Institutional Proxy Voting in Australia

This study was commissioned by
The Australian Council of Superannuation Investors
and prepared by Ownership Matters

acsi

RESEARCH PAPER

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The Australian Council of Superannuation Investors

The Australian Council of Superannuation Investors (ACSI) provides independent research and advice to assist its member superannuation funds to manage environmental, social and corporate governance (ESG) investment risk. ACSI believes effective governance structures and processes decrease risk and potentially increase returns, because they create stability that supports the development of long-term investment strategies. ACSI's research platform serves to underpin policy positions and raise awareness of emerging governance issues.

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Foreword

The Australian Council of Superannuation Investors (ACSI) is very pleased to introduce ***Institutional Proxy Voting in Australia*** – a research report examining the inner workings, idiosyncrasies and anomalies of Australia's proxy voting process for institutional investors.

ACSI commissioned this research in early 2012, having participated for many years in industry discussions over the administrative complexities, costs and potential failures of the proxy voting process. Whist there has been widespread acknowledgment of the risks of mis-counting, the industry has lacked a broad, objective evidence base from which meaningful observations could be made about what works and what doesn't within the system.

Meanwhile, institutional investors' take-up of proxy voting and company engagement have continued to rise, and policy makers have increasingly turned to shareholder approval, rather than prescriptive regulation, as the key mechanism to curb corporate excesses and ensure accountability. These trends have further underscored the need for a better evidence base to guide practical process improvements in the proxy voting system.

This is therefore an important and timely study. For the first time ever to our knowledge, it plumbs the full depths and recesses of Australia's institutional proxy voting system, spanning a comprehensive cohort of institutional investors and service providers, a variety of technological platforms and practices, a very extensive sample of voting resolution types, and a very specific timeframe.

The cohort is a group of 23 asset owners and other institutional investors, collectively responsible for managing over $180 billion of listed Australian equity investments. The sample – 1,895 resolutions considered at 370 meetings of companies listed in the mainstream Australian market index, the S&P/ASX300. And the timeframe - calendar year 2011, encompassing the most recent cycle of AGMs and EGMs for this group, which accounts for over 80% of the entire capitalisation of Australia's listed equities market.

The breadth of this research - and the remarkable level of collaboration among so many players in producing it – have enabled a comprehensive analysis across all key participants and all steps in the voting process, building upon some pioneering research undertaken by AMP Capital Investors in 2006 in relation to its portfolio holdings alone.

All of the report's findings and attributions have been exhaustively verified, so readers can have confidence that they are robust. And those findings do indicate that, despite a relatively low frequency of major errors, Australia's proxy voting system has significant room for improvement, both in the processes followed by industry participants and, potentially, in the regulatory arrangements that govern the system. These issues are exemplified by a series of case studies drawn from the 2011 voting data and very expertly documented by the researchers.

ACSI would like to commend the researchers, Dean Paatsch and Simon Connal from Ownership Matters, for a thoroughly professional research report that illustrates their deep expertise and passion for the subject matter. We are also indebted to all of the project sponsors, ACSI member funds, asset owners, investment managers, custodians, voting agents, share registries and companies who participated in the project.

ACSI is pleased to make this research publicly available, and as part of our contribution to current policy reviews including the Corporations and Markets Advisory Committee (CAMAC) inquiry into the AGM and Shareholder Engagement. ACSI will be actively considering the report's recommendations, and we look forward to discussing these with other industry participants to take Australia's proxy voting system to world best practice levels.

Ann Byrne
Chief Executive Officer, ACSI

Acknowledgements

ACSI gratefully acknowledges the support of all 23 institutional investors who participated in this research project through the provision of proxy voting data for calendar year 2011, and through follow up with the researchers on data validation issues.

The majority of these institutions (13) are Australian superannuation fund members of ACSI, together with 2 international associate members. We also greatly appreciate the participation in the project of 8 major institutional asset owners and investment managers outside ACSI's direct membership base.

We are particularly indebted to the following organisations which, along with ACSI, provided financial support to the project in addition to data:

- AMP Capital Investors Limited
- BlackRock Investment Management (Australia) Limited
- Colonial First State Global Asset Management
- Future Fund
- Perpetual Investment Management Limited
- Vanguard Investments Australia Ltd

The financial contribution of these organisations enabled the research to be conducted on a greater scale and in greater depth than would have been possible from within ACSI's resources alone.

It should be noted that the financial contribution from these organisations did not entail any involvement in specifying the terms of reference of the research or influencing its findings or recommendations. The conclusions and recommendations contained in this report are those of the researcher (Ownership Matters) alone.

ACSI and Ownership Matters also recognise and acknowledge the co-operation in the project of a wide range of other participants in the proxy voting process in Australia, including custodians, voting agents, share registries and companies, who all contributed positively to the data collection, analysis and validation phases of the project.

Ownership Matters particularly acknowledges the co-operation and counsel of staff at the various voting agencies, Broadridge, Institutional Shareholder Services and Glass Lewis, whose assistance in interpreting and validating the data was invaluable.

Finally, the researchers, Dean Paatsch and Simon Connal of Ownership Matters, gratefully acknowledge the assistance of Tze Chuan Ang, whose patience, skill and diligence in standardising and analysing disparate data sets were essential to this project.

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1. Executive Summary

This research project examined the aggregate proxy votes submitted by 23 institutional investors and compared those votes to the vote results disclosed by S&P/ASX300 companies for every resolution put to shareholders at meetings in the 2011 year.

The sample data comprised, on average 17 percent of votes cast on all resolutions, 30 percent of all against votes cast and 52 percent of all abstain votes cast. Based on share prices at the date of the relevant meeting, the sample represented $181 billion (13 percent of total market capitalisation) and was estimated to comprise one-third of all domestic institutional holders across the S&P/ASX300.

Of the 1895 resolutions examined at 370 separate meetings, the study found discrepancies between the data and the declared result in only nine instances, seven of which were the result of errors in the systems used by investors to lodge their votes and two of which were the result of errors made by a company and its registrar. No instance affected the passage of a resolution.

The study also examined the restatement of voting results owing to an investor error at Emeco Holdings and uncovered evidence that suggests vote exclusions (that protect the rights of investors) are not being applied consistently on capital raising resolutions for S&P/ASX listed companies.

While the number of errors proven was small in number, the study identified 52 resolutions where the sample represented 80 percent or more of all against or abstain votes and less than 40% of total votes submitted. If the voting intentions of the two-thirds of institutional investors outside the sample were modestly correlated with those for whom data was received then more resolutions may have been the subject of investigation for potential anomalies.

The study found evidence of operational weaknesses in the systems used by investors to cast votes including unrealistic deadlines for sub-custodian messages, lack of reconciliation of holdings data with votes lodged and the extensive use of faxes to submit proxies.

On the part of companies and their registries, the study also noted differing practices regarding vote exclusions (particularly on capital raising resolutions), a low take up of institutional electronic proxy lodgement (around 17%), the lack of an audit trail, and a propensity to pass resolutions by show of hands from those present at the meeting (70 percent of all cases) rather than call a poll to count the proxies submitted by all investors.

The study noted that the coincidence of the time for the determination of vote entitlements (not more than 48 hours prior to a meeting) and the deadline for the submission of proxies (normally a.m two calendar days before a meeting) led to unrealistic time pressures and reconciliation difficulties.

1.1 Investor/Voting Agent Errors Observed

Table 1: Investor/Voting Agent Errors Observed

Company - Resolution	Error observed
Commonwealth Bank of Australia Resolutions 3 & 4	Custodial voting agent incorrectly offered the investor an 'abstain' option, when CBA's proxy card did not permit abstentions
CSR Limited Resolution 3	Investor sold shares between the date it instructed the sub-custodian and the date the proxy card was submitted. The changed position was not reflected in the investor's reported data.
Macquarie Atlas Roads (MARIL 2010 AGM) Resolution 4	The custodial voting agent sent a SWIFT message with investors' instructions that did not correctly identify the relevant meeting and the resolution in question. As a result, the sub-custodian lodged proxies against the wrong resolution at the wrong meeting for the company (there were three meetings on the same day).
Mesoblast Resolutions 2 & 3	The investor lodged votes after the custodian's cut off time and these instructions were not actioned. The votes were not accurately reflected in the investor's data.
Emeco Holdings Resolution 1	The sub-custodian did not accurately reflect the instructions from beneficial holders at the record date of the meeting.

1.2 Company/Registry Errors Observed

Table 2: Company/Registry Errors Observed

Company - Resolution	Error observed
Mirabela Nickel Resolution 1	Faxes were submitted ahead of time and received but an error by the registry resulted in an incorrect report being sent to the company and approximately 97m shares not being reflected in the final result.
NRW Holdings Resolution 7	Votes were excluded for all votes submitted by the custodian as some (but not all) of the custodian's beneficial owners had participated in a placement.

1.3 Summary of Regulatory Reforms Suggested

Recommendation 1: Separate the coincidence of the time for the determination of voting entitlements (suggested 5 business days before a meeting) with the deadline for proxy lodgements (retain at 2 calendar days before a meeting).

Recommendation 2: Standardise the application of vote exclusions on capital raising resolutions to protect the rights of investors whose votes may be excluded if their holdings are combined (through sub-custodians) with other investors who are ineligible to vote.

Recommendation 3: Require companies to report to the market the total number of proxy votes exercisable by all proxies validly appointed but excluded.

Recommendation 4: Empower shareholders representing more than 5 percent of a company (the same threshold at which a meeting can be called) to appoint an independent assessor to oversee or review a poll.

Recommendation 5: Require companies (in electronic form only[1]) to acknowledge that the votes of shareholders have been processed (or discarded) and to confirm what proportion of the final results their votes represented.

Recommendation 6: Make poll voting mandatory for listed companies so that the votes of all investors are counted on resolutions and not just those present at the meeting.

1.4 Reforms to Market Practices

Recommendation 7: All custodians, sub-custodians and voting agents (both institutional and custodial) should make use of the SWIFT proxy voting messages[2] to enable the automated processing of proxy messages on the investor side.

Recommendation 8: Registries should ensure that online systems for the lodgement of proxies enable 'split' voting, file exchanges and are capable of releasing vote confirmations in a format compatible with the SWIFT proxy voting messages.

Recommendation 9: Online proxy voting platforms should enable users to identify if they have participated in placements so that they can comply with the terms of vote exclusion statements on capital raising resolutions.

[1] Strongly preferred that it be in a SWIFT / ISO 2022 compatible format

[2] SWIFT is a widely used secure messaging system used for communication between financial institutions globally on various aspects of financial transactions including corporate actions.

2. Methodology

This study was commissioned by the Australian Council of Superannuation Investors (ACSI) and several other Australian financial institutions.

Its purpose is to examine the integrity of the systems deployed by Australian institutional investors and utilised by companies to count proxy votes at shareholder meetings. Weaknesses in this system have been identified by numerous parties both in Australia[3] and internationally[4], and a series of legislative[5] and market based reforms[6] have been proposed as solutions.

Whilst there is widespread concern with aspects of the Australian proxy voting system, such as the reliance on fax-based lodgement of proxy forms, little research has taken place to identify systemic weaknesses in existing processes or unearth hard evidence of missing or miscounted votes in Australia.

In 2006 AMP Capital Investors[7] undertook a study in which the proxy votes that it had submitted for S&P/ASX300 companies in 2005 were compared to the proxy votes declared by those companies in the relevant Australian Stock Exchange (ASX) announcement.[8] AMP found 21 instances in which "against" or "abstain" votes that it had submitted in 2005 were not reflected in the proxy votes announced to the ASX. It estimated that 4% of its total votes in 2005 were unaccounted for.

2.1 Parties involved in the Proxy Voting System

The study observed messaging between numerous parties involved in the proxy voting system, including:

- **Institutional investors:** comprising both asset-owners (primarily superannuation funds and public investment authorities) and major investment managers of Australian equity portfolios.
- **Voting agents:** these organisations are contracted by custodians or institutional investors to deliver proxy voting materials and messages to the appropriate recipient.
- **Global custodian:** a bank that holds assets for institutional investors in multiple jurisdictions, contracting with sub-custodians in their "global network" to hold securities and perform various services in local markets.
- **Sub custodian:** a bank (normally) outside the jurisdiction of a global custodian, that will be the registered holder of securities on the global custodian's behalf.

3 'Founder's son blasts pokie group', AFR, 7 May 2008; see also *In the Matter of Rebel Sport Limited (No 2)* [2007] FCA458, at paras 7 and 9,

4 For example see - Review of the impediments to voting UK shares, report by Paul Myners to the Shareholders Voting Working Group, January 2004;

5 Parliamentary Joint Committee on Corporations and Financial Services, Shareholder engagement and participation in Australia, June 2008; see also Directive 2007/36, EU Shareholder Rights Directive

6 See www.swift.com/proxyvoting or www.intermediaryonline.com

7 AMP, *Corporate Governance Report*, January 2006

8 *Listing Rule* 3.13.2 and Section 251AA(2) of the Corporations Act

The diagram below sets out the parties from whom data was sourced or it was observed that proxy messages were sent to or from participants in the study.

