

## Discussion Paper – Investor Vote Confirmation

### A. Overview

There have been calls from members of the investor community globally for the implementation of end-to-end vote confirmation. Some investors want certainty that their voting instructions have been submitted to the issuer's agent<sup>1</sup> in a timely fashion, and accurately recorded and included in the tabulation of votes for the shareholders' meeting. However, delivering effective vote confirmation is not quite as simple as it is sometimes presented.

Drawing on Computershare's experience as a global issuer agent managing shareholder meetings in many international markets, this paper examines the complexities of implementing an effective system of vote confirmation and discusses a number of issues that need to be addressed in its development. Our goal is to use this paper as part of our ongoing contribution to a balanced discussion of the issues with our issuer clients, investors, intermediaries and their agents and infrastructure providers across the markets where we act as issuer agent. The issues that we have identified include:

- a. The form of confirmation required and at what point it should be issued.
- b. To whom the confirmation can or should be provided. In many cases, the issuer agent will have no visibility of the end investor seeking vote confirmation, and a coordinated flow of the confirmation through relevant chains of intermediaries and voting agents may be required.
- c. The relevant population of investors to receive confirmations, including whether confirmations are required for all investors by default or individual investors based on their request.
- d. The impact of different protocols for voting at company meetings e.g. the use of show of hands, poll and direct voting create additional complexities to the provision of vote confirmations.
- e. Agreement on standardised messaging for electronic communication of confirmations.
- f. The need to agree market protocols for the resolution of over-vote positions, which impact the treatment of votes lodged (and thus confirmations issued).

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<sup>1</sup> Note we have used the term issuer agent here to describe the role of the agent appointed by the issuer to receive, record and tally all shareholder votes to provide the issuer with the final vote count. While different markets apply varying descriptions and requirements for this function, the function is central in the voting process for the vast majority of markets, and would be the official source for any confirmation of votes recorded at the meeting.

A small number of markets already provide a form of vote confirmation on a market-wide basis. Others make it available on a subscription and/or trial basis and may provide confirmation to a certain level of ownership in the market but not necessarily through to the end investor (particularly for foreign investors). Approaches thus far are not consistent but offer useful lessons in reaching an agreed solution amongst stakeholders<sup>2</sup>.

Based on the issues addressed in this Discussion Paper, we have outlined a set of proposals that we believe will assist markets to achieve a near-term solution to the needs of the majority of investors that require confirmation of their vote instructions while facilitating evolution in these services over time. In our view, this can be achieved by the following Proposals:

**1. The issuer agent to provide electronic confirmation of receipt of an electronic vote instruction back to the lodging party.**

This is a relatively 'quick' solution that can facilitate the needs of many investors. The investor and their intermediary/ies and/or voting agents should make appropriate arrangements between them for the confirmation to be passed through to the investor from the lodging party. In the event that the vote must be rejected, the issuer agent should, *on a reasonable efforts basis and subject to the vote including appropriate contact details*, notify the lodging party; and where time permits facilitate correction and re-submission. In some markets, we note this is already available.

**2. Subject to agreement by issuers, the issuer agent may additionally make available a service after completion of the meeting to any investor to certify that votes lodged in respect of a particular securities account were included in the final tabulation at the meeting, on payment of a reasonable fee.**

Provision of a service certifying votes cast after the meeting is concluded is more complex (e.g. from the impact of any show of hands, poll or direct voting at the meeting); many markets require issuer consent to disclose their shareholder data; and it is anticipated to only be required by a relatively small number of investors (compared to total shareholder numbers). We propose that this should therefore be provided only on-demand and on a 'user pays' basis. In the near term, this certification could not be managed on a standardised or fully electronic basis. However, it could for example take the form of a written certification sent by email to the requesting investor or their nominated agent. Discussions to agree a more standardised process can be held in the meantime with interested organisations and in the longer term it may be feasible to reach broader agreement on an industry standard, subject to cost-benefit analysis.

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<sup>2</sup> We understand that one proposal in the EU is to adopt a measure similar to the Italian approach where the votes of all shareholders are made available on the issuer's website after the meeting. In our experience, this is likely to prompt concerns for some other markets that have privacy or 'proper purpose' requirements around the disclosure of shareholder identities. Further, it may not deliver similar benefits to markets where investors are not disclosed to the issuer in the voting process.

