"Opening Shareholder Meetings to Fund Managers in Singapore"

Submission to the Monetary Authority of Singapore (MAS), the Accounting and Corporate Regulatory Authority (ACRA) and the Singapore Exchange (SGX)

Asian Corporate Governance Association (ACGA)
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SUMMARY

In this paper we propose that the Singapore Government and regulatory authorities amend the Companies Act and the Listing Rules of the Singapore Stock Exchange to allow nominee companies operated by custodian banks to appoint multiple proxies to shareholder meetings. This would remove current obstacles to fund managers participating in such meetings and would strengthen Singapore's position and reputation as a leading financial centre in Asia.

Fund managers and other institutional owners of shares are increasingly aware of their fiduciary duties to discharge ownership responsibilities over the companies in which they invest. One manifestation of this is an increase in the levels of voting for annual general meetings (AGMs) and extraordinary general meetings (EGMs), both in Asia and globally, and a greater preparedness to attend AGMs and EGMs when issues of importance are being discussed.

We make a proposal in this paper as to how the Companies Act could be amended to allow for the appointment of multiple proxies. We also review ongoing developments in this area in other major markets, including Australia, Hong Kong and the United Kingdom, and find that the general thrust is in the same direction, namely towards encouraging institutional investors to participate more actively in shareholder meetings.

This document follows a recent report by Professor Mak Yuen Teen that explicitly recommends addressing barriers to proxy voting and engagement by shareholders in Singapore. Our paper has been developed with the input and support of custodian banks from the major banking groups in Singapore and represents a broad consensus of market thought on the subject.

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INTRODUCTION

1. As the links between sound corporate governance and capital market development become increasingly appreciated worldwide, focus is turning to the important role that institutional investors[1] can play as catalysts in the governance process. Not only do these institutions have a fiduciary duty to safeguard the assets of their clients or beneficiaries, and achieve the best possible returns, they also have a growing interest in the quality of governance of the companies in their portfolios.

2. Since the late 1990s, the involvement of institutional investors in corporate governance matters has steadily expanded, a result of enlightened self-interest, regulatory encouragement, client pressure and technological change. There has been a trend towards "responsible ownership", which refers to the proper stewardship of assets and engagement with companies. One tangible expression of this trend is the increased voting of shares. For example:

   a. Recent reform of company law in the UK saw the government insert a clause in the new Companies Act (2006) that would give it reserve powers to enforce disclosure of proxy voting activities by fund managers.[2] These reserve powers could be called upon if the industry did not voluntarily provide such disclosure. This has placed greater pressure on institutional investors to vote at general meetings.

   b. The number of major UK institutions that voluntarily disclose their proxy voting activities increased from just two in 2003 to seven in 2004, 10 in 2005[3], and 16 in 2007.[4]

   c. Historically, voting has increased significantly since the mid-1990s: average voting turnout at the annual general meetings (AGMs) of FTSE 350 listed companies in the United Kingdom grew from 36.5% of shares in 1994 to around 55% in 2003—with most of the increase due to institutional voting.[5]

[1] "Institutional investors" is a broad term comprising pension funds (public and private), insurance companies, endowments, mutual funds, other investment and asset management companies (public and private), and private equity and venture capital funds.
[2] Clause 1277, Companies Act (2006). Source: http://www.opsi.gov.uk/acts/acts2006/ukpga_20060046_en_77#pt44-pb2-l1g1277
[3] Source: http://www.investmentuk.org/press/2006/20060621.asp
[4] Speech by the Economic Secretary to the Treasury, Ed Balls MP, to the NAPF Investment Conference, Edinburgh. Source: http://www.hm-treasury.gov.uk/newsroom_and_speeches/speeches/econsecspeeches/speech_est_150307_2.cfm
[5] Source: Pensions Investment Research Consultants Ltd, UK (www.pirc.co.uk)

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d. Average voting turnout for shareholder meetings of FTSE 100 companies stood at around 49% in 2002[6], 52% in 2003[7], 56% in 2004 and 58% in 2005[8]. Average voting turnout for meetings of FTSE 250 companies stood at 57% in 2004 and 59% in 2005.[9]

e. Average voting turnout at AGMs in Australian listed companies rose from around 35% in 1999 to slightly more than 50% in 2004—with the increase due again to greater institutional participation. Turnout ranged from approximately 20% to 80% at individual companies.[10]

f. A new voting standard published by the Investment & Financial Services Association (IFSA) in Australia stated that members *should* vote on all resolutions at company meetings and *must* publish an annual proxy voting summary on their website.[11] This standard became effective on January 1, 2005.[12]

g. In the United States, new rules from the Securities and Exchange Commission require US mutual funds to disclose how they vote their proxies.[13]

h. A number of global institutional investors from the UK and US actively publish their voting records, either in anticipation of or response to regulation/legislation on the publishing of proxy voting activities.

i. Fund managers in Korea and Thailand are now required to publish their proxy voting policies and record.