Figure 1: Parties observed in the voting integrity study

2.2 Methodology

This study embraces the methodology deployed by AMP Capital Investors in its landmark 2006 investigation and extends it to a wider group of institutional investors. In July 2012, Ownership Matters (OM or 'the researchers') invited 35 investors to submit their proxy voting data on S&P/ASX300 companies during 2011 for examination.

The researchers received 23 data sets from a broad cross-section of institutional investors, including:

- 13 Australian profit-for-members superannuation funds who are members of ACSI.
- 2 overseas pension funds who are affiliate members of ACSI and have significant holdings in Australian equity investments.
- 3 major Australian institutional investors outside ACSI's membership.
- 5 large investment managers with significant Australian equity holdings (over and above any holdings managed on behalf of any of the above categories).

In combination, this sample represented a very significant proportion of total holdings in S&P/ASX300 companies, representing a combined value of $181 billion or approximately 13.6% of total market capitalisation.[9] This sample size contributes greatly to the level of confidence that can be held in the study results, relative to studies that are limited to any one investment institution on its own.

[9] Based on share prices at the relevant date of meeting.

The data was derived from three types of electronic proxy voting platforms[10] provided by institutional and custodial voting agents in Australia. The data represented the instructions that institutional investors in the sample had submitted to their custodian or sub-custodian in respect of resolutions at annual general meetings (AGM) or extraordinary general meetings (EGM) in the 2011 calendar year.

The data was provided at the resolution level, detailing the date[11] the instruction was sent to the relevant custodian or sub-custodian and the number of securities that were to have been voted "for", "against" or "abstain" in respect of each proposal considered at the meeting.

For the purposes of the study, all participating institutions were assured that their data would only be disclosed in aggregate form, and without any permanent record being kept or disclosed of the voting instructions of any individual participant.

2.3 Data Standardisation

Two of the voting platforms from which data was derived, utilised a sequential, (whole) numbering system for resolutions that was different to the unstructured, alphanumeric system commonly utilised by companies in AGM notices. Accordingly the researchers standardised the data at the resolution level according to the alphanumeric sequence reported to the ASX in vote disclosures by each S&P/ASX300 company.

2.4 Data Aggregation

The researchers then undertook a process of aggregating the instructions submitted by the 23 participants in the study. OM examined in detail resolutions where the aggregated voting instructions of the sample participants accounted for 95% or more of the "against" or "abstain" votes declared to the ASX in any S&P/ASX300 company in calendar year 2011.

2.5 Data De-duplication

There were several instances in which data was provided by fund managers for accounts managed on behalf of asset owners who had also contributed data to the study. Where OM could identify the amount of double counting that this would cause, it restated (or de-duped) the vote instructions after the aggregation phase.

Where the researchers identified resolutions in which the aggregated data suggested that sample participants accounted for 95% or more of the "against" or "abstain" votes declared to the ASX, a further process of data validation was undertaken. In this instance, if an asset owner on whose behalf a fund manager managed money also voted the same way on the same resolution, the researchers did not count any of the "against" or "abstain" instructions by the fund manager.

This additional step eliminated any prospect of voting instructions being double-counted on account of investment mandates between investment managers and their clients, and may have served to understate the incidence of 95%+ voting outcomes within the survey sample.

[10] Proxy Exchange (ISS), Viewpoint (Glass Lewis) and Proxy Edge (Broadridge)

[11] There was considerable variation in practice about the date reflected in the system, with some systems continuing to change the positions right up until the meeting date, but not stopping on the record date.

2.6 Data Limitations

In Australia the holder of voting rights is the member of the company that appears on the company's register of members.[12] In each of the data sets submitted to the study, custodians were the legal (registered) owners of the securities and responsible for acting upon the voting instructions and submitting proxy votes on behalf of their institutional investor clients to the company or its registrar.

The data provided to the study represented the instructions submitted by beneficial owners (institutional investors) to the legal owner of the securities (sub-custodian) who appeared on the company's register. It is not common market practice by registrars or sub-custodians to confirm the precise number of votes processed and validly submitted to company meetings[13] and as a result verified data on votes counted by companies was not available within the proxy voting platforms.

In some instances the data provided by institutional voting agents represented a valid snapshot at the date the instruction was made (up to 12 days prior to the meeting) but was not reconciled for securities transactions that took place after that date.

Further, different protocols for the uploading of holdings information (discussed later in Section 5.1) amongst custodial voting agents made it difficult to precisely determine if the instructions submitted to the study accurately reflected the voting entitlements on the date an instruction was made.

Accordingly the researchers undertook a further step (described below), insofar as it was possible, to examine the proxy votes actually submitted by custodians and sub-custodians for a select number of resolutions.

2.7 Data Validation

Given the limitations of the data described above, where the aggregate instructions from the sample group represented more than 95% of the "against" or "abstain" votes declared by an S&P/ASX300 company, OM undertook a further process of data validation.

The researchers asked each voting agent acting on behalf of participants in the study to confirm the date on which they had acted on the instruction, the method by which they had acted on the instruction and the number of securities held on the instruction date.

Custodial voting agents are contracted by sub-custodians (18 of the 23 data sets submitted) to collect instructions from the custodian's clients. These voting agents were able to provide accurate and reliable data about votes submitted to registrars. These agents also provided information about voting exclusions that may have applied (for example if the investor had participated in a placement for which ratification was sought).

Institutional voting agents (5 of the 23 data sets submitted) are contracted by institutional investors to deliver instructions to multiple custodians with whom they may have accounts. These voting agents typically act on behalf of investment managers and interface with global custodians or sub-custodians via file feeds, SWIFT instructions or faxes, could only confirm details at the date their instruction had been delivered to the next link in the voting chain, not whether it had been acted upon.

[12] ss 250E and 231Corporations Act

[13] Vote exclusions are applied by the company according to ASX Listing Rule 14.11

2.8 Vote Investigations

The researchers undertook, as part of the study, to examine in detail, up to twenty (20) resolutions where validated aggregated data suggested that our sample constituted 95% or more of all AGAINST or ABSTAIN instructions disclosed. Given the limitations of the data, OM, in conjunction with the study participants, then made inquiries with relevant sub-custodians.

Sub-custodians provide services on behalf of numerous investors, not just those who participated in the study. As a result of confidentiality concerns, the researchers were unable to access documentary proof of proxy lodgements (i.e copies of faxed proxy cards). However, without exception, the sub-custodians were able to provide written confirmation of the final tallies of votes processed and lodged for investors who had submitted data to the study (including, for example, the times and dates of proxy forms faxed to registrars).

3. Sample Overview

3.1 Meetings and Resolutions Analysed

Meetings analysed were those conducted by entities listed in the S&P/ASX300 at any time during the calendar year 2011. Meetings included AGMs, general meetings and scheme meetings and, in aggregate, 370 separate meeting results were examined for the 332 entities that were listed in the S&P/ASX300 during 2011. There were 1895 individual resolutions put to shareholders at those meetings.

Resolution types can generally be grouped to include:

- Remuneration related resolutions (namely the adoption of remuneration reports, approval of employee equity plans and the approval of equity grants to directors).
- The election and re-election of directors.
- Constitutional amendments.
- Capital and capital raising related resolutions (including alteration to the capital structure of the company, the ratification of share issues and the prior approval of future share issues).
- Related party transactions.
- Merger and/or acquisition related resolutions (schemes of arrangement).

3.2 Sample Characteristics

For S&P/ASX300 companies that held shareholder meetings in the 2011 calendar year, the aggregate data contributed to the study represented:

- $181.35 billion in total value[14], and
- 13.61 percent of total market capitalisation[15].
- An average of 17.31 percent of all votes cast on each resolution,
- An average of 29.66 percent of all “against” votes cast on a resolution where a resolution received against votes, and
- An average of 52.52 percent of all “abstain” votes cast on a resolution where a resolution received abstain votes.

[14] Based on share prices at the meeting date

[15] Based on share prices at the meeting date

Table 3: Characteristics of the sample

Average quantity of all votes cast on each resolution by the sample	17.31 percent
Average quantity of "against" votes cast by the sample	29.66 percent
Average quantity of "abstain" votes cast by the sample	52.52 percent

*Note that averages are simple averages and not weighted averages.

For S&P/ASX300 companies that held shareholder meetings in the 2011 calendar year, the aggregate data contributed to the study ranged from:

- 0.7 percent (lowest) to 84.68 percent (highest) of all votes cast on a resolution,
- 0.05 percent (lowest) to 100 percent (highest) of all "against" votes cast on a resolution where "against" votes were cast by study participants, and
- 0.01 percent (lowest) to 100 percent (highest) percent of all "abstain" votes cast on a resolution where "abstain" votes were cast by study participants.

4. Proxy Voting Information Flows

Data provided to the study was sourced from two types of intermediaries who provide proxy voting services to institutional investors:

- Custodial voting agents (acting on behalf of custodians and sub-custodians).
- Institutional voting agents (acting on behalf of institutional investors).

Data was examined from two custodial voting agents who in both instances also acted on behalf of relevant sub-custodians to submit proxy voting instructions to registrars.

4.1 Proxy Voting Workflow

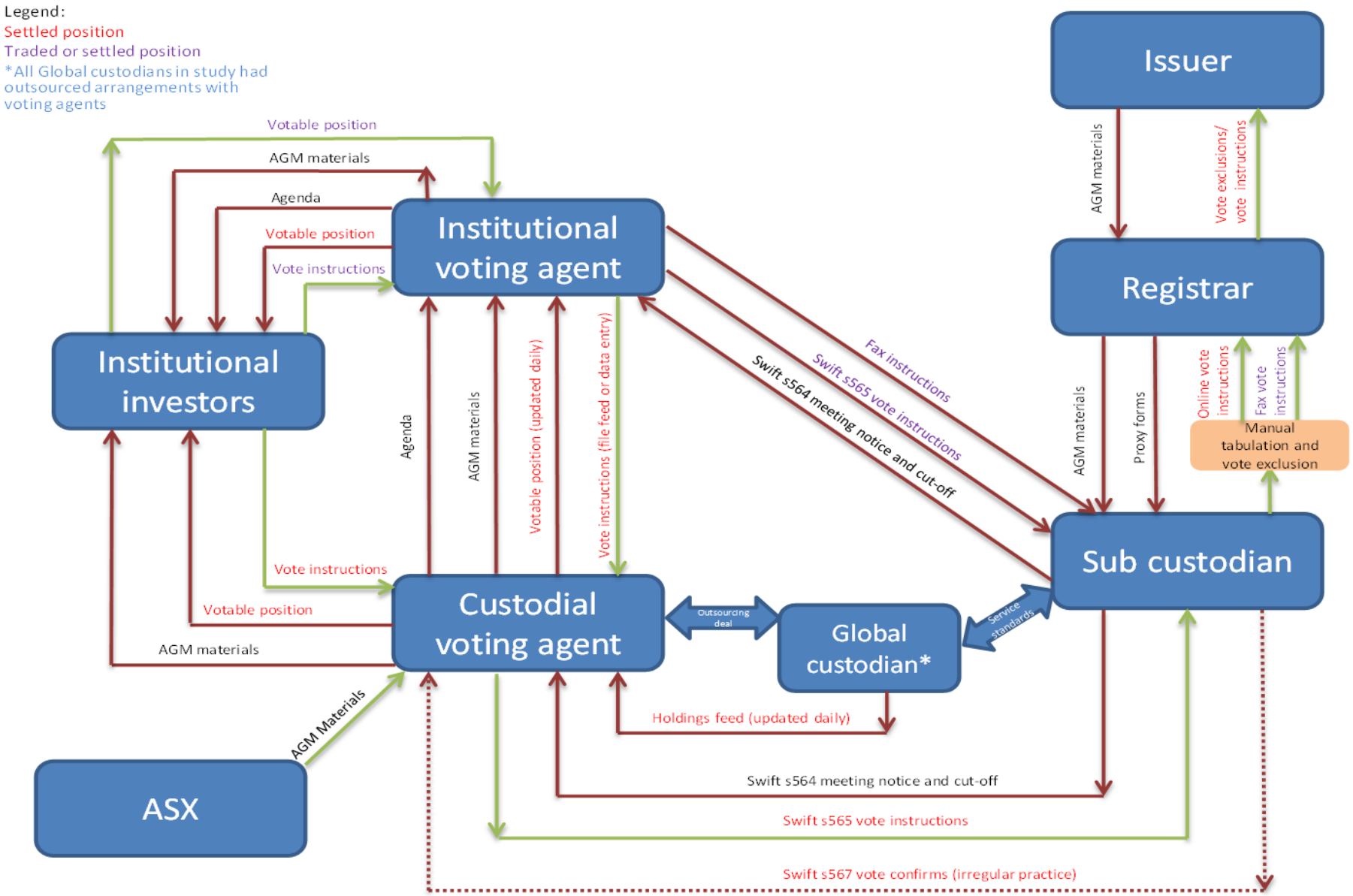
Data was examined from two institutional voting agents, who instructed custodians on behalf of institutional investors in a variety of ways including:

- A file feed to custodial voting agent.
- Manual data entry in a custodial voting agent electronic platform.
- SWIFT[16] 565 “free text” vote instruction message.
- Fax.