## B. Key issues in implementing end-to-end vote confirmation

The current demand for vote confirmation is in part driven by the consideration that investors hold a stewardship role in corporate governance, and requirements that certain types of investors not only vote their shares but also disclose how they voted. The growing interest has also been reflected in the review of vote confirmation by regulators in a number of markets, including the United States<sup>3</sup>, Australia<sup>4</sup>, Canada<sup>5</sup> and the European Union<sup>6</sup>. Most recently, the European Commission is proposing to mandate vote confirmation under draft amendments to the Shareholder Rights Directive, however these draft amendments do not define what the European Commission considers vote confirmation to be, nor does the legislative proposal address the complexities noted in section A above.

While there are several possible points in the voting timetable at which confirmation may be provided, we believe that the two key reference points are:

- a. Confirmation at the time of receipt of proxy instructions by the issuer agent.
- b. Confirmation after the meeting that voting instructions were valid and included in the final vote count for the meeting.

Where a party lodging a vote instruction receives a confirmation of receipt and has sufficient voting entitlement at record date, they should be entitled to assume that the vote was counted at the meeting (**Proposal 1**). The issuer discloses whether there was a poll and the aggregate votes after the meeting and issuer agents make reasonable efforts to contact the lodging party if the relevant securities account moves to an over-vote position. Separately if a particular investor, for varying purposes, requires a specific verification that their vote was included in the final tabulation, this can be provided as a separate service (**Proposal 2**). Investors holding via pooled accounts will need to rely on their own custodian to pass on a confirmation that the votes lodged by the custodian or voting agent (on behalf of the custodian's clients) was not rejected by the issuer agent due to insufficient securities. Based on our experience, a number of factors need to be considered in relation to the logistics of providing confirmation at either level.

### 1. Direct vs indirect investors

The implementation of vote confirmation is less complex where investors can lodge their votes directly with the issuer agent, as shown in **Diagram 1** below. Investors who are recorded on the issuer's share register in their own name or who are otherwise directly disclosed to the issuer agent may be permitted under market rules to lodge their votes directly with the issuer's agent. The investor may also delegate their voting authority to another party to exercise on their behalf.

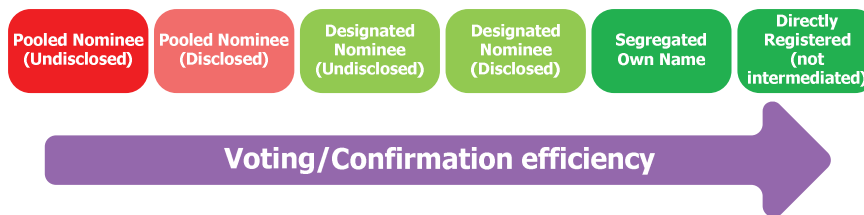
<sup>3</sup> [SEC Concept Release on the U.S. Proxy System](#), Release Nos. 34-62495; IA-3052; IC-29340; File No. S7-14-10

<sup>4</sup> CAMAC Discussion Paper: [The AGM and shareholder engagement](#), September 2012 2012

<sup>5</sup> CSA Consultation Paper 54-401: [Review of the Proxy Voting Infrastructure](#), August 2013

<sup>6</sup> [DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#) amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement

## Impact of holding method/disclosure



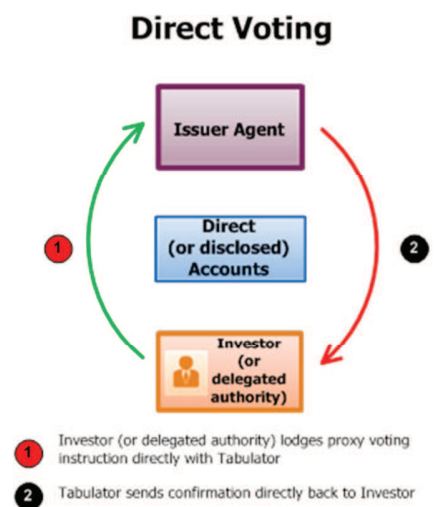
At least when lodged electronically, in our view it should be feasible to establish processes and systems for the issuer agent to confirm back directly to the investor or their identified agent that the votes were received and recorded, as shown in **diagram 2** ‘Direct Voting’.

