advise CREST holders (or their agent) in the event that a proxy appointment submitted via the CREST system is not applied to the account. However, confirmation that a vote has been counted can only be given after the meeting, as even if an appointment is valid and included in the final proxy figures supplied to the issuer, it remains possible for the proxy or the shareholder (or corporate representative) to attend the meeting and amend their vote – indeed arranging for someone to do so is one of the more common ways of resolving the situation of an incorrectly completed proxy card.

ICSA Registrars Group Recommendation: We would encourage shareholders to submit their votes 'electronically' (CREST or proprietary system) wherever such facilities are enabled, as our experience is that these are the most efficient channels for transmitting proxy appointments. Note that End Investors using the services of an intermediary and seeking vote confirmations will need to contact their agent.

4.2 DBV issues: We acknowledge the difficulty for market participants in circumstances where relevant securities are included in the daily DBV collateral process within the CREST system. Here the shareholder exchanges a 'basket' of securities as collateral in a DBV (typically against payment) and has no control over which securities are taken in the process, which will be mirrored on the register of shareholders and so can result in a proxy appointment being lodged in relation to an incorrect number of shares. We have written to Euroclear UK & Ireland to ask them to consider whether it would be possible for those securities with a live meeting recorded on the system to be excluded from the DBV process. It should be noted, however, that in the past market firms did not want securities to be excluded from DBVs for this reason.

April 2012