The complex interaction on proxy voting between investors, institutional and custodial voting agents, sub-custodians and registrars is detailed in the diagram provided overleaf.

[16] SWIFT is a widely used secure messaging system used for communication between financial institutions globally on various aspects of financial transactions including corporate actions.

Figure 2: Australian Proxy Information Flow



4.2 Proxy Voting Deadlines

The complex messaging between parties occurs during a 28 day period between the release of a listed company's notice of meeting and the meeting date. The deadlines are represented in the diagram overleaf.

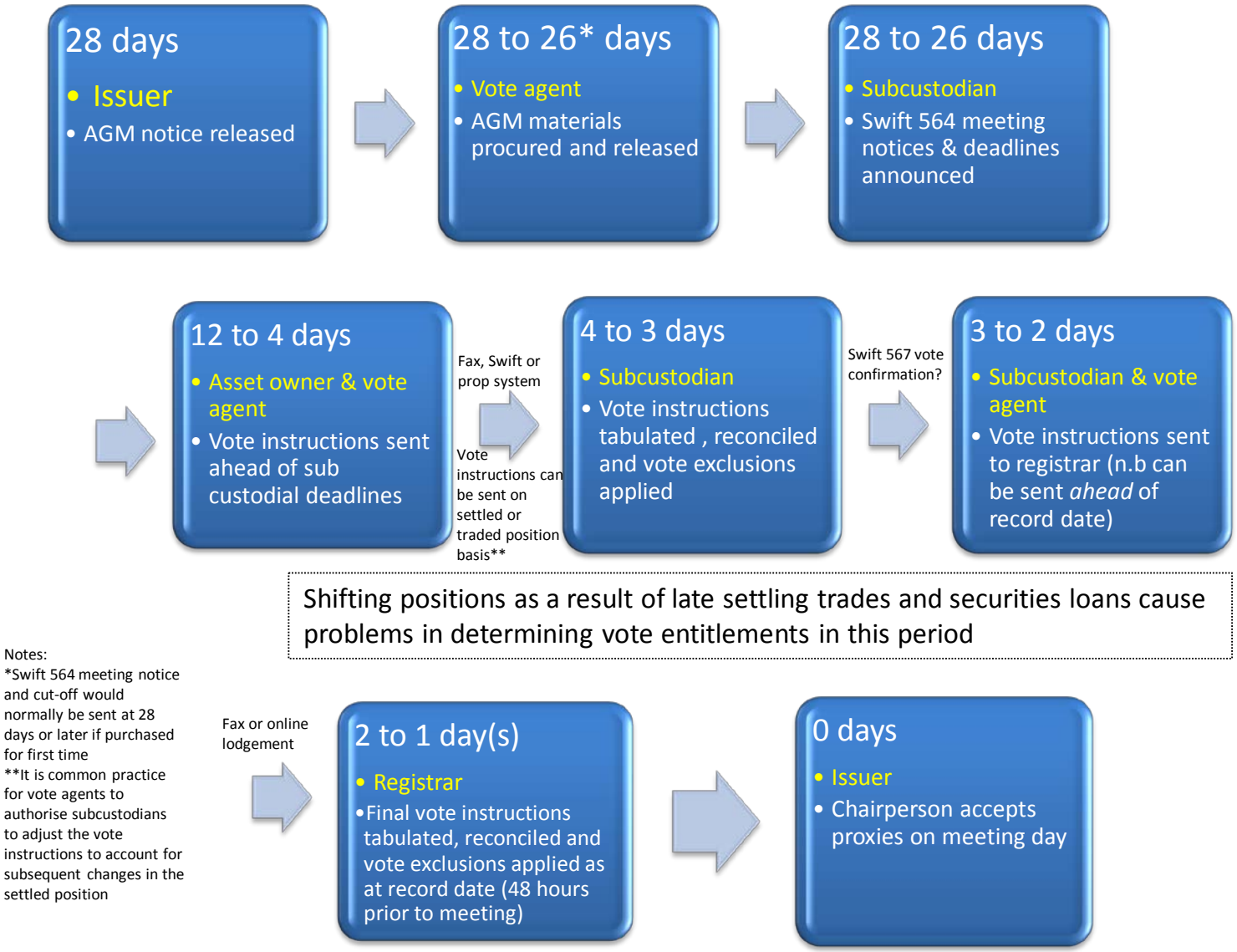
It is noteworthy that the determination of vote entitlements (known as the 'record' date) and the deadline for the lodgement of proxies occurs almost simultaneously on the second day out from the meeting. This creates time pressure and reconciliation issues given the requirement to submit instructions earlier in the 28 day cycle and the continually shifting positions caused by the constant trading of institutional investors.

The time pressure associated with shifting vote entitlements around the deadline for proxy lodgements is shown in the example below:

Table 4: Proxy Lodgement Deadlines Example

Days out from AGM	Action	Investor	For	Against
5 days	Instructions sent to custodian *Investor 3 sells 500k in shares after instruction	Investor 1 Investor 2 Investor 3*	1 million 500k	 1 million
4 days	Positions unchanged on sub cut-off	Subcustodian	1.5 m	1 m
3 days	Proxy card lodged ahead of time	Subcustodian	1.5 m	1 m
2 days – 10 a.m	Deadline for proxies	Subcustodian	1.5 m	1 m
2 days – 7 p.m	Deadline for determination of voting entitlements	Subcustodian	1 m	1 m
1 day	Subcustodian in 'over vote' position and proxy will be rejected unless the registry makes contact & the sub removes the votes of Investor 3.			
Meeting day 10 a.m	Final proxies tallied	Subcustodian	INVALID	INVALID

Figure 3: Australian Proxy Voting Timetable



5. Observations about the Data

Finally, there was a range of idiosyncrasies and non-uniform aspects of the way different parties handled the administration of various steps in the process, which needed to be factored in to the analysis. These are summarised below.

5.1 Accuracy of Holdings Information

The study examined in detail the accuracy of the holdings information (the number of securities) from which the instructions delivered to sub-custodians was derived. In some instances this holdings information was not reconciled to the settled position held by the sub-custodian and reflected on the company's register of members on the same date.

In the case of *institutional voting agents*, the accuracy of instructions sent directly to sub-custodians via SWIFT 565 messages or faxes, depended on the reconciliation between the holdings data provided by their institutional investor clients (which frequently reflects the 'traded' position, excluding securities loans or trades not yet settled) and what was held by the sub-custodian (which reflects the 'settled' position, once securities loans and trades have settled). In the event of a mismatch between the securities instructed by the institutional voting agent and those held by the sub-custodian on the record date, some institutional voting agents authorise the sub-custodian to make an adjustment to the final tally acted upon.

In the case of *custodial voting agents*, the study needed to take account of different approaches that were used by the two different entities involved:

- In the case of one custodial voting agent, the holdings information for the Australian custodian was derived from a nightly feed of settled positions[17] that reflected the sub-custodian's holdings. Thus this data provided to the researchers accurately reflected the number of securities held by the relevant study participants on the morning that the instruction was acted upon.

- In the case of the second custodial voting agent, the holdings information for Australian custodians is updated as part of a global securities update which takes place before the relevant positions are rebalanced for the final settlement of Australian securities[18].

Thus data provided from the second custodial voting agent reflected the number of securities held by study participants up to 24 hours before the instruction was acted upon and was not reconciled on a daily basis to the positions held by local market sub-custodians. It is standard operating procedure for this custodial voting agent to continue to send SWIFT 565 instructions right up until the meeting cut-off date (i.e past the sub-custodian cut off) if positions have changed.

[17] Post close of CHESS, see http://www.asxgroup.com.au/asx-settlement-operating-rules-guidance-notes-and-waivers.htm

[18] Ibid

5.2 Cases of final instructions being acted upon but not reflected in proxy voting systems

In the case of institutional voting agents, the accuracy of data supplied depended on the method of instruction utilised, namely:

- File interchange to custodial voting agent (a 24 hour lag may apply as noted in Section 5.1) or fax (where deadline has passed).
- Manual data entry to rival custodial voting agent (instructions supplied on cut-off are not adjusted for subsequent shifts in custodial data).
- SWIFT 565 (instructions supplied on cut-off are not adjusted for subsequent shifts in custodial data).
- Fax (instructions supplied on cut-off are not adjusted for subsequent shifts in custodial data).

The study observed that it was not frequent practice for sub-custodians to send SWIFT 567 messages to their custodial vote agent counterparts as confirmation that their votes had been received and processed.[19] None of the data supplied to the study from institutional voting agents (five files from five submitted) was reconciled to instructions finally delivered to issuers by sub-custodians. In contrast the majority of the data provided by custodial voting agents (sixteen files from eighteen submitted) was reconciled to the final instructions delivered to issuers by sub-custodians.

Irrespective of the data's provenance, further investigations of selected resolutions were made with the relevant sub-custodians. Only confirmations provided by sub-custodians were regarded as determinative in the case study section of this study (see Section 8 below).

5.3 Vote Exclusions

Institutional investors who instruct their sub-custodians on certain types of resolutions can legitimately have their votes excluded by either the sub-custodian or the issuer in accordance with the ASX Listing Rules. Most commonly this occurs in relation to resolutions that seek to authorise or ratify non pro-rata capital raisings for the purpose of Listing Rule 7.1.

Listing Rule 7.1 sets out a basic requirement: without prior approval by shareholders, an entity cannot issue (or agree to issue) equity securities representing more than 15% of its equity capital base.

Listing Rules 14.11 and 14.11.1 require that shareholders that have subscribed or may subscribe to new issues of capital ***must be excluded*** from voting on a resolution approving or ratifying the issue of more than 15%. The onus falls on the Company[20] to disregard proxy votes once they have been received from the registered holder[21], typically the sub-custodian, if the sub-custodian had participated in a placement for any of its beneficial holders.

[19] OM learnt that the unstructured nature of the SWIFT 567 messages would make it technically very difficult to reflect the information in these messages in the relevant platforms,

[20] Listing Rule 14.7 that requires that "*If an entity states in a notice of meeting that it will do something that the Listing Rules require it to do, the entity must do that thing*".

[21] It may also be a term of the placement that if the recipient votes on its authorisation in contravention of the voting exclusion statement, then the shares to be issued to the recipient may be cancelled.

However the ASX routinely grants a waiver that exempts custodian nominees from the exclusionary effect of Listing Rule 14.11 provided that "the beneficial owner confirms to the nominee that it did not and will not participate in the share issue"[22].

The researchers observed that all the proxy voting systems deployed by both institutional and custodial voting agents made it impossible to identify whether the contributors to the study had participated in a placement. Institutional and custodial voting agents thus rely on investors self-excluding on certain resolutions, where they have participated in placements, without external validation. However staff tasked with administering a proxy vote may not be aware if their organisation has taken part in a placement. Some sub-custodians take additional measures to verify these instructions and apply voting exclusions themselves before proxy cards are lodged.

The researchers observed that there were often large "abstain" votes recorded on placement related resolutions which tends to indicate that institutional investors are applying their own vote exclusion where they have participated in a placement and lodging abstain votes rather than votes for or against the resolution.

The researchers also became aware that, despite the terms of the standard ASX waiver for Listing Rule 14.11, some issuers and their registries will apply voting exclusions, according to their own determination of placement participation. This process of exclusion can occur without visibility of the instructions from beneficial holders, after proxy cards have been received from sub-custodians.

The wide variation in market practices relating to vote exclusions resulted in the sample data for 'against' instructions received on capital raising resolutions being more likely than any other resolution type to represent at least 95% or more the proxy votes declared by the company.[23]

Accordingly the researchers investigated placement participation and vote exclusions as an explanatory variable in each such capital raising resolution.

