

Shareholder Governance: Turning Risk Into Opportunity

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Proxy Voting

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EU Shareholder Rights Directive

- Set of common requirement standards to facilitate the exercise of shareholders' rights at general meetings of listed companies with the intent of removing obstacles and challenges to voting
- Each Member State is able to regulate individual country legislation within these standard guidelines
- Areas of focus
 - information communicated within a certain timeframe
 - ability to put items on the agenda
 - ask questions of companies and receive answers
 - participate and vote at the general meetings
 - publication of voting results
- Entered into force on the 3rd of August 2007
 - Member States must transpose to national law by August 2009
 - Some countries still making changes

EU Shareholder Rights Directive (Cont'd)

- What to expect
 - Notice and details are required at least 21 days prior to general meeting dates; details to include information relating to location, proposed agenda, procedure for voting (including electronic process) and disclosure of the record date
 - Share blocking abolished and introduction of record date entitlement fixing not to exceed 30 days prior to meeting date
 - Removal of obstacles to electronic participation
 - Right to ask questions related to items on the meeting agenda and receive an answer from the company
 - Removal of restrictions regarding proxy appointment including permitting appointment of proxy by electronic means
 - Internet publication of meeting results no later than 15 days following the meeting

More information regarding the Directive is available at: http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm

Joint Working Group – General Meetings

- The Market Standards for General Meetings (MSGM) intend to provide
 - “streamlined communication and operational processes so as to ensure that information from the Issuer can reach the Shareholder – and vice versa – in a timely and cost efficient manner”
- 4th of December 2009 workshop hosted by EuropeanIssuers
 - Set of market standards for cross-border communications and operations presented
- MSGMs incorporate EU SRD concept, but go further to:
 - Define the sequence of dates
 - Define how to communicate the entitled position
 - Define the content of entitled position
- EuropeanIssuers hope that the SRD and MSGM together will increase foreign investor participation in general meetings
- Standards are built on ISO20022 messaging

SWIFT ISO20022 Messages

Function of Message	MT ISO 15022	MX – UNIFI messages ISO 20022	
Meeting Announcement or Modification	MT564 with event type CAEV = MEET, CMET, XMET, or OMET (or MT568/599)	MeetingNotification seev.001.001.02	MNOT
Cancellation of Meeting or Meeting Notification	MT564	Meeting Cancellation seev.002.001.02	MCAN
Confirmation of Entitlement	MT564	MeetingEntitlementNotification seev.003.001.02	MENT
Voting Instruction (Incl Voting Registration, Meeting Attendance, Appointing Proxy, ...)	MT565	MeetingInstruction seev.004.001.02	MINX
Cancellation of Voting Instruction	MT565	MeetingInstructionCancellationRequest seev.005.001.02	INXC
Status on Voting Instruction	MT567	MeetingInstructionStatus seev.006.001.02	INXS
Confirmation of vote Execution	n/a (nominal use of MT568/599)	MeetingVoteExecutionConfirmation seev.007.001.02	NEW VOTC
Results of Meeting	n/a (nominal use of MT568/599)	MeetingResultDissemination seev.008.001.02	NEW MRES

ISO20022 Improvements

Straight-Through-Processing

- All fields defined – no narrative

Transparency

- Supports provision of instruction status, meeting results and confirmations of vote execution where available

Market Coverage

- Specific market requirements addressed within standard

Extended Voting Period

- Opportunity exists to remove days in processing due to enhanced straight-through-processing

Share Blocking

- Definition: “Subjecting the rights of an end investor to sell or otherwise transfer its shares to any restriction to which they are not subject to at other times”
- Approximately 20 markets have some type of blocking in place when shares are voted
- Voting percentages are much lower in blocking markets
 - Some institutions elect to forgo voting in blocking markets so as not to impact trading
 - 36% average against 64% average in non-blocking markets
 - When France eliminated blocking vote percentages rose from 30% to 54% in one year
- EU SRD abolishes share blocking in EU Markets
 - Sub custodian operational practice sometimes continue the practice of “flagging” or “earmarking” shares
 - While shares can be released to settle a trade, the vote must be rescinded

Vote Confirmation

- Definition: Acceptance of a vote instruction and the acknowledgement that the shares corresponding to the instruction have been counted and will be represented at the shareholder meeting
- Need cooperation of all parties in the chain of intermediaries for true confirmation
- Broadridge platform changes include providing Reported and Accepted/Rejected statuses
- Broadridge has been providing educational sessions with various industry committees regarding Vote Confirmation
 - SEC
 - NYSE
 - Council of Institutional Investors (CII)
 - Society of Corporate Secretaries and Governance Professionals
 - Transfer Agents
- Broadridge is working with Yale Millstein Center to host an industry session

Securities Class Actions

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What is the connection with Corporate Governance?