3. The rise in proxy voting activity at shareholder meetings is leading to greater interest on the part of institutional investors to attend annual and extraordinary general meetings in person. While the number of fund managers attending meetings is currently lower than the number voting—partly due to the cross-border nature of much share ownership—the right to attend is nevertheless an important feature of a modern and efficient capital market. It also helps to build investor trust in the integrity of a market.

[6] Source: Manifest Voting Review 2002; http://manifest.co.uk/reports/proxy_poll/proxypoll2002.htm
[7] Source: Manifest Voting Review 2003; http://manifest.co.uk/reports/proxy_poll/voting_review_2003.pdf
[8] Source: Manifest Voting Review 2005; http://www.manifest.co.uk/reports/proxy_poll/voting_review_2005.htm
[9] Source: Manifest Voting Review 2005; http://www.manifest.co.uk/reports/proxy_poll/voting_review_2005.htm
[10] Source: Interview with Proxy Australia, now part of Institutional Shareholder Services Inc (www.issproxy.com). Figures refer to S&P/ASX 200 companies.
[11] Source: http://www.ifsa.com.au/documents/IFSA%20Standard%20No%2013.pdf
[12] IFSA has more than 140 members who collectively manage and oversee over A$1 trillion (www.ifsa.com.au).
[13] Source: http://www.sec.gov/news/press/2003-12.htm

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SECTION 1: THE SITUATION IN SINGAPORE

4. The central tenet of this document is that the process of facilitating participation by institutional investors at AGMs of listed companies in Singapore is neither as efficient nor as effective as it could be. In effect, institutional investors are being disenfranchised by the "two-proxy" rule imposed in the Articles of most listed companies incorporated in Singapore. While companies have the option to allow a greater number of proxies, few have chosen to do so. The temporary fixes to this problem are unsatisfactory both to institutional investors and their local custodian banks, hence pressure for a more lasting solution is growing. Over the past three years ACGA has noticed a considerable increase in interest among market participants in this issue. As a result, we believe that Singapore's reputation as a sound international financial centre may suffer if this issue is not resolved.

5. It is important to emphasise at the start that fund managers owning shares in companies listed in Singapore are able to vote their shares should they wish to do so (regardless of where the fund manager is domiciled). While fund managers do face certain impediments in the voting process, this is not the focus of this paper.[14] However, an understanding of the proxy voting process helps to elucidate the problem of participating in meetings.

6. In order to vote on general meeting resolutions in Singapore, a fund manager sends voting instructions to its custodian bank (often through an online voting platform provided by Institutional Shareholder Services or ADP/Broadridge[15], the two leading companies in this area and both headquartered in the US). The custodian bank in turn aggregates the instructions received from all its clients (ie, other fund managers) and proceeds to vote these shareholdings.

7. For cross-border institutional investors, votes cast online will typically go first to a global custodian bank, which passes aggregated instructions *en masse* to a local custodian bank, which in turn passes them to a share registrar, who sends them to the company representative (often the company secretary).

8. It is important to note that, technically, fund managers are not voting <u>in their own names</u> at general meetings. Their votes are sent instead by a nominee company/account operated by a local custodian bank (e.g. Raffles Nominees, DBS

14 ACGA addressed the impediments in Asian proxy voting systems in a 2006 report entitled "Voting for Change: Bringing Proxy Voting Systems in Asia into the 21st Century". See www.acga-asia.org for a copy.

15 The proxy voting service division of ADP was recently spun off as a separate listed company called Broadridge Investor Communication Services, Inc.

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Nominees), which appoints either the chairman of the meeting or another person as its proxy.