[22] See for example Waiver number WLC110305-ANZ- 20/10/2011

[23] See Section 8.8

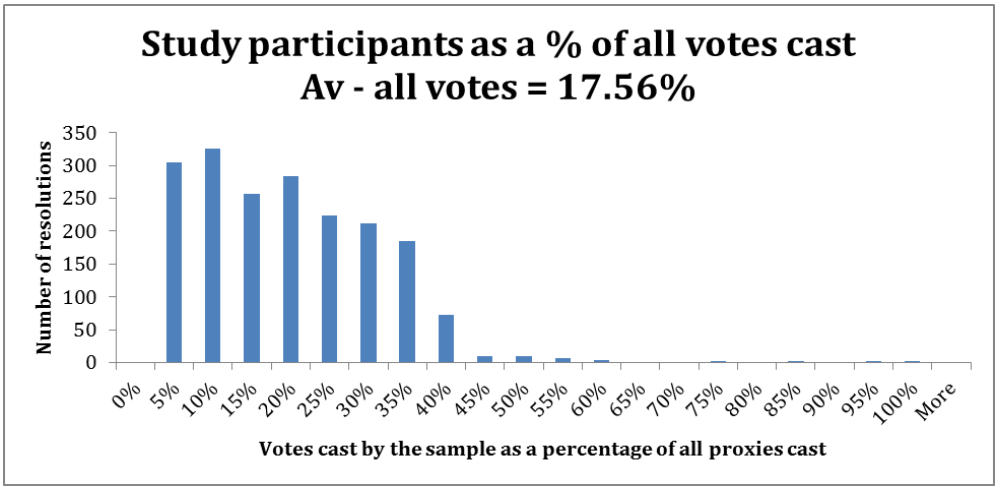
6. Study Results: Pre Validation

As noted above the core objective of the study was to compare the aggregated instructions of the sample participants to the votes declared by S&P/ASX300 entities throughout the 2011 year in order to assess the nature and effect of any material anomalies between the two. This section discusses the aggregated votes cast by the study participants on a pre-validation basis.

6.1 Sample as proportion of all votes cast

The sample represented an average of 17.52 percent of votes cast on each resolution, with the distribution shown in the diagram below. This average is a simple average (as opposed to a weighted average) across all 1895 resolutions put to shareholders by the relevant issuers.

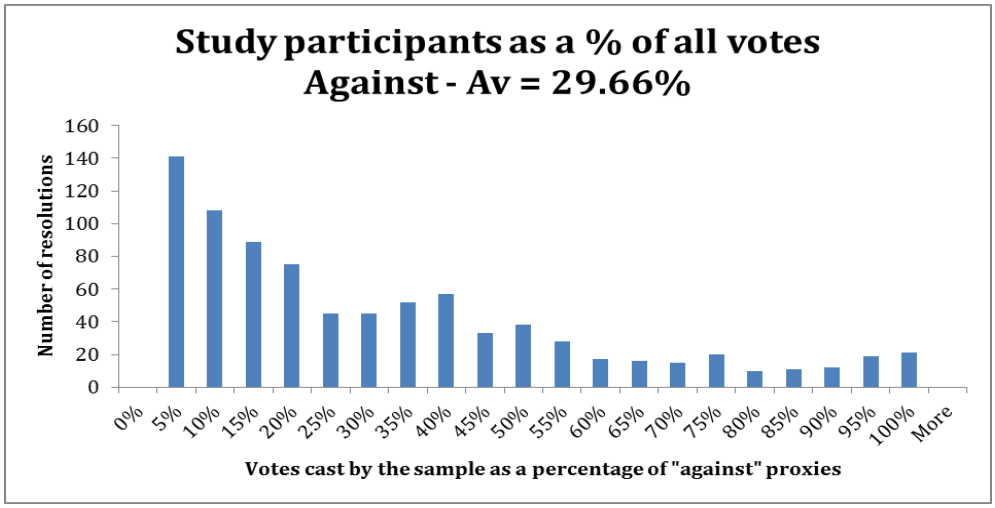
Figure 4: Study participants as a percentage of all proxy votes cast



6.2 Sample as proportion of all AGAINST votes cast

The sample represented an average of 29.66 percent of against votes cast (on resolutions where the sample cast against votes), with the distribution shown in the diagram below.

Figure 5: Study participants as a percentage of all 'against' proxy votes

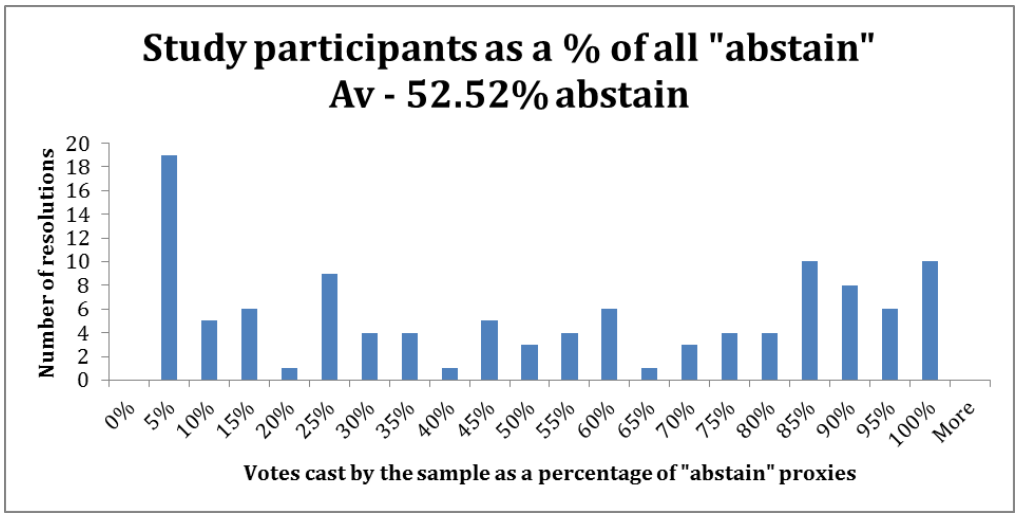


*Note: excludes 1,043 resolutions where no against vote was cast by the sample.

6.3 Sample as proportion of all ABSTAIN votes cast

The sample represented an average of 52.52 percent of abstain votes cast (on resolutions where the sample cast abstain votes), with the distribution shown in the diagram below.

Figure 6: Study participants as a percentage of all 'abstain' proxy votes



*Note: excludes 1,772 resolutions where no abstain vote was cast by the sample.

6.4 Selection of Resolutions for further investigation

The researchers identified 34 resolutions where, on a pre-validation basis, the data suggested that the proxies cast by institutions in our sample:

- Exceeded the AGAINST VOTES declared by the company (10 instances).
- Exceeded the ABSTAIN VOTES declared (12 instances).
- Represented 95% or more of the AGAINST VOTES declared (12 instances).

This represented a small percentage of the total resolutions examined. In total 34 resolutions were selected for further investigation from a total of 1895 resolutions (1.7 percent in total).

In accordance with its brief, OM focussed on the 22 cases where aggregate votes cast (either against or abstain) exceeded disclosed proxies.

6.5 Instances where aggregate AGAINST votes cast by the sample group exceeded disclosed AGAINST proxies

Figure 7: Instances where aggregate AGAINST votes cast by the sample group exceeded disclosed AGAINST proxies

Index	Meeting Type	Resolution number	Resolution description	Disclosed Against vote	Aggregate sample Against vote
200	GM	3	Ratify the issue of 37 million shares	439,704	793,159
100	AGM	3	Approve the appointment of a director	6,943,722	7,178,258
200	AGM	4	Approve the re-election of a director	491,501	2,783,362
200	EGM	1	Ratify the issue of 31 million shares	37,994	2,250,855
200	EGM	3	Approve the election of a director	351,819	2,250,855
200	AGM	1	Approve the adoption of the remuneration report	16,935,451	20,660,895
200	AGM	7	Ratify the issue of 25.5 million shares	398,896	6,114,487
100	AGM	1a	Approve the election of a director	13,180,641	16,446,962
200	AGM	6	Approve the election of a director	3,885,906	27,300,777
200	EGM	1	Approve the acquistion and lease back of properties	353,225	361,513

Of this group of ten resolutions:

- Five were director election resolutions.
- Three sought approval for the ratification of a placement.
- One related to the adoption of a remuneration report.
- One sought approval for the sale and lease back of properties.

6.6 Instances where aggregate ABSTAIN votes cast by the sample group exceeded disclosed ABSTAIN proxies

Figure 8: Instances where aggregate ABSTAIN votes cast by the sample group exceeded disclosed ABSTAIN proxies

Index	Meeting Type	Resolution number	Resolution description	Disclosed Abstain vote	Aggregate sample Abstain vote
200	AGM	4	Ratify the issue of 52.4 million shares	37,550	1,313,797
100	AGM	3	Approve the adoption of the remuneration report	0	43,000
100	AGM	4	Approve the grant of securities to the CEO	0	43,000
300	AGM	2	Approve the adoption of the remuneration report	252,431	567,649
200	AGM	10(a)	Ratify the issue of 31 million shares	156,503	3,229,167
200	AGM	10(b)	Approve the issue of 78 million shares	129,951	3,229,167
200	EGM	1	Approve the issue of performance rights to the CEO	2,511,130	3,086,649
300	AGM	3	Ratify the issue of 43 million shares	0	1,999,254
200	AGM	7	Ratify the issue of 25.5 million shares	1,223,189	18,292,421
100	AGM	4	Ratify the issue of 56.8 million shares	1,548,806	2,021,434
300	AGM	5	Ratify the issue of 30.2 million shares	252,006	1,131,669
200	AGM	6	Approve the grant of options to the CEO	50,153,257	51,111,998

Of this group of twelve resolutions:

- Seven were placement related resolutions.
- Three sought approval for a granted of equity to the CEO.
- Two related to the adoption of a remuneration report.

6.7 Instances where aggregate AGAINST votes cast by the sample group were 95 percent or more of disclosed AGAINST proxies

Figure 9: Instances where aggregate AGAINST votes cast by the sample group were 95 percent or more of disclosed AGAINST proxies

Index	Meeting Type	Resolution number	Resolution description	Disclosed Against vote	Aggregate sample Against vote	Proportion Against
200	AGM	1	Approve the re-election of a director	32,846,299	32,326,800	**98.42%**
200	AGM	1	Approve the adoption of the remuneration report	15,989,826	15,805,419	**98.85%**
100	GM	1	Approve a constitution amendment	185,459,237	182,824,841	**98.58%**
100	GM	2	Approve an acquisition	185,916,912	182,824,841	**98.34%**
200	AGM	3	Approve the re-election of a director	5,535,857	5,356,123	**96.75%**
200	AGM	3	Approve the re-election of a director	25,420,243	25,245,101	**99.31%**
200	Scheme	1	Approve a scheme of arrangement	27,522,588	26,650,785	**96.83%**
300	AGM	2b	Approve the re-election of a director	1,035,466	990,799	**95.69%**
300	AGM	3	Approve the re-election of a director	1,657,875	1,653,803	**99.75%**
200	AGM	3	Approve the re-election of a director	137,774	131,170	**95.21%**
100	AGM	14	Approve the re-election of a director	2,842,688	2,790,044	**98.15%**
100	AGM	2	Approve an amendment to an employee equity plan	33,693,827	32,347,026	**96.00%**

Of this group of twelve resolutions:

- Seven were director election resolutions.
- One sought approval for a constitutional amendment.
- One related to the approval of an acquisition.
- One sought approval for a scheme of arrangement.
- One sought approval to amend an employee equity plan.
- One related to the adoption of a remuneration report.

This group of resolutions was not examined in detail as the research brief required OM to concentrate on the instances where the data suggested that the sample group had submitted more than 100 percent of the declared proxies.

6.8 Against Votes as a Proportion of Total Votes Disclosed

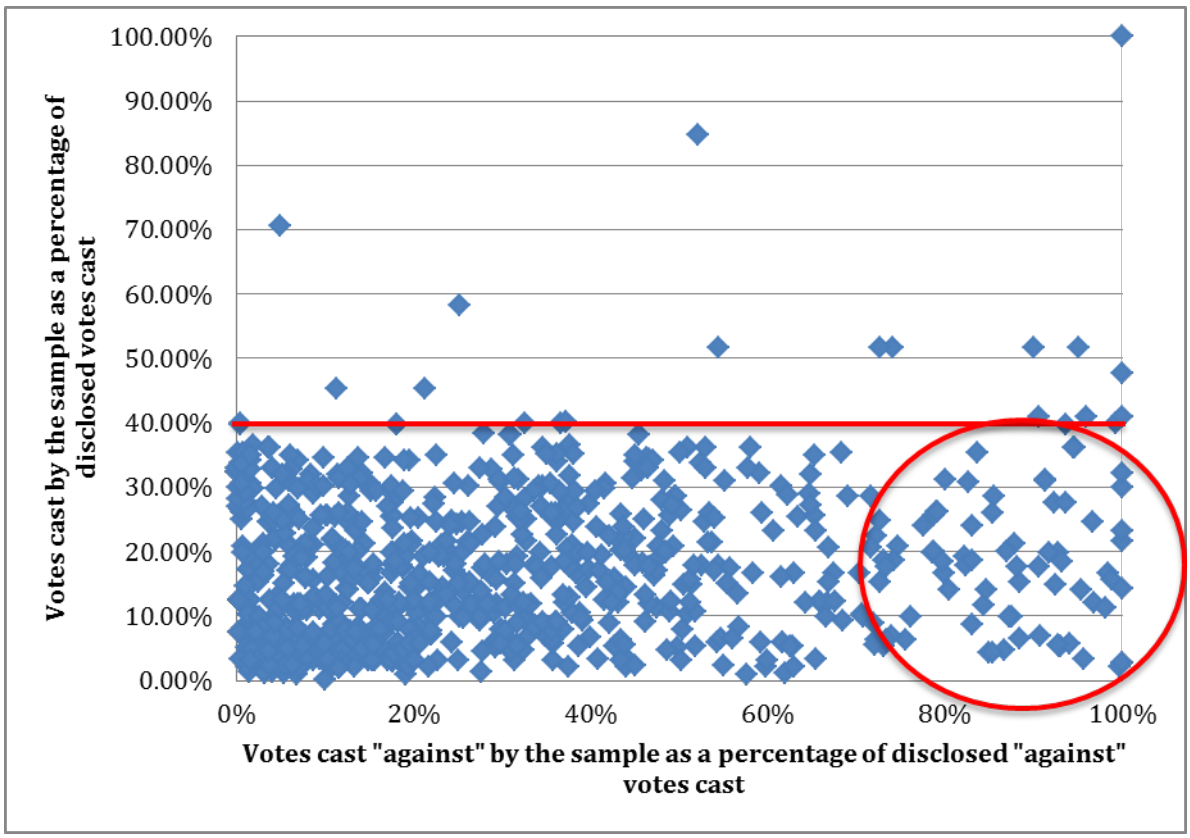
On a small number of resolutions (approximately 52 in total – circled in Figure 10 below) aggregated data provided to the study represented less than 40 percent of total votes cast, but more than 80 percent of all against votes disclosed.