This is based on the issuer agent having adequate transparency of the securities holding to validate voting entitlement and subject to inclusion of appropriate contact details to enable them to respond to any instruction that purports to vote against more securities than the investor held at record date.

In markets where a financial intermediary can operate accounts at the level of the Central Securities Depository (‘CSD’) directly in the name of, and on behalf of, the investor<sup>7</sup>, the investor can also lodge their votes directly with the issuer’s agent or by using their voting agent to communicate the vote on their behalf.

Investors holding indirectly via an account with an intermediary (without direct voting authority) have to lodge their votes indirectly with the issuer agent by passing their vote instructions through either their intermediary or a voting agent, which forwards on for lodgement with the issuer agent.

Where securities are held indirectly through a custodian in a *segregated account* (so that the securities of only one investor are held in that particular account), the issuer and their agent generally have some visibility of the investor and will know the amount of shares that they hold. While in most markets segregated accounts do not directly disclose the identity of the underlying investor, issuers generally have access to mechanisms to identify the investors in such accounts<sup>8</sup>. These identifying features can assist in the communication flow between issuer, issuer agent and investor<sup>9</sup>.

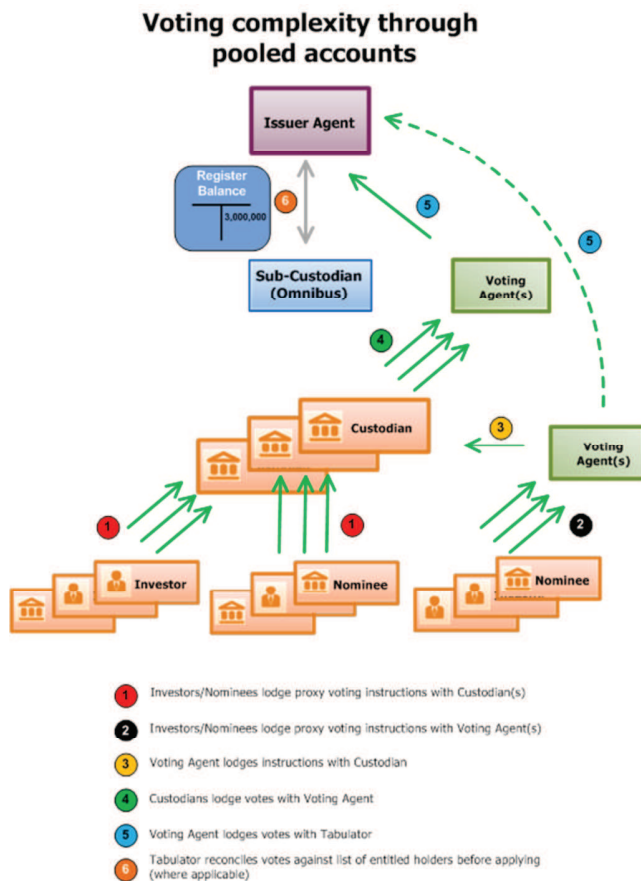


<sup>7</sup> For example, this is possible through the CSDs in countries such as Australia, Germany, India and Sweden.

<sup>8</sup> For example, in the United Kingdom, CSD accounts can be segregated but do not directly identify the beneficial owner. However, the issuer is able to demand disclosure of the identity of the beneficial owners through provisions in the Companies Act 2006.

<sup>9</sup> We also note that some investors that hold through segregated accounts may elect to directly disclose themselves to the issuer to better facilitate engagement.

However, the common custodian practice of holding securities in *pooled accounts*, where the positions of multiple investors are commingled, adds significant complexity to the vote confirmation process, as shown in the example in **diagram 3**, ‘Voting Complexity Through Pooled Accounts’.



Investors will submit their proxy votes to their intermediary or voting agent, to be tallied along with other clients of the same intermediary, and submitted through to the issuer agent as a single proxy vote instruction. Some voting agents may also arrange to lodge votes directly with the issuer agent.