9. This is because fund managers are typically not the "legal owner" of the securities in their portfolio. For securities holdings purposes, the legal owner (or registered company member) is usually the nominee company of the local custodian bank, which holds the assets of its institutional clients in "omnibus accounts" (i.e., accounts aggregating the securities of several clients). Hence, it is the omnibus account (e.g. Raffles Nominees, DBS Nominees) that ordinarily appears on the register of shareholders.

10. However, a fund manager wishing to attend a shareholder meeting in person faces significant obstacles, for the following connected reasons:

    a. Because the fund manger's name is not on the shareholder register, it formally has no right to attend (even though it holds the company's shares in its portfolio).

    b. The Articles of Association of most Singapore companies (listed and unlisted) state that a member of a company that is entitled to attend and vote at a shareholder meeting is entitled to appoint no more than two proxies to attend and vote in his place.

    c. Local custodian banks in Singapore will often use both proxy cards to vote the shareholdings of their clients (as described in paragraphs 6 to 9), hence there are no proxy cards left to give to clients who may wish to attend a company meeting.

    d. Whilst we know of one local custodian bank that aggregates all voting instructions on one proxy card, leaving one free to give to a client, this means that the bank must choose between clients if more than one wishes to attend a meeting (typically, the biggest client or the first request will get the card, while the smaller ones or later requests are disadvantaged). We understand that the frequency of such incidents is increasing.

    Fund managers, therefore, have no clear legal right or assured way to attend shareholder meetings in Singapore.

11. One solution sometimes proffered is that fund managers should simply buy a few shares in the name of an employee and attend meetings on that basis (since the names of retail investors in Singapore are on the shareholder registers of companies

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through the central depository). But this is unsatisfactory for two reasons. First, most well-governed fund managers have rules against staff members owning shares of companies in their portfolio (ie, to avoid problems of conflict of interest and possible insider trading). Second, this would not be of any use to fund managers who wished to attend a meeting in their name, vote the shares in their portfolio, and represent their full holding in a company. Fund managers who wanted to act in a fiduciary capacity on behalf of their clients would not want to attend shareholder meetings in a reduced capacity, nor should they have to.

12. We believe that this could be an impediment to the Government's intention to promote Singapore as a world-class financial centre. Investors who buy shares in companies increasingly expect to be able to exercise the ownership interests attached to those shares.

13. We are also of the view that were Singapore to amend its company law and listing rules to resolve these issues, its status as one of Asia's leading markets would be strengthened.

Why use both proxy cards?

Paragraph 10.c above noted that custodian banks in Singapore typically use both proxy cards when casting votes, while 10.d highlighted a different practice by one bank. What is the rationale for using two?

The main advantage of using both cards is that if a vote is taken on a show of hands, as it normally is in Singapore, the use of two cards will ensure that votes Against are represented. If a bank aggregates all votes, For and Against, on single card and then appoints, say, the chairman of the meeting as its proxy, there is no guarantee that votes Against will be cast. This is because the chairman of the meeting will normally want to vote in favour of all resolutions. Although some chairmen will vote "both ways" at a meeting, thus representing all the voting instructions he has received, the majority view of lawyers and professional advisors in Singapore is that this practice is technically illegal. Meanwhile, other chairman, faced with conflicting voting instructions, simply do not vote any of the proxies in their hand.

Banks who use both proxy will aggregate all votes For on one card and all votes Against on the second card. They will normally give the first card to the chairman of a meeting and use the second to send a staff member to the meeting. In this way, when a vote is taken on show of hands, the staff member will raise his or her hand to vote Against.

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The Companies Act

14. As noted in Paragraph 4, it is important to point out that the Singapore Companies Act (Chapter 50) does not mandate the two-proxy card limit.

15. The Companies Act, under Section 181(1), states that:

> "A member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint another person or persons, whether a member or not, as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting, but unless the articles otherwise provide —
>
> (a) a proxy shall not be entitled to vote except on a poll;
>
> (b) a member shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and
>
> (c) where a member appoints two proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.
>
> (*Underlining added*.)

16. Hence, companies *may* amend their Articles to allow for the appointment of more than two proxies, should they decide to do so.

17. Furthermore, the Singapore Code of Corporate Governance (revised in July 2005) encourages issuers to make such amendments (in Commentary 15.4):

> **15.4** Companies are encouraged to amend their Articles of Association to avoid imposing a limit on the number of proxies for nominee companies so that shareholders who hold shares through nominees can attend AGMs as proxies.
>
> (*Underlining added.*)
>
> However, few, if any, issuers have made these amendments to date.