It is entirely plausible that the sample data could represent only a small proportion of the total votes cast but a much larger proportion of against votes recorded. This is because participants in the study may be, by their nature, more likely to vote against resolutions than other shareholders and more likely to consider resolutions in a similar fashion (for example, they may utilise common governance guidelines (like the FSC Bluebook or the ACSI Guidelines) as a basis to determine how they will vote on particular resolutions).

These observations warrant further investigation (for example by resolution type), however it is beyond the scope of this interim report to delve deeper.

The diagram below depicts votes cast against a resolution by the sample[24] as a percentage of total disclosed against votes (horizontal axis), plotted in contrast to votes cast by the sample as a percentage of total disclosed votes cast (vertical axis).

Figure 10: Votes cast against a resolution: sample vs total againsts



The data presented above gives cause for cautious concern about the integrity of the Australian proxy voting system. The sample studied represented only a limited number of institutional investors (estimated to be one-third of institutional holders on S&P/ASX300 company registers)[25]. Given that many institutional investors reference widely accepted governance guidelines that have a high degree of commonality[26], more research is required to determine if voting instructions from institutions outside the sample are correlated with those institutions who contributed data to the study.

Any doubts about the validity of declared voting results could be conclusively settled by a full audit of the voting instructions of the entire shareholder base. This is no doubt impracticable across the entire system, but a good reason for suggesting the appointment of shareholder-initiated scrutineers in cases where any misgivings exist.

[24] Resolutions where no against votes were cast by the sample were excluded.

[25] Orient Capital, Presentation to 2011 AIRA Conference, p5

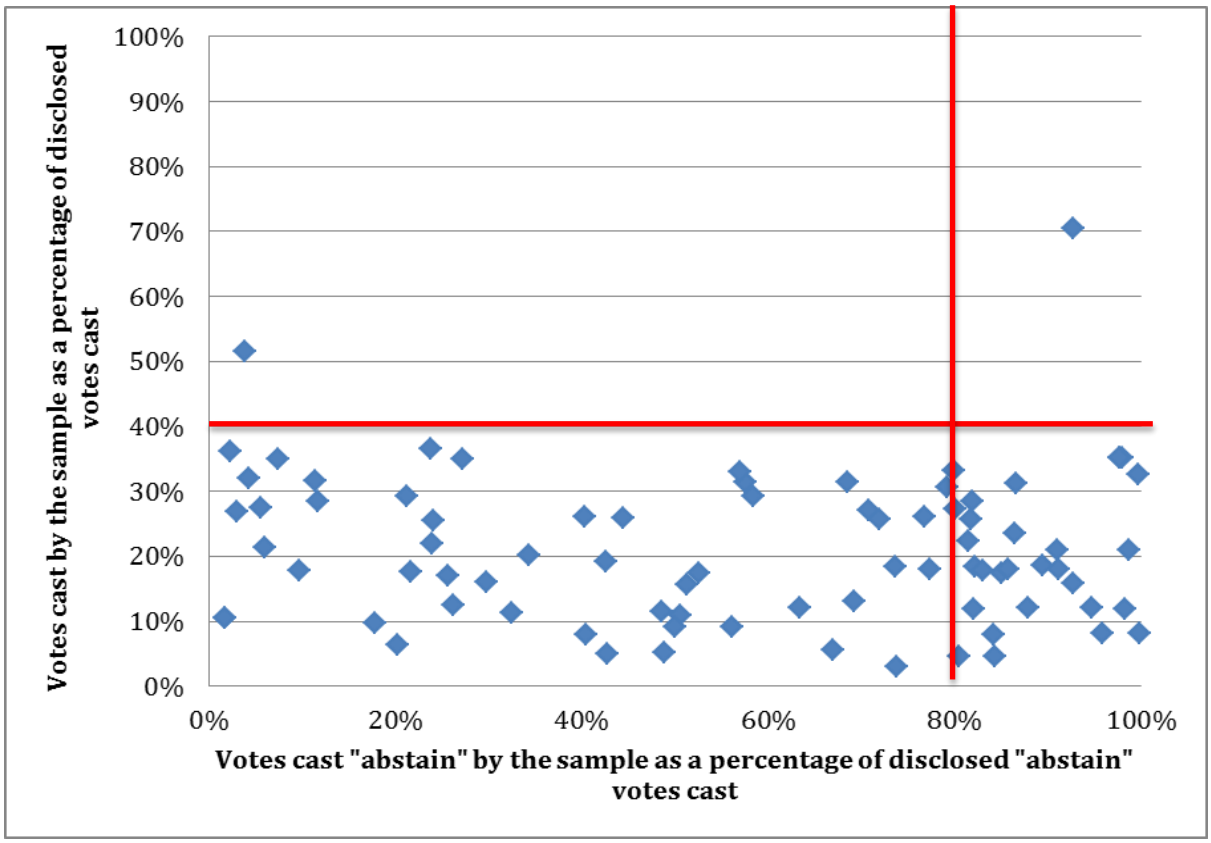
[26] http://www.acsi.org.au/images/stories/ACSIDocuments/cg_guidelines_2011_final_version_22.06.11.pdf and FSC Guidance Note 2 at http://www.fsc.org.au/standards-guidance/financial-services-council-guidance-notes.aspx

6.9 Abstain votes as a proportion of total votes disclosed

On a small number of resolutions (approximately 28 in total) data provided to the study represented less than 40 percent of total votes cast, but more than 80 percent of all abstain votes disclosed.

It is entirely plausible that the sample data could represent only a small proportion of the total votes cast but a much larger proportion of abstain votes recorded. This is because participants in the study may be, by their nature, more likely to vote abstain than other shareholders.

Figure 11: Abstain votes as a proportion of total votes disclosed



7. Study Results: Validation Stage

7.1 Data Exclusions and Validation

Following the identification of the resolutions for further examination, OM proceeded to:

- Exclude fund manager data where there was a possibility that a fund manager and a superannuation fund who contributed data to the study had voted on the same resolution with respect to the same holding (as described above).
- Request that each affected participant in the study seek validation from its voting agent and sub-custodian of:
    - The date the instruction was acted upon.
    - The number of securities the institution held on the instruction date.
    - The method of instruction (e.g SWIFT message, File feed to external voting provider, Manual execution to external voting provider, Fax).
    - If the resolution involved the ratification of a placement, whether they had participated in the placement.

As a result of this process further exclusions were made from the list of 22 resolutions identified in the pre-validation phase:

- Data provided for aggregation did not satisfy the threshold of 100% against, once the possibility of double counting of fund manager data was excluded (one instance only).
- Data provided for aggregation did not match to the raw data and was resubmitted (two instances).
- Data provided for aggregation did not satisfy the threshold, once the votes had been adjusted for the effect of Chess Depositary Interests (CDIs) on issue (one instance only).
- Vote exclusions were validly made by either the sub-custodian or the company as a result of participation in placements, but not reflected in the proxy voting platforms from which data was provided (eight instances).
- Final vote totals confirmed by a sub-custodian closely matched the final votes declared but were not relayed to the investor (two instances).

8. Study Results: Post Validation Stage

Accordingly, following the application of the validation filters, the study focused on **eight resolutions** (six case studies) where the validated data suggested that the aggregated instructions represented 100% or more of the total against votes disclosed or more than 100% of the abstain votes disclosed. The researchers also examined in detail the circumstances at Emeco Holdings (EHL) which restated its proxy results at the 2011 AGM following an investigation by an independent scrutineer. Further we examined all resolutions involving placement related resolutions for evidence of consistent application of voting exclusions.

8.1 Case Study One – Commonwealth Bank of Australia (CBA)

Table 5: Case Study One – Commonwealth Bank of Australia (CBA)

Commonwealth Bank of Australia (CBA) – registry Link Market Services					
Meeting details:	Date	Type	Item number	Resolution description	
	8 Nov 2011	Annual General meeting	Item 3 & 4	3. Approve the adoption of the remuneration report. 4. Grant of Securities to the CEO.	
Disclosed proxies	*For*	*Against*	*Abstain*	*Discretion*	
			0		
Aggregated proxies	*For*	*Against*	*Abstain*	*Discretion*	
			43,000	N/A	
Investigation:	*Reason*		*Analysis*		
	Votes cast by one investor exceeded disclosed proxy votes cast abstain.		The proxy voting system utilised by the investor gave 'ABSTAIN' as a valid vote option on this resolution. A SWIFT message reflecting this instruction was sent to the sub-custodian. The proxy form printed by the issuer did not permit 'ABSTAIN' as a valid vote option and the sub-custodian rightfully discarded the instruction.		
Outcome:					
	The incident was caused by operational weakness on the part of the proxy voting agent as it incorrectly coded agenda items as being able to record an ABSTAIN vote as a valid vote option on the electronic proxy voting platform. CBA, pursuant to its constitution and disclosed to investors on its proxy cards, does not permit ABSTAIN as a valid vote option.				

8.2 Case Study Two – CSR Limited (CSR)

Table 6: Case Study Two – CSR Limited (CSR)

CSR Limited (CSR) – registry Computershare					
Meeting details:	Date	Type	Item number	Resolution description	
	7 July 2011	AGM	Item 3	Ratify the appointment of Rob Sindel as an executive director	
Disclosed proxies	*For*	*Against*	*Abstain*	*Discretion*	
	277,322,439	6,943,722	726,531	3,245,228	
Aggregated proxies	*For*	*Against*	*Abstain*	*Discretion*	
	85,911,249	**7,178,258**	0	N/A	
Investigation:	*Reason*		*Analysis*		
	Votes cast by investor against the resolution exceeded disclosed proxy votes cast against.		Investor confirmed the following: ▪ instructions were sent to institutional voting agent on 24 June 2011 ▪ on the instruction date it held 7,178,258 shares ▪ instructions were cast by direct file feed to custodial voting agent ▪ custodial voting agent distributed SWIFT messages with instructions on a reduced number of shares ▪ the sub-custodian made subsequent adjustments to the final instructions to reflect share sales but this was not recorded in the proxy voting system.		
Outcome:					
	The investor sold shares between 24 June 2011 and the record date 7pm Sydney Time on 5 July 2011. Tallies were adjusted by voting agents and sub-custodians to reflect the share sales but not communicated back to the investor.				

8.3 Case Study Three – Macquarie Atlas Roads (MQA)

Table 7: Case Study Three – Macquarie Atlas Roads (MQA)

Macquarie Atlas Roads (MQA) – registry Computershare					
Meeting details:	Date	Type	Item number	Resolution description	
	12 April 2011	AGM	Item 4 (MARIL 2010)	Approve the re-election of David Walsh as a director	
Disclosed proxies	*For*	*Against*	*Abstain*	*Discretion*	
	315,365,721	491,501	118,202	N/A	
Aggregated proxies	*For*	*Against*	*Abstain*	*Discretion*	
	42,255,005	**2,783,362**	0	N/A	
Investigation:	*Reason*		*Analysis*		
	Votes cast by the investor against the resolution exceeded disclosed proxy votes cast against.		Investor confirmed the following: ▪ instructions were sent from institutional vote agent platform on 30 and 31 March 2011 ▪ on the instruction date it held 2,783,362 shares in 4 accounts ▪ 2 voted via SWIFT to sub-custodian and 2 other accounts were voted via custodial vote agent Sub-custodian confirmed ▪ It received SWIFT instructions for approximately 2 million shares as 722k shares had been sold down after the instruction date. ▪ The SWIFT instructions from the custodial vote agent did not correctly specify the meeting at which Resolution 4 should be voted against. ▪ There were two AGMs on the same proxy card, each with four resolutions. ▪ It followed the order of the SWIFT instructions and voted against Resolution 4 at the wrong meeting on the right proxy card.	
Outcome:					
	The SWIFT message produced by the custodial voting agent did not specify the correct meeting to vote against (Macquarie Atlas Roads is a stapled entity and its various entities conducted three meetings on the same day) and votes were incorrectly cast against by the sub-custodian on Resolution 4, Re-election of Director - John Roberts at the MARL 2011 AGM (28.71% against) instead of Resolution 4, Re-election of Director – David Walsh (0.23% against) at the 2010 MARIL AGM.				

