COMPANY AGMs:
RESTORING THEIR RELEVANCE

First published in the AICD's August edition of "Company Director"

Separating the engagement process of the meeting from the procedural part by legislating that all votes on AGM Resolutions (including Proxy votes) could only be lodged after (as opposed to before or at) the meeting, would go a long way towards alleviating the sense of disenfranchisement felt by retail shareholders.

The debate about the relevance of the listed company AGM, particularly in its current format, is on again. Many shareholders who attend AGMs regularly undoubtedly experience a sense of frustration with a process that reports on and discusses financial results for a twelve month period that ended 4-5 months earlier. And for the relatively few retail shareholders who do make the effort to attend an AGM to express their views and cast their votes, the apparent "irrelevance" of those votes is thrown into stark relief by the display of proxy votes indicating an outcome decided at least 48 hours beforehand by the institutional investors.

The ability of a shareholder to attend an AGM is further constrained by geography (not everyone lives in the city where AGMs are held and few are webcast) or time constraints (employees or business owners are rarely able to attend a meeting that may run for 2-3 hours in the middle of a week day). As a result, retirees tend to be over represented at AGMs along with company employees, their advisers, bankers and brokers. Institutions and broking analysts rarely attend but will take note of the outlook statement contained in the Chairman's or Managing Director's address typically released to ASX on the same day.

Australian listed companies have been operating under a continuous disclosure regime since 1994. The increased use of the internet by companies over the past 10 years to disseminate information and the use of websites as sources of information by investors, have quickly closed the information gap between well resourced institutional investors and retail investors. There remains however a vast difference between the level and intensity of direct engagement by companies with institutions as compared with retail investors.

The strongest argument for retaining the AGM is that it remains the one and only opportunity each year for retail investors to ask questions directly of their elected representatives on a range of issues relating to the performance of their company. The fact that the meetings are held as open sessions, enabling all shareholders to participate in the discussion, not only promotes disclosure but also allows shareholders to gauge the calibre of the Board based on their handling of the meeting and unscripted responses to questions.

There would be few who disagree with the principle that direct engagement by investors with companies provides valuable input to their decision making. With the exception of index and quantitative investors, most institutional investors view face to face meetings with the company as an integral part of their investment process. Retail investors, especially sophisticated investors, have a similar need for Company contact but often the issues that concern them differ from those on the institutional agenda. Australian AGMs in 2009 for example were notable for retail investors voicing their anger on the simmering issue of executive remuneration and on capital raisings that, in some cases, delivered generous discounts to big shareholders while diluting the holdings of the small.

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Without the AGM there would be no opportunity for these views to be aired either individually or through representative bodies or for Boards to be given the opportunity to answer their critics and put their case.

What differs between institutional and retail investors, however, is the degree of access that can be managed in practice. Institutional investors have unparalleled access to management through briefings, one on one meetings, broker conferences, site visits and strategy days throughout the year. Boards of top 100 companies occasionally meet informally with major institutional shareholders to seek feedback and, where companies have issues, fund managers are not backward in seeking an audience with the Chairman and Managing Director to ensure their views are heard.

Retail investors, on the other hand, are usually willing to acknowledge that their need for engagement has to be handled differently.

However, thanks to technological advances, retail holders do now have a number of new information avenues open to them. The expansion of investor relations activities targeting institutions in recent years has also delivered benefits to individual investors through a wealth of information being released via the ASX's Company Announcements platform. If they have access to the internet, any investor is able to review copies of presentations given at briefings or conferences, transcripts of interviews with management, video interviews, as well as all the statutory disclosures. Furthermore the prohibition of selective disclosure is designed to ensure that no investor is privy to information that is not publicly available to all other investors. So the question arises – if the information is already out there, is there any additional benefit to retail investors in attending an AGM?

We would agree with the position taken by the ASA that it "continues to strongly support the opportunity for retail shareholders to attend general meetings, to receive up to the minute information, listen to the debate and otherwise to interact with company directors". The challenge therefore is to make the AGM more productive and relevant.

One of the procedural problems embedded in the current AGM format is the amount of time spent on matters relating to voting and discussing agenda items when it is clear from the lodgement of proxy votes that the outcome has already been decided. The AGM process itself implies that there is some capacity to engage and therefore to influence the result of a vote, when experience suggests otherwise. This is not to say that proxy votes are less than fully informed. Over the past decade major shareholders have become much more conscious of the importance of exercising their vote and companies are increasingly adopting a process of consultation with them prior to proxies being lodged. As a result it is not unknown for resolutions to be withdrawn or amended if it becomes clear that support is lacking. While the Australian Shareholders' Association (ASA) claims to represent the retail shareholders' point of view as part of this process, the fact remains that the current process invariably results in small investors attending an AGM knowing that the outcome has already been determined.

Australia has one of the highest rates of direct share ownership (36% in 2008) in the world yet anecdotally the percentage of retail shareholders that choose to exercise their vote is relatively small. To what extent this reflects general apathy or a view that, based on their experience of AGMs, their vote doesn't count is difficult to judge. What we do know is that voting participation by shareholders in Australian companies has doubled over the past 7 years from 30% to 60%. This largely reflects a move by the major players in the superannuation industry to become more actively involved as investors and to use their significant presence on many company registers to exercise their voting power responsibly. It may be that retail shareholders should now be encouraged to do the same.

A simple solution would be to separate the engagement process of the meeting from the procedural part by legislating that all votes on AGM Resolutions (including Proxy votes) could only be lodged after (as opposed to before or at) the meeting. From the retail shareholders' point of view, the meetings would then fulfill their true function of providing information and being a forum for discussion that may then result in more informed voting decisions by all shareholders. The only difference in process would be that the results of the vote would not be known until sometime after the meeting. While the outcome might be no different, at least in the short term, a recognition that all shareholders benefit from the opportunity to engage with the Board and senior executives prior to casting their vote, would go a long way towards alleviating the sense of disenfranchisement currently felt by retail shareholders.

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