

Super funds and proxy voting

The recent release of the ASX Corporate Governance Guidelines and Recommendations has put new pressures not only on directors and boards, but also on the super funds to exercise their proxies to ensure good governance. **GEOF STAPLEDON** examines the latest evidence to see how this is working.

Associate Professor Geof Stapledon,
Principal,
Institutional
Analysis Pty Ltd
and Deputy
Director, Centre
for Corporate Law
and Securities
Regulation,
University of
Melbourne

Corporate governance failures sparked Australia's traditionally disengaged institutional investor community into action in the 2002 AGM season—but there is still a long way to go before Australian public companies experience the more rigorous monitoring observed in the proxy voting seasons in the US and Britain.

Analysis of the proxy voting results of the 2002 annual general meeting season reveals several trends that together suggest that more Australian institutional investors are taking an activist stance towards corporate governance.

A survey by Institutional Analysis tallied the voting results from AGMs of 122 trading companies (i.e. not property trusts or other investment vehicles) in the ASX Top 200 from 2002. The 96 companies in this group which were widely held (i.e. no substantial shareholder with 20% or greater of the voting capital) were the focus.

Voting results at non-widely held companies tend to be distorted by the presence of the dominant shareholder on the register and, as such, these companies were not considered in these calculations.

The study involved a review of the 2002 AGM proxy voting statistics reported to the Australian Stock Exchange (ASX) under section 251AA of the Corporations Act. Similar studies were conducted in previous years (1998 and 1999) by Corporate Governance International and the Centre for Corporate Law and Securities Regulation at the University of Melbourne. There was considerable overlap between the

companies in the present study and the sample in the previous two studies.

The survey revealed that the shareholder participation rate jumped 22% between the 1999 AGM season and the 2002 AGM season. In the 2002 AGM season, proxy voting instructions at widely held companies represented on average 43% of voting capital. By contrast, in the 1999 AGM season proxy voting instructions at widely held companies represented on average 35% of voting capital. (In 1998 the percentage was 32%.)

Large cap companies had a shareholder participation rate 18% higher than small cap companies. For this study we defined large cap as Top 20 by market capitalisation. The smaller cap companies were those ranked between 21 and 200 in the ASX/S&P 200.

The proportion of shareholders voting 'Against' on controversial resolutions rose 34% between the 1999 AGM season and the 2002 AGM season. In the 2002 AGM season there were 408 resolutions put to AGMs of widely held companies in the sample. Thirty-eight of these resolutions (9.3%) were categorised as 'controversial' because either (i) the resolution was assessed to have breached the Investment and Financial Services Association (IFSA) Blue Book guidelines on corporate governance, or (ii) the resolution was proposed by a shareholder and was not endorsed by the company's board.

For these 'controversial' resolutions, on average 8.7% of companies' voting capital issued proxy instructions of 'Against'. In 1999 the average proportion was 6.4%.

The average shareholder participation rate on controversial resolutions in 2002 was 45%, higher than the overall participation rate of 42%. Significant shareholder dissent was registered at two categories of resolution: non-executive director remuneration and executive remuneration.

On average, 14% of shareholders issued proxy instructions of 'Against' or

...Australian directors face a shareholder community that is extremely reluctant to challenge board recommendations on votes.

'Abstain' on resolutions dealing with executive remuneration. On average 15% of shareholders issued proxy instructions of 'Against' or 'Abstain' on

resolutions dealing with non-executive director remuneration.

Overall, controversial resolutions represented 9% of total resolutions in the sample in 2002. The success rate for controversial resolutions fell from 82% in 1999 to 68% in 2002.

As in previous years, the 2002 proxy season was marked by a very high success rate for all categories of resolution. Only 18 of 627 resolutions at widely and non-widely held companies in the sample this season were not passed. Every resolution that was voted down was a shareholder-proposed resolution. Not one resolution proposed by the board of a company in the sample failed. It is apparent that Australian directors face a shareholder community that remains largely reluctant to challenge board recommendations on votes.

In addition to examining the results (i.e. passed/not passed) of company resolutions, it is useful to examine the manner in which the company annual general meeting reached its decision. Most resolutions are passed on a show of hands. For procedural efficiency, the chairman will assess the number of raised hands and only conduct a shareholders' poll (Figure 2) if there is sufficient evidence of significant shareholder dissent on the resolution.

The proportion of controversial resolutions decided on a poll rose from 18% in 1999 to 34% in 2002.

The number of companies at which all controversial resolutions were decided on a show of hands fell from 18 to 1.

The overall trend suggested by these results is that controversial resolutions are faced more opposition in 2002 than 1999, with more being decided on a full poll of shareholders rather than being quickly resolved by the company chairman on a show of hands, and a higher proportion failed to be passed. However more than two-thirds of controversial resolutions were still passed.

In 2002, controversial resolutions were more likely to appear at AGMs of non-widely held companies than widely-held companies. 38% of non-widely-held companies (10 of 26) put forward at least one controversial resolution. Only 11% of widely held companies (10 of 96) did so.

FIGURE 1 PERCENTAGE OF CONTROVERSIAL RESOLUTIONS PASSED

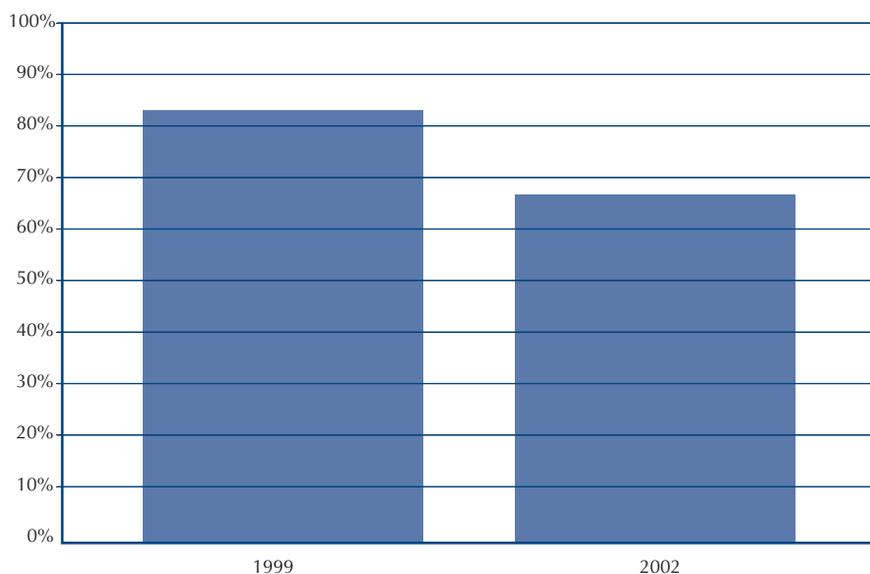


FIGURE 2 PERCENTAGE OF CONTROVERSIAL RESOLUTIONS DECIDED ON A POLL