8.4 Case Study Four – Mesoblast Limited (MSB)

Table 8: Case Study Four – Mesoblast Limited (MSB)

Mesoblast Limited (MSB) – registry Link Market Services					
Meeting details:	Date	Type	Item number	Resolution description	
	9 February 2011	General Meeting	Items 1 and 3	1. Ratify the issue of 31 million shares to Cephalon for $4.35 per share. 3. Approve the election of Kevin Buchi as a director	
Disclosed proxies	*For*	*Against*	*Abstain*	*Discretion*	
	1: 153,526,485 3: 153,178,572	1: 37,994 3: 351,819	1: 36,488 3: 48,562	1: 334,841 3: 356,855	
Aggregated proxies	*For*	*Against*	*Abstain*	*Discretion*	
	1: 1,793,138 3: 1,793,138	**1: 2,250,855** **3: 2,250,855**	1: N/A 3: N/A	1: N/A 3: N/A	
Investigation:	*Reason*		*Analysis*		
	Votes cast by investor against the resolution exceeded disclosed proxy votes cast against.		Investor confirmed the following: It submitted votes after the cut-off time nominated by its custodian. The votes were not actioned.		
Outcome:					
	Late vote instructions were not processed by custodian, yet continued to be reflected as 'voted' in the investor's proxy voting system.				

8.5 Case Study Five – Mirabela Nickel (MBN)

Table 9: Case Study Five – Mirabela Nickel (MBN)

Mirabela Nickel Limited (MBN) – registry Advanced Share Registry					
Meeting details:	Date	Type	Item number	Resolution description	
	13 May 2011	AGM	Item 1	Approve the adoption of the remuneration report	
Disclosed proxies	*For*	*Against*	*Abstain*	*Discretion*	
	209,982,468	16,935,451	978,987	N/A	
Aggregated proxies	*For*	*Against*	*Abstain*	*Discretion*	
	28,732,160	**20,660,895**	0	N/A	
Investigation:	*Reason*		*Analysis*		
	Votes cast by two investors against the resolution exceeded disclosed proxy votes cast against. The proxy lodgement deadline was Thurs 11th May at 11 a.m Perth time. The record date the Company determined was 5.00 p.m. (Perth time) on Thurs 11th May 2011 (after the lodgement deadline).		Investor 1 confirmed the following: ▪ Instructions were sent for 10,362,369 shares held in a single custodial account on Wed 10 May, 2011 Investor 1's sub-custodian confirmed the following: ▪ Instructions were submitted to the registry via fax on 14:33 on 9 May 2011 ▪ It instructed 13,369,968 shares Against across 2 proxy cards (once instructions had be received for other clients). Investor 2 confirmed the following: ▪ instructions were sent on Mon 8 and Tues 9 May 2011 ▪ on the instruction date it held 10,298,526 shares across 3 accounts Investor 2's sub-custodian confirmed the following: ▪ The instructions were received via SWIFT ▪ It instructed 10,298,526 shares Against by fax on 10 May at 16.29 pm		
Outcome:					
	The company confirmed that an error was made in the report provided by the registry that detailed the proxies that had been processed prior to the meeting. The final report was not provided to the company, such that an additional 70 million proxies in favour of the proposal and 27 million against, were not reflected in the final result. The result of the resolution was not affected and the company and the registry have subsequently tightened their procedures as a consequence.				

8.6 Case Study Six – NRW Holdings Limited (NWH)

Table 10: Case Study Six – NRW Holdings Limited (NWH)

NRW Holdings Limited (NWH) – registry Link Market Services					
Meeting details:	Date	Type	Item number	Resolution description	
	23 November 2011	AGM	Item 7	Ratify the issue of 25.5 million shares at $2.74 per share	
Disclosed proxies	*For*	*Against*	*Abstain*	*Discretion*	
	20,026,794	398,896	1,223,189	373,871	
Aggregated proxies	*For*	*Against*	*Abstain*	*Discretion*	
	47,021,655*	**6,114,487***	18,337,820*	N/A	
Investigation:	*Reason*		*Analysis*		
	Votes cast by 3 investors against the resolution exceeded disclosed proxy votes cast against. *Numerous investors in the sample participated in the NWH placement, yet instructed their custodians to vote FOR / AGAINST / ABSTAIN. Many of these votes were validly excluded. NWH did not obtain a waiver from Listing Rule 14.11 in relation to the enforcement of the voting exclusion statement for custodians.		Investors 1 & 2 confirmed the following: ▪ On the instruction date they held 856,174 & 450,100 shares ▪ They did not participate in the placement The sub-custodian for Investors 1 & 2 confirmed the following: ▪ instructions were sent on 18 November 2011 at 3.04pm and confirmed by the registry at 8.37 a.m on Sat 19th November 2011. ▪ on the instruction date it voted 1,306,274 shares against the resolution ▪ instructions were sent by fax Investor 3 confirmed the following: ▪ on the instruction date it held 709,874 shares ▪ It did not participate in the placement The sub-custodian for Investor 3 confirmed the following: ▪ instructions were sent on the morning of 18 Nov 2011 ▪ On the instruction date it voted 1,906,125 Against (including other investors' vote) ▪ Instructions were sent by fax	
Outcome:					
	The company confirmed that the registry had applied the vote exclusions to all proxy votes on Item 7 that had been submitted by custodians where a custodian had participated in the placement.				

8.7 Case Study Seven – Emeco Holdings Limited (EHL)

The study also investigated an incident which occurred at the AGM of Emeco Holdings Limited (EHL) in which the initial declaration of a poll in respect of the resolution to endorse the remuneration report recorded a 26.7% vote against, triggering a so-called 'first strike' under the 'two strikes' legislation[27]. A subsequent audit took place and an announcement revealed that the result had been restated to take account of an error that had been made in lodging proxies by a sub-custodian[28]. The final result was in fact declared as 24.7% against and a 'first strike' was not incurred.

Table 11: Case Study Seven – Emeco Holdings Limited (EHL)

Emeco Holdings Limited (EHL) – registry Link Market Services				
Meeting details:	Date	Type	Item number	Resolution description
	15 Nov 2011	AGM	Item 4	Adoption of the remuneration report
Disclosed proxies	*For*	*Against*	*Abstain*	*Discretion*
	335,038,793	119,602,967	24,615,146	770,777
Restated proxies	*For*	*Against*	*Abstain*	*Discretion*
	323,120,223	104,563,827	24,615,146	770,777
Investigation:	*Reason*		*Analysis*	
	The company restated the vote results following the review of an independent scrutineer		The company confirmed the following: ▪ initial instructions were received from a sub-custodian on Friday 11 November, 2011 ▪ these instructions were twice amended before the proxy voting deadline at 12 noon on Sunday 13 November 2011 ▪ the second revised instructions were received at 11.35am on 13 November 2011 ▪ due to sales of approximately 15 million shares that had settled between the initial proxy lodgement and the record date, the sub-custodian had insufficient shares to support its final proxy instructions ▪ the registry contacted the subcustodial voting agent and invited it to submit a further revised proxy after the deadline had passed. ▪ the voting agent submitted a revised proxy by reducing the instructions it had previously submitted on a pro-rata basis	
Outcome:				
	The scrutineer confirmed that the custodial voting agent had made an error by making a pro-rata reduction of its earlier instructions. The AGAINST instructions which related to the parcel of 15 million shares that had settled on Friday 11 November, 2011 at 7 p.m should have been withdrawn from the instructions.			

[27] Emeco Holdings, ASX Announcement 9/11/2011 Emeco AGM Voting Error

[28] Emeco Holdings, ASX Announcement 22/02/2012 Final AGM Voting Result

8.8 Case Study Eight – Capital Raising Resolutions & Vote Exclusions

Given the high incidence of placement related resolutions in the resolutions identified for further investigation and our understanding about the inconsistent application of vote exclusions, the researchers examined all capital raising resolutions for S&P/ASX300 companies during 2011.

The researchers identified 34 resolutions that sought approval for, or ratification or, a placement of shares to a number of recipients. These 34 resolutions excluded resolutions where shares were issued as consideration for an acquisition and resolutions where approval was sought for the conversion into equity of convertible notes.

In twenty instances (59 percent of placement related resolutions) OM observed that voter turnout (being the aggregate number of proxy votes cast) on the particular placement resolution declined vis-à-vis the other resolutions put to shareholders at the same meeting. The decline in votes counted on the relevant placement related resolutions suggests that vote exclusions were being applied.

However, the researchers also observed that in fourteen other instances (41 percent of placement related resolutions) voter turnout on the placement resolution was the same as, (or only marginally smaller than) that of other resolutions put to shareholders at the same meeting (see Figure 12. below).

8.9 Instances where voter turnout on a placement resolution was the same as that of other resolutions put to shareholders at the same meeting:

Figure 12: Instances where voter turnout on a placement resolution was the same as that of other resolutions put to shareholders at the same meeting

TICKER	DATE	TYPE	Resolution	Votes - For	Votes - Against	Votes - Abstain	Votes - Discre	Total votes	Ratification/Prior approval?	Turnout	Abstain/turnout
AQP	25/11/2011	AGM	2	344,467,097	2,579,698	-	-	347,046,795	Prior approval	73.79%	0.00%
AUT	24/01/2011	GM	1	126,582,614	5,500	15,984,579	2,178,974	144,751,667	Ratifiaction	38.09%	11.04%
AUT	24/01/2011	GM	2	122,520,360	70,500	19,981,833	2,178,974	144,751,667	Prior approval	38.09%	13.80%
CNX	24/11/2011	AGM	5	450,674,392	551,923	11,342,279	500,282	463,068,876	Ratification	60.34%	2.45%
CNX	24/11/2011	AGM	6	450,665,892	560,423	11,342,279	500,282	463,068,876	Ratification	60.34%	2.45%
CPL	10/06/2011	GM	1	240,591,993	47,300	16,265,659	2,106,182	259,011,134	Ratification	48.67%	6.28%
CPL	10/06/2011	GM	2	160,441,198	342,998	97,958,717	268,221	259,011,134	Prior approval	48.67%	37.82%
ELM	23/11/2011	AGM	6	62,764,605	2,328,231	41,210,000	-	106,302,836	Ratification	47.41%	38.77%
EWC	27/10/2011	AGM	5	910,100,051	6,841,975	127,023	1,196,944	918,265,993	Ratification	52.95%	0.01%
FML	28/11/2011	AGM	7	938,839,401	14,217,176	12,539,258	-	965,595,835	Ratification	22.35%	1.30%
NKP	12/12/2011	AGM	3	36,410,390	1,033,604	-	-	37,443,994	Prior approval	6.69%	0.00%
OMH	20/04/2011	AGM	6	268,914,587	147,169,388	128,498	3,910,826	420,123,299	Prior approval	83.34%	0.03%
PRU	25/11/2011	AGM	5	236,755,544	5,804,199	50,470	85,900	242,696,113	Ratification	53.24%	0.02%
SFR	28/11/2011	AGM	3	104,720,634	829,198	681,948	1,121,170	107,352,950	Ratification	71.15%	0.64%

In each of these cases, the voter turnout on the placement resolutions was the same as the turnout on other resolutions at the same meeting, indicating possible misapplications of the voting exclusion rules.
In AQP, CPL and EWC placements were made to single investors, however in all other instances, placements were made to a variety of institutional investors.

In four instances there were large abstain votes (in excess of ten percent of votes cast) recorded which may indicate that abstain votes were lodged by placement participants rather than a vote exclusion being applied.

Whilst the voting results presented above are not conclusive in relation to placement ratifications, the results suggest that either:

- placement recipients did not vote on any other resolutions at the same meeting; or
- vote exclusions are not uniformly applied.

8.10 Summary of Case Studies

The case studies examined in the course of the study reflect various aspects of operational weakness in the integrity of the Australian proxy voting system. These weaknesses were observed on the part of investors (and their voting agents) and issuers (and their registrars). The errors which were observed occurred at all points of the voting chain.

Given the limited size of the sample (18% of all votes submitted) it is impossible to say how widespread these errors are and similarly impossible to make a conclusive judgement about the confidence of disclosed votes in corporate elections.