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SECTION 2: SOLUTIONS AND RECOMMENDATIONS

18. We believe that the fairest and most effective long-term solution to the two-proxy standard is to amend both the Companies Act and the Listing Manual of the Singapore Stock Exchange (SGX) to require companies to allow their members to appoint multiple proxies to shareholder meetings. We would like to emphasise that our proposed amendment to the Companies Act (see paragraph 19) is intended to accord this right only to nominee companies of local custodian banks, or other companies that provide custodial services to investors, since they are precisely the group most affected by the two-proxy limit. We are not proposing that other members of companies, namely individual investors and corporate shareholders, should be given the right to appoint multiple proxies since we can see no reason for them to do so. The two-proxy limit in their case is adequate and fair.

19. Our proposed amendment to Section 181 of the Companies Act (Chapter 50), which we suggest be inserted as a new Section 181(1A), is as follows:

(1) Without prejudice to the generality of Section 181, any banking corporation, any wholly-owned subsidiary of a banking corporation whose business includes the provision of nominee services, any person holding a capital markets services licence to provide custodial services for securities under the Securities and Futures Act may, if it is a member of a company, authorize such person or persons as it thinks fit to act as its proxy or proxies, as the case may be, at any meeting of the company or at any meeting of any class of members of the company provided that, if more than one person is so authorized, the authorization shall specify the number and class of shares in respect of which each such person is so authorized.

(2) A person or persons authorized under section (1) shall be entitled to exercise the same powers in the meeting as any member of the company, namely to vote on a show of hands as well as a poll, to call for a poll, and to ask questions.

(3) This section shall supersede, with regard to the entities listed under section (1), any clause or clauses in the Articles of Association of any company that limits the number of proxies that may be appointed by a member to no more than two.

20. Following an amendment to the Companies Act, we propose that the Listing Manual of the Singapore Stock Exchange be amended to require all issuers in Singapore to amend their Articles of Association to allow for multiple proxies. Amending the Listing Manual is necessary because the Companies Act only applies to issuers

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incorporated in Singapore, not to the increasing number of issuers incorporated in overseas jurisdictions such as China or Bermuda.

Singapore's Policy on Shareholder Participation

21. The arguments laid out above are fully in accord with Singapore's policy of encouraging greater shareholder participation in corporate governance generally. The Singapore Code of Corporate Governance (in both 2001 and 2005 issuances) states:

> "Companies should encourage greater shareholder participation at AGMs, and allow shareholders the opportunity to communicate their views on various matters affecting the company." (Principle 15)

22. In 2004, Mr J. Y. Pillay, Chairman of Singapore Exchange, said in a speech at a conference in Singapore that institutional investors:

> "... express their views firmly, but they do not meddle. They generally know their rights and their constraints. Should they sense trouble lurking around the corner, they alas tend to vote with their feet, which is a pity since, with their experience, they could make a real difference with a more forceful stance at general meetings."[16]

23. More recently, a report titled "Improving the Implementation of Corporate Governance Practices in Singapore", written by Mak Yuen Teen, former Associate Professor, NUS Business School, explicitly recommended that shareholder activism by institutional investors be encouraged and promoted. A paucity of shareholder engagement has led, the author contends, to a lack of market enforcement of the "comply or explain" approach to corporate governance in Singapore. To counter this, the report made the following recommendation (page 11):

> "Barriers to shareholder engagement, including voting proxies and attending meetings, should be further studied with a view to overcoming or reducing them."

24. We believe, therefore, that our submission is timely and echoes the contents of Professor Mak's report to the Monetary Authority of Singapore.

[16] Opening Remarks by J Y Pillay, Chairman of Singapore Exchange, at the EPC's 5th Annual Corporate Governance Conference, February 11, 2004. Source: http://www.ccdg.gov.sg/attachments/2004-02-11%20EPC%205th%20annual%20corporate%20governance%20conference.doc

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CONCLUDING REMARKS

25. As this submission shows, the two-proxy rule in Singapore (as it relates to the nominee companies of local custodian banks) differs not only from the legal norm or market practice in other major financial markets with which Singapore competes (see Appendix 1 below), it appears to be incongruent with Singapore's policy of encouraging the active participation of institutional and other investors in shareholder meetings.

