Rethinking the AGM

I would respectfully suggest that, in addition to the reasons listed in the original discussion paper, there are a number of other reasons why shareholders are becoming less involved in AGMs and they include, but are not limited to, the following:

1 The increasing number of people who now own shares in one or more public companies. There are a growing number of younger shareholders who are prevented from attending AGMs because of work commitments. Web casting and other technological advances would not advance physical attendance or involvement because, unless they are shift workers, they would probably not be able to access the web during work time. Their primary interest is share price and dividend and they will either put the shares "away in the drawer" or churn their shares, hopefully for capital gain, rather than dividend. Their movement on an off the share register does not encourage an active interest in the AGM and there is little that can be done to change that attitude. There would also be minimal benefit to the company to change the attitude.

2 Many share portfolios are now held in Self Managed Super Funds (SMSFs) and they are increasingly being managed by outside managers on behalf of the members. The age of the members of the SMSFs has led to them, in some cases, relying on the outside manager for dealing with all correspondence and, therefore, having little or no interest in the AGM on the matters to be discussed. Managers have stated that many of their clients do not wish to bother with the associated paperwork involved in dealing with proxy votes and do not wish to have the reports etc forwarded to them. This is being exacerbated with the increasing age of the members of the SMSFs. It is also in the interest of the Manager to reduce paperwork and postage by discouraging shareholder involvement.

In some cases the fund managers are automatically binning the paperwork if and when it is received. Even when specific clients request that the paperwork should be sent to that client this breaks down within the Manager because of the number of staff involved and a failure to understand and remember/record the different requirements of each individual client.

As one of this minority of clients of a SMSF manager it is annoying, particularly when there is an issue that I would like to vote on.

The problem is compounded when the share register defaults to "web access" if no alternative instruction is received. Experience has shown that the Manager will often register the client as "web access" without the relevant specific instruction in order to limit the amount of incoming mail that is non essential to their area of responsibility.

While it would require more work in the initial stage to expand the data base for the shareholder there would be some merit in having a multiple address field that allowed for:

(i) delivery of dividend notices, share issues etc.

(ii) delivery of annual reports, voting forms etc – **where different from (i) above.**

It may be feasible to list this in the Chess Sponsorship Data and therefore apply it automatically to each holding for the same Holder ID. There would still need to be a yes/no option for a hard copy of the annual report as distinct from the voting forms as there may be no need to have multiple copies of the report when there are multiple shareholdings within the family home.

3 The ecological benefits of having the shareholder access the information from the web is offset when a hard copy of part or all of the report still has to be printed. However, clear formatting on the web without background colours that hide data when printed by more basic printers are an essential requirement. In some cases the responsible officers in a company have not been aware of this problem because their printers are multi-colour and very sophisticated in comparison to some in the home that are use for more basic printing services.

4 Re Section 4.5 The election or re-election of directors at an AGM is often seen as a *fait accompli* because they have been selected shortly after the previous AGM, the information on their benefit to the company is very brief, they may be requested or invited to make a short statement about themselves but after that the chairman may decide not to allow them to be questioned. (In some cases this may, of course, be desirable to prevent unnecessary personal attacks). In many cases they make no contribution at the AGM and might as well not be there,

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One area of concern is the multiplicity of directorships held by some directors and their ability to give adequate time to their responsibilities to the company in question. Because most shareholders would not have a shareholding in each of those companies it may be reasonable to require the director to produce details of his responsibilities at each of the other companies, the number of meetings attended, the length of the meetings (a meeting with a 4 page agenda might take far less time, both in preparation and in attendance, than one with an agenda of 100 or 200 pages), the amount of travel involved to attend meetings (interstate and overseas) where video link or phone hook-up is not considered appropriate, and the time required for involvement in non-public companies and organisations – particularly where the participation involves payment as distinct from honorary involvement (e.g. public authorities vs. school councils, charitable organisations etc). Because of their obvious ability and experience their participation in any of these organisations should still be encouraged but the total workload should be able to be assessable by shareholders to ensure that the contribution to the publicly listed company, for what many would see as a generous director's emolument, remains fair value to the company and it's shareholders.

5 Re Section 4.3 Attendance at some AGMs is difficult because of the number held over a short period. The work load for shareholders in examining reports etc is concentrated and there would be some merit in moving the accounting period to a different time of the year for a many companies to spread the work load. There should not be any reason for precluding this as there are already a number of companies with a balance date other than the 30th June. (No doubt many accountants would appreciate their work load being spread out more evenly for personal tax returns and spreading the reporting period for publicly listed companies would also spread the associated work load for the directors.) If company financial reporting periods were changed then there would be merit in keeping like companies within the same reporting window to enable more constructive comparison – e.g. banks, retailers, mining, manufacturing etc. Conglomerates would pose a problem but might be included within the group of their major activity. I believe this change is preferable to extending the time for holding the AGM because matters of concern should be dealt with as soon as possible.

6 The Questionnaire.

6.1 Separation of deliberative and decision-making functions.

I would respectfully submit that, except in rare circumstances, there would be little advantage to the company or the shareholder and the extra costs would be a charge against profits and dividends.

The decision-making function would be better served if the shareholders were provided with balanced information for their deliberation. As an example – we are informed about a director's previous work history or directorships but no reason as to why he did not continue in that position. Did he leave of his own volition or was he told that his work/contribution was of a lesser standard than was acceptable and he should not seek re-appointment in order to preserve his reputation.