**Issuer agents do not have visibility of who these investors are or how many shares each individual investor owns through the pooled account, and can only confirm the vote lodged to the top-tier ownership level that they have visibility of.** Therefore, the Issuer agent would generally only be able to issue a confirmation in respect of the pooled position.

The custodian or their voting agent will therefore need to reconcile the confirmation from the issuer agent in respect of the total pooled position with the individual vote instructions of underlying investors and disseminate the appropriately apportioned

confirmation downstream. With investors holding securities cross-border, it is not unusual for multiple custodians and sub-custodians and their agents to be involved. In this scenario, the confirmation would need to be passed down to the investor potentially through multiple intermediaries, likely affecting accuracy, timeliness, efficiency and cost effectiveness for the various parties involved.

The accuracy of the allocation of the initial vote confirmation provided by the issuer agent and passed down by the intermediaries will determine the efficacy of the vote confirmation for the investor.

## 2. The impact of vote discrepancies

The risk of over-voting creates particular issues for vote confirmation. Our experience with over-voted positions in various markets suggests that market agreement on the resolution of over-voted positions will be a key element to the implementation of any market-standardised vote confirmation process<sup>10</sup>.

<sup>10</sup> The visibility of over-voting and ability to resolve varies by market structure. In the UK, in the 2014 proxy season Computershare recorded 668 instances of over-voting however only 3 instances were unable to be resolved before the relevant meeting. In Australia, Computershare identified 169 instances of over-voting in the proxy season up to November 11, 2014, and was able to resolve all

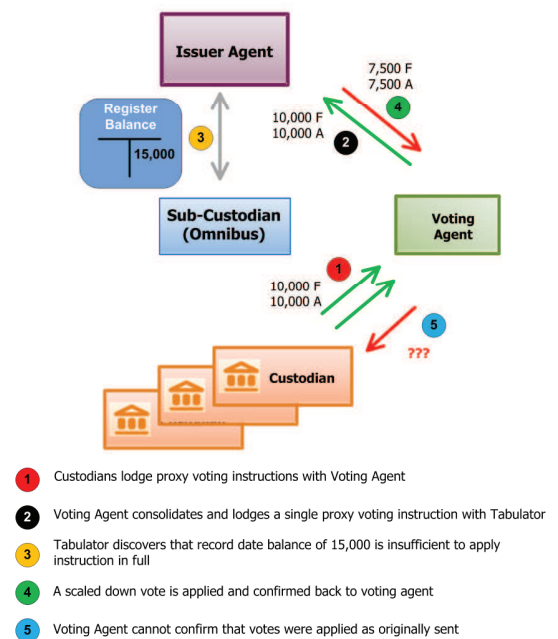
We do not propose to discuss the various causes of over-voting in detail here. The topic has been discussed in the reviews of proxy processes in several international markets as mentioned earlier, and the causes and contributing factors for over-voting can vary between markets based on their different voting processes and timetables. However, it is necessary to address the impact on vote confirmation processes. In brief, over-voting arises where the securities of multiple investors are commingled in pooled securities accounts operated by an intermediary, and the total number of vote instructions submitted to the issuer agent exceeds the balance of securities held in the pooled account<sup>11</sup>.

It is not always possible to identify an incidence of over-voting in a sufficiently timely manner to allow resolution of the position prior to the meeting. A subsequent proxy vote instruction received by the issuer agent may also force the position into an over-vote, affecting shares voted on the earlier instruction, which was initially valid. Additionally, the issuer agent cannot determine which underlying investor(s) voted in excess of their entitlement, meaning that an entire pooled account representing the votes of many investors can be affected.

Various markets and different issuer agents adopt a range of approaches to resolving over-vote positions, which involve substantial exception-processing, time and cost. These can include:

- › manual resolution of the over-vote between the intermediary and the issuer agent (but only if adequate contact details for the intermediary are included in the vote instruction and time permits);
- › pro-ration of the position by the issuer agent to reflect the proportion of ‘for’, ‘against’ or ‘abstain’ etc votes lodged – as shown in example in **diagram 4**, ‘Example of an Over-vote with Pro-ration Applied’;
- › varying practices to disregard certain votes once the securities balance is exceeded, such as rejecting votes for management;
- › rejecting all votes lodged in respect of the securities position, particularly if time does not allow any other action prior to the meeting.