8.11 Investor/Voting Agent Errors Observed

Table 12: Investor / Voting Agent Errors Observed

Company - Resolution	Error observed
Commonwealth Bank of Australia Resolutions 3 & 4	Custodial voting agent incorrectly offered the investor an 'abstain' option, when CBA's proxy card did not permit abstentions
CSR Limited Resolution 3	Investor sold shares between the date it instructed the sub-custodian and the date the proxy card was submitted. The changed position was not reflected in the investor's reported data.
Macquarie Atlas Roads (MARIL 2010 AGM) Resolution 4	The custodial voting agent sent a SWIFT message with investors instructions that did not correctly identify the relevant meeting and the resolution in question. As a result, the sub-custodian lodged proxies against the wrong resolution at the wrong meeting for the company (there were three meetings on the same day).
Mesoblast Resolutions 2 & 3	The investor lodged votes after the custodian's cut off time and these instructions were not actioned. The votes were not accurately reflected in the investor's data.
Emeco Holdings Resolution 1	The sub-custodian did not accurately reflect the instructions from beneficial holders at the record date of the meeting.

8.12 Company/Registry Errors Observed

Table 13: Company / Registry Errors Observed

Company - Resolution	Error observed
Mirabela Nickel Resolution 1	Faxes were submitted ahead of time and received but an error by the registry resulted in an incorrect report being sent to the company and approximately 97m shares not being reflected in the final result.
NRW Holdings Resolution 7	Votes were excluded for all votes submitted by the custodian as some (but not all) of the custodian's beneficial owners had participated in a placement.

8.13 Broader Observations

The case studies summarised in this Section highlight specific instances of errors and of the parties responsible, where these can be conclusively demonstrated from the data that was available for the study, after it was validated and followed-up in detail with all of the various participants in the voting process.

Pleasingly, the incidence of these fully demonstrable and attributable errors was quite small, at just 9 of the 1895 individual resolutions put to shareholders during 2011 among S&P/ASX300 entities (an error rate of just under 0.5%). These results suggest that, for the most part, the institutions, voting agents and other service providers involved in the process are generally doing a good job within the time constraints and operational parameters of the current Australian proxy voting system.

To the extent discernible from this data, it also appears that the incidence of 'lost votes' may not be as high as might have been implied from a simple extrapolation of the findings of the AMP research in 2006. Again, this is a positive development, suggesting a significant improvement in business processes and practices over recent years (particularly in relating to the risk of 'over-voting' by sub-custodians) as investors and their service providers have become more alert to the need for solid and accountable practices in the area of proxy voting and corporate governance.

Nevertheless, as foreshadowed earlier, there are grounds for cautious concerns over some of the broader observations that can be drawn from the study's findings. In particular, there was a considerable number of resolutions where modest 'against' votes submitted by the remaining two-thirds of institutional investors that were outside the sample group (noted in Section 6.2 above) would have called the declared result into question. In addition, there are reasonable systemic concerns identified over the administration of particular voting provisions designed to protect minority interests, such as the voting exclusions on capital raising resolutions discussed above.

Accordingly, in the following sections OM makes some observations firstly about potential administrative and process improvements that might be adopted, and secondly around potential reforms that might address these issues and ensure that all parties can have even greater confidence in the system going forward.

9. Observations about market practices

This section documents the researchers' observations about the practices deployed by the various parties who play crucial roles in delivering proxy instructions from institutional investors to Australian companies.

9.1 Agenda Coding & Procurement

The study sourced data from three electronic platforms used to collect instructions from institutional investors. The platforms are:

- Proxy Edge – provided by Broadridge (custodial voting agent) on behalf of numerous custodians in the Australian market.
- Viewpoint – provided by Glass Lewis (institutional voting agent) on behalf of numerous institutions in the Australian market.
- Proxy Exchange – provided by Institutional Shareholder Services or ISS (custodial and institutional voting agent) on behalf of National Custodian Services and numerous institutions in the Australian market.

Broadridge has the dominant market share of the Australian custodian market (estimated to be 80% by volume of proxy instructions sent). Institutional vote agent customers of ISS and Glass Lewis that seek to instruct Broadridge serviced custodians, generally do so via a file exchange with Broadridge.

Broadridge sources agenda information from ASX announcements, converts this information into an electronic format and solicits instructions from its clients (and their agents) based on this agenda. Broadridge provide this agenda information to Glass Lewis and it is reflected in the Viewpoint platform.

ISS sources agenda information from ASX announcements, converts this information into an electronic format and solicits instructions from its clients based on this agenda. It has a process of reconciling its agendas to the format required by Broadridge for instruction via a file exchange.

The accuracy of agenda information is crucial to the integrity of the Australian proxy voting system as it drives three important actions:

- Coding of resolutions as "supported by directors" will trigger voting by institutions who have the option within all proxy voting platforms to set a "default" position to vote in favour of all management proposed resolutions unless otherwise advised.
- The numbering of resolutions will be used to trigger SWIFT 565 messages that contain voting instructions to sub-custodians.
- The numbering of resolutions will be used by custodial voting agents to produce their own proxy cards on behalf of sub-custodians for processing by registrars.

In the course of the study, the researchers observed errors in the coding of agenda information including:

- An abstain vote option being provided where none was available (CBA).
- Resolutions for a proxy card involving multiple meetings were tagged to the incorrect meeting (MQA).
- The researchers are aware of a shareholder resolution in December 2010 being incorrectly coded as having the support of directors (ANZ).

The dominant market position of Broadridge and ISS means that the Australian market is reliant on the operational controls those organisations have in place to ensure its agendas are accurate.

9.2 Sub-Custodian Messaging

Institutional and custodial voting agents both utilise a variety of messages to pass proxy instructions through to sub-custodians.

The SWIFT 565 messages used to convey proxy instructions to sub-custodians are in an unstructured format that cannot be automatically processed by sub-custodians. Re-keying is required. Further OM observed that it is commonplace for these messages to be sent with the resolution number as the only identifier of the instruction, not the text of the resolution. This appears to have led, in part, to the error observed in the case of MQA.

Institutional vote agents (ISS and Glass Lewis) still utilise faxes to instruct some sub-custodians.

The researchers learnt that it was not common practice for sub-custodians to utilise SWIFT 567 messages to confirm that proxy instructions had been received and to confirm the final amount of securities relayed to the registrar.

9.3 Cut-off Times

Custodial and institutional voting agents both solicit instructions from their institutional investor clients well ahead of the deadline for the submission of proxies to a company. Typically these deadlines range from twelve days out from the meeting (earliest) to four days out from the meeting (latest).

These early deadlines are driven by cut-off times imposed by sub-custodians, so that there is sufficient time for the aggregation and reconciliation of instructions from multiple sources. The cut-off times are normally contained in a SWIFT 564 message released by sub-custodians to custodial voting agents, which in turn is relayed to institutional vote agents. Where a SWIFT 564 message is not received or is not processed, it is commonplace for vote agents to set the cut off times to the earliest possible cut off (twelve days).

Whilst an early cut-off allows time for processing, it poses challenges for the reconciliation of instructions to the position held by the sub-custodian on the actual date that the instructions are released to the registrar. The challenges include:

- Changes in position of a global custodian due to trades that have settled after the cut-off may not reconciled back to beneficial holder instructions, resulting in incorrect voting by the global custodian.
- Some custodial voting agents send multiple SWIFT instructions (even after cut-offs) to reflect changes in positions resulting in confusion from sub-custodians about which instruction to process.

9.4 Proxy Lodgement & Confirmation

The Australian institutional voting market is still heavily dependent on the lodgement of proxies by fax.

Many Australian companies now accept the lodgement of proxies via an online system.[29] According to a review of the 2011 AGM season by registry provider Computershare, online voting has reached a plateau. It received only 17% of total proxies electronically (up from 15.7% in 2010).

At the date of writing Broadridge, the biggest custodial voting agent in the Australian market, only sends fax instructions on behalf of its sub-custody clients to Australian registries (including Computershare). This market practice accounts for a significant number of institutional votes being lodged by fax in Australia, rather than on-line.

Another reason for the reliance on faxes is that some registries do not provide on-line proxy lodgement facilities that accommodate split votes. Split votes are required by sub-custodians as their beneficial holder clients do not vote uniformly and as a result the sub-custodian is obligated to lodge a portion of holdings "for" a proposal, a portion "against" and a portion "abstain". Computershare's online voting platform, Intermediary On-line specifically caters for the submission of 'split' votes by sub-custodians on behalf of institutional investors.

On-line lodgement facilities have stronger operational controls than faxes, as the registry's view of the sub-custodian's settled position can be observed prior to the lodgement being made, minimising the possibility of overstating the vote instructions.

In all of the investigations that were the subject of the study, no sub-custodian or investor client was provided with evidence from a registry that their votes had been accepted and processed. Typically sub-custodians maintain records of the proxy forms they have submitted or the online lodgement made, however no written confirmation is provided that the proxy vote has been accepted by the issuer. Accordingly no authoritative confirmation about vote processing is relayed to the investor.

The researchers observed that registries typically provided confirmation to sub-custodians that proxy instructions had been received ahead of time. Further, many registries undertake an outreach to sub-custodians in the event that proxy cards have been submitted for more shares than the sub-custodian was entitled to (as the registered holder) on the record date. In this instance, sub-custodians are invited to submit revised proxies. An example of this procedure was recorded in the case study on Emeco Holdings.

While pro-active outreach to sub-custodians in the event of 'over voting' is a positive feature of the Australian market[30], meetings scheduled for Monday or Tuesday in Australia would imply that sub-custodians are available for contact over a weekend and in a position to submit a revised proxy ahead of time. This is not always the case.

[29] Section 250BA of the Corporations Act notes that a company may specify any electronic means by which a member may give the company a proxy.

[30] This is in contrast to the experience as detailed by AMP in its 2006 study where many minor 'over votes' resulted in the entire proxy card being rejected.

9.5 Holdings Shift Post Lodgement

The researchers observed a design flaw in the Australian proxy system involving the declaration of the 'record date', being the time at which a registered holder's vote entitlement is determined and the cut off time for the lodgement of proxies. In some instances proxy cards were required to be lodged before the record date had passed, meaning it was impossible to observe the registered holder's final position including any trades that had settled after lodgement but prior to the record date.

This situation is best illustrated by the example at the CSR Annual General Meeting that took place at 10 a.m on 7 August, 2011. The Notice of Meeting specified that proxies were required to be lodged by 10 a.m Sydney time on Tuesday, 5 July, 2011. The same Notice of Meeting also specified that the vote entitlement would be determined as "persons who are registered as shareholders at 7 p.m Sydney time on Tuesday, 5 July, 2011.

The scheduling of proxy lodgements before the determination of vote entitlements means that it was impossible for a sub-custodian to lodge a complete proxy, taking account of any securities that settled between 10 a.m and 7 p.m on Tuesday, 5 July, 2011. It is very common for securities lending transactions to settle intra-day.

So called "late" settlements are unlikely to result in vote rejections for sub-custodians that act for multiple clients in 'omnibus' accounts. This is because 'omnibus' accounts rarely receive instructions from 100 percent of beneficial holders and there is normally a sufficient buffer of shares available to enable votes to be processed. However (as was the case in Emeco Holdings) the inability of sub-custodians to adjust the proxy card after lodgement to take account of changed positions results in inaccurate votes because there has been no reconciliation against the actual instructions of beneficial holders.

In contrast, "late" settlements in institutional holdings that are the only holdings in segregated sub-custodian accounts (with a discrete Holder Identification Number or HIN) are more likely to be impacted by 'over voting'. Some registries have adopted 'work arounds' for this eventuality by accepting instructions to adjust single HIN proxy cards that do not have split votes, for changes in positions.

9.6 Vote Exclusions

As mentioned above, institutional investors who instruct their sub-custodians on certain types of resolutions can legitimately have their votes excluded by either the sub-custodian or the issuer in accordance with the ASX Listing Rules.

Whilst market practice varies according to the issuer and registry involved, registries contacted during the course of the study revealed that some issuers take steps to exclude all votes on capital raising resolutions from a sub-custodian if a sub-custodian participated in a placement even for a single beneficial holder.

Regardless of the merits of the vote exclusion undertaken, there is limited visibility to investors when votes have been excluded after a sub-custodian has submitted its proxy. Corporations Act Section 251AA which requires the disclosure of proxy information does not require vote exclusions to be disclosed to market or to the registered holder whose votes have been excluded.

Listing Rule 14.11.1 specifies voting exclusions on shareholder resolutions relating to the approval in advance of non pro-rata capital raisings that would result in the issuance of more than 15% of current shares on issue in a 12 month period.[31] A literal reading of the rule suggests that shareholders that 'may participate' in placements will have their votes excluded on resolutions seeking approvals under the placement mandate.

However the ASX endorses the existing market practice whereby the votes of potential participants are included in these vote counts. The Federal Court has recently endorsed the ASX's position[32], meaning that the class of shareholders who stand to benefit most from abandoning pre-emptive rights can increase an entity's capacity to do so, without control from minorities who are, by definition, excluded from non-pro rata offers.