26. Our recommendation for multiple proxies is in line with those in Professor Mak Yuen Teen's report to the Monetary Authority of Singapore regarding improving the implementation of corporate governance best practices.

27. We believe that allowing the appointment of multiple proxies to shareholder meetings would only enhance Singapore's reputation as an international financial centre and as one of the leading markets in Asia for corporate governance. By restricting this right to companies that provide custodial services (or their nominees), we further believe that it is possible to design an outcome that benefits institutional shareholders, takes into account the legitimate concerns of issuers, and resolves a problem that is growing in importance.

28. In view of the above, we recommend that the relevant regulatory bodies in Singapore adopt our proposal of allowing multiple proxies as highlighted in paragraph 19 via an amendment to the Companies Act and the Listing Manual.

End.

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Appendix 1: Law and Practice in Other Major Markets

As part of this submission we have researched the relevant company law provisions in key markets to which Singapore could be compared, namely the United Kingdom, Australia, and Hong Kong.

The UK is a particular point of interest here, since it recently amended its company law to strengthen the rights of investors, a central plank of which was the nomination of multiple proxies by legal owners. The UK, therefore, serves as a useful benchmark, having gone through significant consultation on the subject. We believe that should Singapore follow the amendments made by the UK on this issue, it would enhance its status as a corporate governance leader, both regionally and internationally.

References in **bold** are to specific clauses in respective company laws.

Reference is made to:

a. United Kingdom: Companies Act 2006
b. Australia: Corporations Act 2001
c. Hong Kong: Companies Ordinance (as amended, 1997)

United Kingdom

1. The UK recently amended the Companies Act (2006) so as to allow for the appointment of multiple proxies. The Act now allows a member to appoint multiple proxies, on the proviso that each proxy is appointed to exercise the rights attached to a specific portion of shares. (**s324)**

2. Furthermore, each proxy present in a meeting has one vote on a show of hands, as well as the right to speak and vote at a meeting (**s284**, **s324**). Previously, proxies did not have these rights under UK company law: legally speaking, they could only vote on a poll.

3. In essence, the new rule requires that a subdivision of holdings be stated, whereby the registered shareholder nominates the proxy to act upon a predetermined percentage of its total holding. The Companies Act facilitates this, stating explicitly that a member need not use all his votes or cast all the votes he uses in the same way (**s322**).

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4. This amendment follows a wide ranging review of company law in the UK, including specific reference to the increased focus on institutional investor engagement. One aspect of this review was the establishment of a committee (led by Paul Myners) into voting. The subsequent report[17] (published January 2004) to the Shareholder Voting Working Group[18] recommended two things:

   a. *First*, that the powers of proxies be strengthened so that they can legally speak at meetings and vote on a show of hands as well as a poll.

   b. *Second*, that the government amends the company law to clarify the position of "corporate representatives", so that multiple corporate representatives are allowed.

   "My recommendation in this regard is that corporate members should be allowed to appoint one corporate representative for a distinct number of shares held giving that corporate representative the power to attend, speak at and vote on a poll in respect of that defined number of shares."

   Paul Myners, "A Review of the Impediments to Voting UK shares"
   Report by Paul Myners to the Shareholder Voting Working Group
   January 2004

5. Following the report, and in many cases prior to the amendment of the Companies Act in 2006, a significant number of companies amended their Articles to reflect these suggestions. The following examples of language used in meeting notice documents indicates this:

   "A shareholder entitled to attend and vote is entitled to appoint a proxy or proxies to vote on his or her behalf".
   BT Group PLC, Annual Review & Notice of Meeting 2007

   "As a member (meaning a registered shareholder), you may appoint a proxy or proxies to attend, speak and vote at the AGM on your behalf".
   BP PLC, Notice of BP Annual General Meeting 2007

[17] A copy of the report is available at:
http://www.jpmorgan.com/pdfdoc/jpmorgan/investorservices/doc/mynersreport2004.pdf
[18] Set up by the Department of Trade and Industry (DTI)

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"A member entitled to attend and vote at the Meeting is entitled to appoint one or more proxies to attend and vote instead of the member".
HSBC Holdings PLC, Notice of Annual General Meeting 2007