#### Example of an Over-vote with pro-ration applied



instances prior to the meeting. By contract, in other markets such as Canada, the lack of visibility of contact details for the lodging party leave the issuer agent unable to assist in resolving identified instances of over-voting.

<sup>11</sup> For example, 20,000 votes may be lodged in respect of 2 investors, with 10,000 voted against a particular resolution and 10,000 for the resolution. However, where the total securities account balance is only 15,000 shares, there is an over-vote of 5,000 securities.



Each such approach comes with a range of draw-backs and the risk of some or all investors in a pooled account being disenfranchised, and has varying impact on the validity of any vote confirmation provided by the issuer agent prior to the meeting. It is also necessary to understand that inclusion of appropriate contact details of the party to contact in relation an over-vote are essential where there is an expectation that issuer agents actively seek to assist in resolution. In some instances, we see incomplete or no contact details and when reaching out proactively, may receive conflicting direction from intermediaries or the agents regarding resolution.

***Each market should therefore consider establishing an appropriate standard for treatment of over-vote positions, including communication arrangements.*** If a consistent approach is not followed by the investors' intermediaries and/or voting agents in apportioning the total confirmation received from the issuer agent in respect of the pooled account to the individual investors represented in that account, a risk emerges that individual confirmations passed on to the end investors will not reconcile to the upper-level confirmation for the total pooled account supplied by the issuer agent.

### **3. Attendance in person**

Where permitted by market rules<sup>12</sup>, an underlying investor holding indirectly through a custodian or nominee may be authorised to attend and lodge a vote directly at the meeting. The authority to do so is usually obtained from the party recorded at the top level of ownership (e.g. registered holder) and may not be notified to their voting agent. In some instances, an investor may have separately lodged a proxy instruction through their voting agent but subsequently attends and votes at the meeting also. Where the investor holds through a pooled account, the issuer agent will not have visibility of the earlier proxy instruction lodged by the investor and will permit their attendance at the meeting subject to appropriate authorisation and sufficient unvoted securities remaining in the relevant pooled account<sup>13</sup>. To address this risk, the custodian providing authority for the investor to appear at the meeting should also confirm that any prior proxy has been appropriately rectified or revoked<sup>14</sup>. Further, without knowing the precise detail of the attendance and voting position a voting agent is unable to reconcile the post-meeting confirmation against pre-meeting instructions lodged.

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<sup>12</sup> Not all markets allow indirect investors (or the investor's nominated agent) to attend a meeting in person. Those markets that do facilitate attendance by an indirect holder apply varying requirements for disclosure and authorization, and the issues noted in this section should be considered in the specific market context.

<sup>13</sup> This presents a risk of duplicate voting by the investor, where they vote by proxy and also attend the meeting. The issuer agent is unable to invalidate the earlier vote due to the lack of visibility. The discussion in this paper focusses on the impact for vote confirmation but the broader issue of addressing this risk should also be addressed as noted in the commentary by requiring confirmation that any prior proxy has been appropriately revoked or adjusted.

<sup>14</sup> Intermediaries and voting agents should consider any impact on their systems and voting records where their client investor attends the meeting and lodges a revised vote, and how such instances should be handled and communicated.

#### **4. Should confirmation be sent to all investors or only on request?**

It is also necessary to agree who should receive a vote confirmation. Should every investor that votes receive a confirmation, or only those that request confirmation? Should investors attending and voting at the meeting receive a confirmation or only those that vote in advance of the meeting? What about votes lodged in paper form, which may necessitate additional system development to capture and generate vote confirmations? Is vote confirmation a requirement predominantly of the larger and/or institutional investor community, or do retail investors also have a widespread demand for it? In markets where the intermediary may vote on some matters without the underlying investors' instructions, should confirmations be sent through to the investor?