9.7 Reporting of Proxies Voted

Data provided to the study was sourced from the proxy voting systems utilised by the majority of institutional investors in the Australian market. This data represents only the instructions delivered to the next link in the proxy voting chain, and not the actual tally received and counted by the issuer concerned.

Institutional investors who disclose their proxy votes to their customers[33] source the data from their proxy voting systems. As this data is increasingly published on websites and available to the public, it is desirable that the data be as accurate as possible.

9.8 Scrutineers

The study highlighted the case of Emeco Holdings where an independent scrutineer engaged by the board discovered an anomaly in the proxy votes of a sub-custodian and was able to restate the votes so that a ‘first strike’ was avoided on a resolution seeking endorsement of the remuneration report.[34]

Whilst the Emeco situation indicated the desirability of an independent scrutineer in certain circumstances, the study observed that no shareholder has the capacity to initiate a similar review without making a formal complaint to ASIC after the vote result has been declared.

[31] ASX Listing Rule 7.1

[32] Stratford Sun Limited v OM Holdings Limited [2011] FCA 1275

[33] Members of the Financial Services Council following the FSC’s Standard 13 on Proxy Voting will soon agree to disclose their votes at various company meetings in full. See http://www.fsc.org.au/standards-guidance/financial-services-council-standards.aspx

[34] A similar situation occurred in at IDT Australia (IDT) where the ‘discovery’ of an error in the vote count at the 2011 AGM resulted in a first strike being declared 11 months later. See IDT Announcement, Deferral of AGM, 11 October 2012.

9.9 Show of Hands vs Poll

The study observed that it was still extremely common in S&P/ASX300 companies for resolutions to be passed on a show of hands (representing a majority of shareholders present at the meeting by number only) rather than for a poll to be called where all proxies lodged prior to the meeting are counted together with those present in the room (representing the total number of securities who had cast valid votes for a resolution).

During 2011, polls were conducted:

- On 586 of the 1895 resolutions examined (30.9 percent).
- At only 111 of the 370 meetings (30 percent) examined.

Rarely is the failure to call a poll controversial, however in the 2011 year, Metcash passed its remuneration resolution on a show of hands rather than call a poll in which the 24.69 percent of proxies it had received against the resolution would be added to other votes from those in attendance at the meeting. Remuneration reports are required to be passed by at least 25% of "votes cast" at a meeting or they will trigger a 'first strike' under Section 250U of the Corporations Act. The Australian Shareholders' Association claims it had sufficient proxies with their representative in the meeting to trigger a strike but failed to call a poll.[35]

[35] http://australianshareholders.com.au/asa_site/index.php?option=com_content&view=article&id=1672:the-metcash-story&catid=75:asa-in-the-media&Itemid=118

10. Suggestions for Regulatory Reform

This section presents suggestions for regulatory reform to address issues identified by the study.

10.1 Separate the Coincidence of Lodgement & Voting Entitlement

There are two dates pertinent to the casting of votes via proxies:

- Proxy appointments must be received by a company **at least 48 hours before** a meeting (Corporations Act, s. 250B(1)).
- The company's determination of voting entitlements for a meeting must be based on the persons who were shareholders **not more than 48 hours before** the meeting (Corporations Regulations, reg. 7.11.37(3)).

The coincidence of these dates creates the potential for discrepancies between the votes lodged via proxies and the vote entitlement regarded as authoritative by the company. Many of the weaknesses in the current proxy voting system would be relieved by separating the coincidence of these dates.

There is widespread support within the financial services community[36] for a proposal to have an earlier date for the determination of voting entitlements – 5 business days before the meeting, rather than 48 hours. The earlier 'record' date will provide sufficient time for this reconciliation of votes lodged. The Parliamentary Joint Committee on Corporations and Financial Services in its report on Shareholder engagement and participation in Australia[37] recommended[38] that "the government should consult with industry on amending the record (cut-off) date".

By diminishing the current time pressures on reconciliation, this proposal will better ensure that shareholders' proxy appointments and voting instructions are respected and will also facilitate the creation of an audit trail and the accurate reporting of proxy votes to the customers of institutional investors.

Recommendation 1: Amend Corporations Regulations Reg 7.11.37 (3). Replace "not more than 48 hours" with "five (5) business days".

10.2 Review the Application of Vote Exclusions to Sub-Custodians

Presently Listing Rules 14.11 and 14.11.1 maintain that shareholders that have subscribed or may subscribe to new issues of capital **must be excluded** from voting on certain resolutions approving or ratifying the issue. This would customarily exclude the votes submitted by a sub-custodian if it had participated in a placement for any of its beneficial holders.

[36] See IFSA Submission 16 at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/sharehold/submissions/sublist.htm

[37] June 2008

[38] Recommendation 13

However the ASX routinely grants a waiver at the request of an issuer that exempts custodian nominees from the exclusionary effect of Listing Rule 14.11 provided that "the beneficial owner confirms to the nominee that it did not and will not participate in the share issue".

The study did not observe a high incidence of cases where waivers to Listing Rule 14.11 had been requested or granted[39] during 2011, but did observe a wide variation in the practice of applying vote exclusions on capital raising resolutions.

In order to introduce some consistency to the practice of applying vote exclusions to proxy cards lodged by sub-custodians, the Listing Rules should be adjusted to apply the terms of the waiver that is routinely granted upon the request of an issuer.

Recommendation 2: Amend Listing Rule 14.11 to accommodate the terms of the standard waiver granted by the ASX.

10.3 Disclose Vote Exclusions and Discarded Votes

Presently there is a wide variety of practice in relation to the enforcement of vote exclusion statements on shareholder proposals. Frequently this is an issue for capital raising resolutions involving the ratification or approval of placements and for votes on remuneration resolutions where votes of closely related parties[40] are involved.

Clarity in the enforcement of voting exclusions is an important part of building confidence that the ownership rights of shareholders entitled to vote are respected. Currently there is no transparency surrounding the application of vote exclusions.

Recommendation 3: Amend Corporations Act Section 251AA (1). After "A company must record in the minutes of a meeting, in respect of each resolution in the notice of meeting, the total number of proxy votes" add "and the total number of proxy votes exercisable by all proxies validly appointed but excluded".

10.4 Enable the Appointment of an Independent Scrutineer

This study highlighted an instance in which where an independent scrutineer engaged by an issuer discovered an anomaly in the proxy votes of a sub-custodian and was able to restate the votes so that a 'first strike' was avoided on a resolution seeking endorsement of the remuneration report. Under the present law, no shareholder has the capacity to initiate a similar review.

The UK Companies Act 2006 contains provisions that address this issue and which allow shareholders representing more than 5 percent of total securities on issue (the same threshold at which an extraordinary general meeting can be called in Australia) to call immediately for the poll to be reviewed by an independent assessor: ss. 342-344. The UK provisions also entitle shareholders to have an independent assessor appointed ahead of a poll being taken to oversee it.

Recommendation 4: Amend Corporations Act Section 250 to add the equivalent of Sections 342 – 344 of the UK Companies Act 2006 so that shareholders representing more than 5 percent can appoint an independent assessor to oversee or review a poll.

[39] 8 waivers from Listing Rule 14.11 out of a total of 32 possibilities for S&P/ASX300 companies in 2011

[40] Section 250BD of Corporations Act

10.5 Create an Audit Trail for Proxy Votes

Presently no issuer or its registry provides the members of a company with authoritative acknowledgement that their proxy votes have been received and processed. This creates an imperfect audit trail, which makes the accurate publication of voting instructions for institutional investors[41] challenging.

The need for an effective audit trail is even more pressing in light of Campbell v Jervois Mining Ltd [2009] FCA 401 where the Federal Court held, in effect, that the Chairperson's statement of intention in the notice of meeting as to how undirected proxies would be voted was not binding on the Chairperson and the Chairperson could thus validly vote such proxies in a manner contrary to the previously declared intention.

Recommendation 5: Amend Corporations Act Section 250. Require companies (in electronic form only[42]) to acknowledge that the votes of shareholders have been processed (or discarded) and to confirm what proportion of the final results their votes represented.

10.6 Compel the Meetings of all Listed Companies to be conducted by Poll and Not Show of Hands

The study revealed a low incidence of resolutions in S&P/ASX300 companies being passed by poll (31.7 percent) and a low incidence of companies (30 percent) putting resolutions to a poll. The study highlighted one instance where a poll may have triggered a 'first strike' on a remuneration report resolution, but instead was passed by a show of hands.

Voting by the "show of hands" system excludes proxy votes and gives one vote for each shareholder physically present in the meeting. This results in low transparency and disenfranchises institutional shareholders who cannot typically attend meetings.

Recommendation 6: Amend Corporations Act Section 250 to make poll voting mandatory for listed companies.

[41] Required by some client mandates and see further http://www.fsc.org.au/policy/superannuation/consultation-on-new-and-revised-fsc-standards-superannuation-governance-and-proxy-voting.aspx

[42] Strongly preferred that it be in a SWIFT / ISO 2022 compatible format

11. Suggestions for Changes to Existing Market Practices

This section presents suggestions for changes to market practices to address operational weaknesses identified by the study. If the earlier recommendation of separating the coincidence of the record date from the lodgement date is adopted, many of the operational complications that are the result of shifting vote entitlements will disappear.

11.1 Utilise Swift Messages and ISO 20022 Standards

The Society for Worldwide Interbank Financial Telecommunication (SWIFT) organisation has developed a series of sophisticated messages that replace the existing MT 564, 565 and 567 series that enable the automated processing of proxy instructions between institutional investors, voting agents and the custodian network.[43]

Figure 13: Utilise Swift Messages and ISO 20022 Standards

Function of message	MT	MX – UNIFI messages
Meeting Announcement or modification	MT564 with event type CAEV = MEET, CMEET, XMET or OMET (or MT568/599)	MeetingNotification seev.001.001
Cancellation of Meeting or Meeting Notification	MT564	MeetingCancellation seev.002.001
Confirmation of Entitlement	MT564	MeetingEntitlementNotification seev.003.001
Voting Instruction (incl. voting, registration, meeting attendence, appointing proxy...)	MT565	MeetingInstruction seev.004.001
Cancellation of voting instruction	MT565	MeetingInstructionCancellationRequest seev.005.001
Status on voting instruction	MR567	MeetingInstructionStatus seev.006.001
Confirmation of vote execution	n/a (nominal use of MT568/599)	MeetingVoteExecutionConfirmation seev.007.001
Results of meeting	n/a (nominal use of MT568/599)	MeetingResultDissemination seev.008.001

The SWIFT message suite is not regarded as being capable of effecting proxy lodgements in Australia at this stage of their development[44] as it cannot reflect all elements of a typical Australian proxy card, however it represents an exciting development that, if utilised will assist in eliminating operational errors between investors and custodian banks.
The study observed that no Australian bank or voting agent utilised the new suite of SWIFT messages during the 2011 year.

Recommendation 7: All custodians, sub-custodians and voting agents (both institutional and custodial) should make use of the SWIFT proxy voting messages.

[43] See http://www.swift.com/proxyvoting

[44] No Australian registry service is a SWIFT user

11.2 Develop Online Proxy Lodgement Systems

Presently online systems for the lodgement of proxies vary between registrars. Operational weaknesses to the current generation of systems would be addressed by the following developments:

- All systems to permit 'split' voting by sub-custodians, so that fax based lodgement is used only as a last resort.
- All systems to permit the lodgement of multiple proxies (for different meetings) by way of a 'batch process' or file exchange to a single registrar, in order to eliminate keystroke error and to facilitate automation.
- All systems to acknowledge that votes have been received and processed by a return message to investors that is in a SWIFT compatible format, so that it can be communicated to the ultimate beneficial holder by the custodian network or relevant voting agent.

Recommendation 8: Registries should ensure that online systems for the lodgement of proxies enable 'split' voting, file exchanges and are capable of releasing vote confirmations in a format compatible with the SWIFT proxy voting messages.

11.3 Vote Exclusions

Presently online proxy voting platforms administered by custodial or institutional voting agents do not enable users to identify if their institution has participated in a placement (for example) and as a result ought to be excluded from voting on a particular resolution that seeks shareholder approval.

This results in confusion for institutional investors, sub-custodians and registrars that seek to comply with the terms of the relevant listing rules.

If recommendation 2, to change Listing Rule 14.11 in relation to sub-custodian votes is adopted, then the providers of online proxy voting platforms should adjust their systems to enable users to identify if they have participated in a placement. This will enable compliance with the existing terms of the standard ASX waiver which requires the beneficial owner to confirm to the nominee that it did not and will not participate in the share issue.

Recommendation 9: Online proxy voting platforms should enable users to identify if they have participated in placements so that they can comply with the terms of vote exclusion statements on capital raising resolutions.

Appendices

Appendix A: List of Figures

Appendix B: List of Tables

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