Where there has been an item that has created extensive division between shareholders and, perhaps, the board then a more appropriate method would be to adjourn the debate for that specific item and circulate a summary of the various arguments for a further vote. I believe that, in this case, only deliberative votes should be accepted and "open" proxy votes should be precluded as this could skew the result.

However, the circumstances that would precipitate such an action are so extreme that the company and shareholders may be better served by the requisition of a special general meeting by the required number of shareholders to consider a motion of "No Confidence" in a director or the board as a whole or to consider the specific resolution. Such a meeting should not be able to be called frivolously and could be subject to approval by an independent third party.

6.2 If there is to be a delayed first vote either because of the reasons put forward in the original paper or because of 6.1 above then there should be sufficient time for the dissemination of the information and voting paper to the shareholder allowing for processing by an intermediary third party as discussed in point 2 above.

6.3 Any change should be regulated in such a manner that there is no opportunity for either party to work outside the intention of the changes.

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6.4 The number of proxies should not be announced as this may unduly influence further voting and, as suggested above, undirected proxies should be excluded as each shareholder should be required to direct their vote. The Australian Shareholders' Association, when requesting members and other shareholders to name the Association as the proxy holder, recommends that the shareholder fill in the voting paper and not provide undirected proxy votes. The Company Chairman has often been seen to state at the commencement of the discussion on items that require a vote that "the Chair has sufficient proxy votes to carry all resolutions". It is not unreasonable to suggest that this is a to imply that the Board has its mind made up and all the votes it needs and could not care less what any shareholder present might like to contribute to the discussions at the meeting.

6.5 Web casting would certainly be advantageous but should only be mandated where the implementation is cost beneficial. With more extensive use the cost would be reduced and, eventually, be automatic for companies above a certain size. Smaller companies with a commensurate smaller number of shareholders should be either able to generate a more active involvement by the shareholders or could more economically distribute the necessary information by other means. It is not irrational to suggest that some companies, particularly small companies with a shareholder base of limited geographical spread, might better serve those shareholders by conducting their AGM at a more shareholder friendly time – say the evening (shock, horror).

6.6 There should not be a need for a specified minimum time as such. What is more important is to ensure that there is sufficient time to hear all the divergent views without tedious repetition by a series of speakers covering the same aspect. This is dependant on the ability of the chairman to conduct a public meeting as distinct from his ability to chair and administer a board of directors.

6.7 If all company AGMs could be spread more evenly throughout the year then there would be no need to extend the time. (See comment 5 re Section 4.3 above).

6.8 A one-size-fits-all approach would unnecessarily disadvantage some companies and inadequately direct others. There are others better qualified than me to suggest parameters of differentiation but levels of gross and net profit, numbers of shareholders, limits of physical operation (state, national, international) and complexity of operation would be some of the factors that should be taken into consideration.

6.9 Unless the Board is extremely large and there is also a need to have a number of senior executives on the dais as well they should all be there. The chairman of the respective committees should present their reports and answer any relevant questions. If the company chairman answers any questions on behalf of the committee chairman and it is felt that the answer does not fully represent the opinion of the committee then there would be a reluctance to correct the company chair. It is also an opportunity for the shareholders to form an opinion on the ability and contribution of the director concerned with a view to supporting or rejecting their re-election at that meeting or at a subsequent meeting.

6.10 It is essential that directors should answer questions on any aspect of their business background and current activity, their future intentions with the company and their individual views on the areas of operation of the company concerned. Questions of a personal nature should be precluded except where they impact on the director's ability to carry out their responsibilities adequately.

Boards often have independent assessment of individual directors at, say, 3 year intervals and these have been used to advance the re-election of a director who is being opposed by some shareholders. However, having disseminated that the director concerned is rated very highly (or the highest) amongst their directors there has also been a refusal to disclose the identities of directors who rate at the bottom of the assessment. Transparency is a basic requirement of Board performance and ability and it may be reasonable for such "Board Assessments" to be accessible to an independent third party. Such a third party might be an Australian Shareholders' Association sub-committee.

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It is also preferable to the hidden alternative that the board privately suggest that a particular director should not seek re-election and he would then be free to seek a place on some other Board where he can inflict his perceived substandard ability on his new fellow directors and the associated shareholders. This is also covered in note 4 above (re Section 4.5).

7 Underlying all the above is another reason for shareholders not attending AGMs or voting directly or by proxy – the perception that no matter how much they try, theirs is a voice in the wilderness. Many shareholders would be constrained from expressing their views at a meeting because of their own perception of their "speaking ability" without realising that their comments made from the heart and without the supposed benefits of debating and public speaking experience can often carry far more weight with the rest of the shareholders in the body of the hall than the carefully chosen, but sometimes superficial, remarks of someone experienced at getting their own way.

Meeting Chairmen of both public companies and a multitude of other organisations often hear the speaker and then deride or ignore the comments. They believe that they always know best. They generally know they have "the result in the bag" because of the number of proxy votes directed in accordance with the board recommendation or left open to the chairman's discretion and, therefore, do not have to justify their own arguments and position. We may not necessarily agree with another speaker but we must always promote and defend his right to put his argument in the same way as we expect them to support our right to do the same thing.

If Company Boards are serious about involving the shareholders then they must be prepared to not only listen to them at the AGM (and on other occasions) but also take note of and, where appropriate, instigate the actions requested and, at the same time, acknowledge that their actions are a result of shareholder input and do not appear to present them as executive or board initiatives.

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