If confirmation is provided to every investor that votes, we note that the costs will likely be higher for all stakeholders involved in passing through the confirmation to investors. As noted previously, issuer agents are only able to confirm receipt back to the top level of ownership, which is frequently in the form of a pooled account representing many end investors. Based on our analysis and experience, we have therefore proposed that a confirmation of receipt should be provided in respect of any vote lodged electronically with the issuer agent. Investors, their intermediaries and agents should discuss the further dissemination of the confirmation through to the investor. An investor should also be able to request a certification that their vote was cast at the meeting, subject to payment of a reasonable fee.

#### **5. Development requirements and standardised communications**

Where markets have established electronic voting channels, these same channels could be extended to incorporate confirmation messaging for receipt of electronic votes, rather than introducing separate infrastructure. As discussed above, we envisage that post-meeting certification of votes cast will, in the near term, would not be managed on a standardised or fully electronic basis and may, for example, take the form of a written certification that could be sent by email to the requesting investor. Discussions to agree a more standardised process can be held in the meantime with interested organisations, and in the longer term it may be feasible to reach broader agreement on an industry standard for certification of votes cast.



## C. Summary and Proposed Approach

As highlighted above, most of the complexity in delivering vote confirmation arises due to the voting instruction or shareholding changing or becoming invalid after the initial lodgement. In view of the challenges associated and the fact that the number of investors actively seeking a confirmation will be low in comparison to the number of total proxy instructions, we have recommended a pragmatic approach to facilitating a near-term vote confirmation solution for electronically-lodged votes, which we believe can be applied across most international markets. It also provides scope for the discrete group of investors that require specific confirmation post-meeting of votes cast at the meeting to obtain this. This proposal would create an equivalent level of certainty of participation to that currently obtained and widely accepted in respect of other corporate actions:

### 1. Confirmation of receipt

**We recommend that a confirmation should be provided to indicate receipt of any voting instruction lodged electronically.** This will provide certainty to the lodging participant that the vote will be processed by the issuer agent (provided that there is sufficient voting entitlement based on the record date position). In the event that any subsequent changes take place (to either the voting instruction or to the entitlement position) the lodging participant should be responsible for any corrective actions in respect of the confirmation. Such changes may arise for example where a pooled account becomes over-voted or where an underlying investor holding through a pooled account subsequently revises their vote instruction or attends the meeting in person, as discussed above. Issuer agents should use reasonable endeavours to contact the lodging agent in the event of any issues arising that may prevent execution of the voting instruction, subject to having access to appropriate contact details and sufficient time prior to the meeting.

### 2. Post-meeting certification

As it is feasible that the pre-meeting voting intention may not be recorded in its original form at the meeting if there is an over-vote situation that the issuer agent has not been able to resolve with the lodging party or if a shareholder changes the instruction. **We therefore suggest that a post-meeting certification facility could be made available by the issuer agent to any investor requiring confirmation of the votes executed at the shareholder meeting.** Issuer agents should be entitled to charge reasonable fees for the provision of any such certification service.

Computershare continues to participate in stakeholder dialogues on the requirements to implement vote confirmation across many of the markets in which we operate. The topic of vote confirmation is both local and international, and discussions should, so far as practicable, also seek to establish a consistent approach. We have outlined above several key issues to be considered in formulating an appropriate market approach, drawn from our experience as a global issuer agent. These are relevant to ensuring the integrity of any confirmation of vote receipt and lodgement for the meeting, and thus facilitating effective end-to-end vote confirmation down to investors.

## Contacts

### **Claire Corney**

Senior Manager, Regulatory & Market Initiatives,  
Global Capital Markets  
+1 212 805 7159  
claire.corney@computershare.com

### **Andy Callow**

Senior Manager, Regulatory & Market Initiatives,  
Global Capital Markets  
+44 870 702 0003 ext1292  
andy.callow@computershare.co.uk

### **Paul Conn**

President, Global Capital Markets  
+1 212 805 7154  
paul.conn@computershare.com

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*Founded in 1978, Computershare is renowned for its expertise in high integrity data management, high volume transaction processing and reconciliations, payments and stakeholder engagement. Many of the world's leading organisations use us to streamline and maximise the value of relationships with their investors, employees, creditors and customers.*

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