"A shareholder entitled to attend and vote at the Annual General Meeting is entitled to appoint one or more proxies to attend and, on a poll, vote instead of him".
J Sainsbury PLC, Chairman's letter to shareholders and Notice of Annual General Meeting2007

"If you are an ordinary shareholder you may attend and vote at the AGM or choose one or more other people (proxies) to attend the AGM and vote for you".
Standard Chartered PLC, Notice of Annual General Meeting 2007

6. More importantly, and even prior to the Myners report, the *de facto* market practice in the UK was that listed companies (at least the larger ones) exercised a fair degree of flexibility and allowed institutional investors to attend meetings, to speak and to ask questions (even though such investors did not generally vote their own shares at the meeting, since this was still delegated to their custodian).[19]

Australia

7. Company law in Australia is similar to Singapore in that it limits the legal owners of shares (also the custodian banks) to two proxy cards (**s249x(3)**).

8. The Corporations Act (2001) facilitates this, stating explicitly that a person voting on a poll may cast votes in different ways (i.e. for/against) resolutions (**s250h)**.

9. Moreover, the Corporations Act (2001) states that the proxy may speak, vote, and participate in a demand for a poll at a meeting (**s249y)**.[20]

10. Reflecting our suggested amendment to s181(1)(c) of the Companies Act in Singapore, the Australian Corporations Act (2001) states that if the division of votes between nominated proxies is not specified, each proxy can exercise half of the member's votes (**s249x)**

[19] Report by Paul Myners to the Shareholder Voting Working Group, "Review of the Impediments to Voting UK Shares", January 2004, p27.
[20] However, the Corporations Act states that a company's constitution may prohibit voting on a show of hands;

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11. Market practice, however, mirrors that of the UK before the recent amendments to the company law (see above). As part of our research for this submission we have spoken to a number of company secretaries in Australia and all indicated that listed companies were normally willing to allow investors into meetings, not only to observe but also to ask questions. This is not a right of investors under the Corporations Act, but is a courtesy extended to investors by the majority of companies, especially the larger ones. These companies are comfortable about admitting shareholders on a guest basis because they know who they are (many companies do an "ownership sweep" every six months to understand who are the beneficial owners underlying the nominee accounts on their shareholder registers). Listed companies in Australia have this right—which is quite unusual on a regional basis—under **s672A and 672B** of the Corporations Act 2001.

Hong Kong

12. Hong Kong added a new section to its Companies Ordinance in 1992, around the time that the central clearing system was established, to allow for the appointment of multiple proxies at shareholder meetings. Local custodian banks in Hong Kong (or their nominee companies) are not the legal owner of shares, but are rather participants in the Central Clearing and Settlement System (CCASS). CCASS is operated by the Hong Kong Securities Clearing Company Ltd (HKSCC), which also manages a common nominee company, HKSCC Nominees Ltd, in whose name most share certificates are held (for credit into the stock accounts of CCASS participants).

13. If a fund manager wishes to attend a company meeting, its custodian bank will instruct HKSCC/CCASS to appoint one or more proxies. Legally, the common nominee is empowered to appoint multiple corporate representatives or proxies to "attend, vote and act at general meetings as if they were individual members, including the right of speech and the right to vote on show of hands and on poll".[21]

14. The specific wording in the Companies Ordinance (**Cap32, s115 (1A) & (3)**) is as follows:

    (1A) A recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571) may, if it or its nominee is a member of a company, authorize such person or persons as it thinks fit

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to act as its representative or representatives, as the case may be, at any meeting of the company or at any meeting of any class of members of the company provided that, if more than one person is so authorized, the authorization shall specify the number and class of shares in respect of which each such person is so authorized.

And:

(3) A person authorized under subsection (1A) shall be entitled to exercise the same powers on behalf of the recognized clearing house (or its nominee) which he represents as that clearing house (or its nominee) could exercise if it were an individual shareholder of the company.

(Underlining added)

The language of section 115 makes clear that HKSCC or its nominee may appoint multiple proxies to shareholder meetings in Hong Kong. It also shows that such a right is restricted to a clearing company or its nominee. Other corporate shareholders and individual investors do not enjoy the same right—which accords with our proposal.

[21] Hong Kong Exchanges, "Guide to Eligibility and Admission of Securities to the Central Clearing and Settlement System", p7.

Appendix 2: Questions & Answers

In the course of our work on this issue in recent years we have spoken with a number of regulatory bodies, issuers, custodian banks, lawyers and others in Singapore. Several questions and concerns are commonly raised and we would like to address them here at the outset.

Question: Would it not be easier to ask issuers simply to invite fund managers to attend shareholder meetings as observers (while leaving the voting power in the hands of local custodian banks)? This should be workable, the argument goes, since listed companies typically know many of their institutional investors on a personal basis (since they meet them during the year).

Answer: Although this is a useful compromise to the extent that it would allow fund managers into meetings, it would not give them any of the legal rights of a member. They could not vote their shares, they could not call for a poll, and they could not ask questions. It is unlikely that such a compromise would be satisfactory to many fund managers. Moreover, there is no guarantee that all issuers, or even many issuers, would agree to follow this practice. And such a solution would be unfair to those investors whom issuers do not know personally, such as investors new to the company.

Question: Would it not be possible to encourage listed companies to amend their Articles voluntarily?

Answer: This recommendation is already in place and is contained within Principle 15 of the revised Singapore Code of Corporate Governance (see paragraph 17 of this document). ACGA strongly supported this addition to the Code when it was released for consultation in late 2004 (see our submission to the Council on Corporate Disclosure and Governance in February 2005).[22] While such a recommendation is to be applauded, we earlier noted (paragraph 17) that we knew of few companies (if any) that had amended their Articles in this way to date.

[22] For a copy of the ACGA submission on the draft revised code, go to the following page on our website: http://www.acga-asia.org/content.cfm?SITE_CONTENT_TYPE_ID=12&COUNTRY_ID=276

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Question: Will your proposed amendments to the Companies Act and the Listing Manual result in large numbers of proxies attending meetings (and possibly disrupting them)?

Answer: We believe that such a scenario is extremely unlikely if not impossible, primarily because we are seeking to restrict the right to appoint multiple proxies to nominee companies of local custodian banks or other companies that are licensed to provide custodial services. Other corporate shareholders and individual members would continue to be limited to two proxies each per meeting. The chances, therefore, of meetings being overwhelmed by hundreds of extra participants is almost nil—since the universe of fund managers in Singapore is limited and only a portion of them would be likely to attend meetings. The scenario most feared—that of an individual investor or activist shareholder appointing dozens or hundreds of proxies to a single meeting—is not possible under our proposal.

Question: Isn't it unfair to restrict the right to appoint multiple proxies to providers of custodial services? Shouldn't retail shareholders also have the same right?

Answer: As noted above in paragraph 18, our view is that the two-proxy limit is sufficient and fair for individual shareholders. It is hard to envisage a scenario where they would need to appoint more than two. Moreover, our proposal follows the law in Hong Kong where only "a recognized clearing house or its nominees" is permitted to appoint "one or more" proxies (i.e. multiple proxies). In Hong Kong, individual and corporate shareholders are restricted to two proxies.

Question: Why is there a need to amend the Companies Act as well as the Listing Manual?

Answer: This is an issue that deals with fundamental aspects of shareholder rights. Institutional investors, if not the beneficial owners of shares, act as agents for the beneficial owners (eg, pension funds, endowments, individual investors). It is quite common for beneficial owners to delegate to their fund managers the power to vote and attend company meetings on their behalf. Since it is usually impossible and impractical for beneficial owners to carry out these tasks—as they are often based overseas and lack both the resources and knowledge to vote and attend meetings—the most sensible solution is for the fund manager on the ground to carry out these tasks. Given that attending shareholder meetings is a basic right accorded to shareholders under company law, it is appropriate that the Companies Act in Singapore be amended to allow for beneficial owners whose shares are held in trust by local custodian banks to be properly represented at company

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meetings by their external fund managers. If such fund managers are not permitted access to company meetings, this effectively disenfranchises the rights of a large number of beneficial owners.

A second reason is that the right to appoint multiple proxies is now enshrined in company law in other major markets, including Hong Kong and the UK (see Appendix 1 above).

Question: Would it be enough to amend just the listing rules to resolve this issue?

Answer: In fact, this solution has already been examined, as we understand, and found to be unworkable. SGX investigated the possibility of amending its Listing Manual to require multiple proxies, but came to the conclusion that this would be extremely difficult without an amendment to the Companies Act.

End.

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