- Institutional investors are under pressure to demonstrate consistent oversight and engagement with the companies in which they invest. Political demands for more shareholder engagement, new legislation and the worldwide spread of securities class action suits – all combine to make shareholder governance a pressing issue right now
- Asset managers and institutional investors also have a responsibility to ensure that their clients and funds are collecting any and all monies to which they are entitled. As securities class actions grow in volume and settlement size, this task will become more important and visible
- The implications of not filing and collecting payouts could be financial and reputational. An example is a lawsuit in 2005 in which 40 US mutual fund managers were sued for more than US\$2 billion in unclaimed securities class action settlements, plus punitive damages, commissions and fees

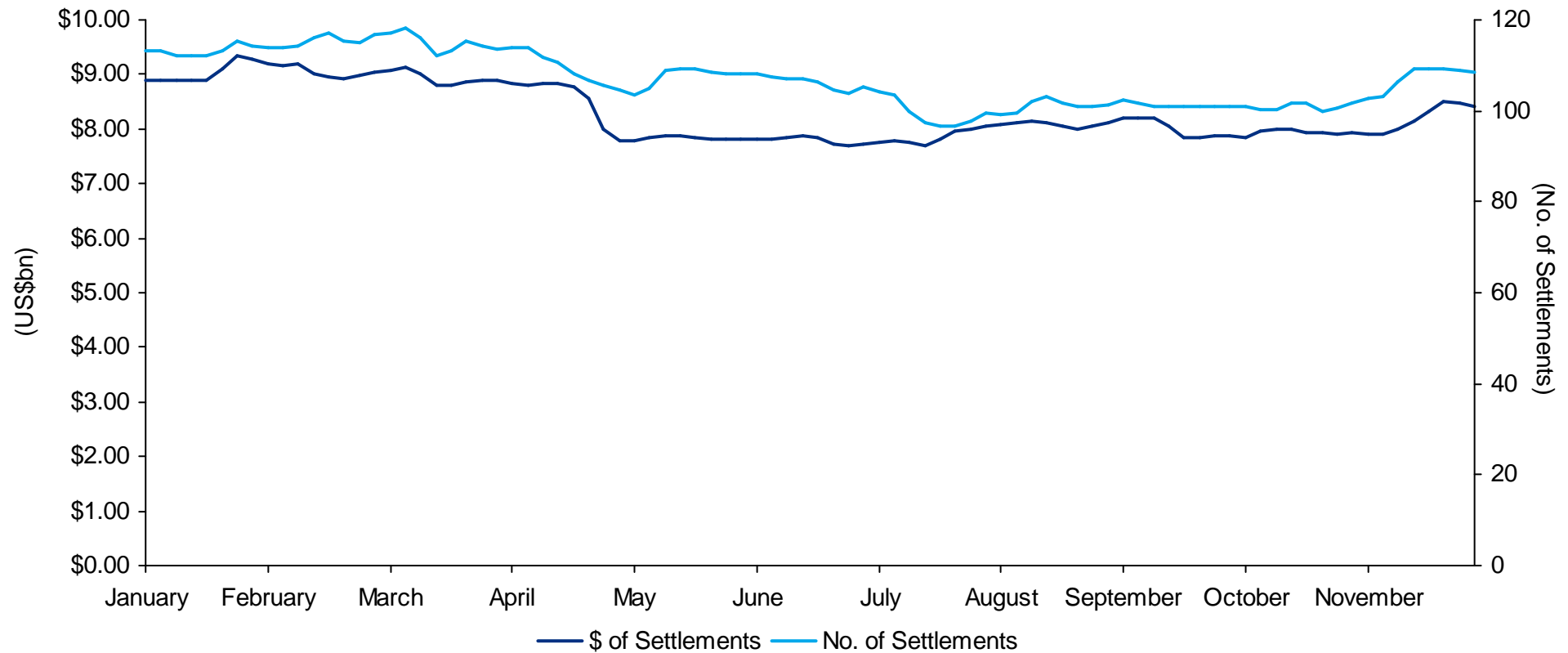
Challenges

- One of the biggest corporate governance challenges is in tracking and filing for class action settlements and pursuing claims. Every year, there are literally thousands of notices relating to class actions, most of them in the US. They can issue from courts, law firms or claims administrators - or appear in a variety of publications. The number of different sources runs into the hundreds
- Even when a class action settlement is settled, investors face a dual challenge in making a valid claim. They must pull together a complete transaction history in the relevant security or securities over the time period concerned and they must make a filing in accordance with the correct procedure

US Volumes and Trends

“Between 2000 and 2007, almost \$12bn in settlements, to which shareholders were entitled, was not reclaimed. Around \$3.6bn of this total can be attributed to European investors, and almost \$1.5bn to investors in the Far East.”

2009 SCAS Settlement Pipeline



US Volumes and Trends (Cont'd)

“As of Q4 2009, over \$8 billion in class action settlements and SEC civil penalties are awaiting disbursement to investors.”

- “Institutional investors have a fiduciary responsibility to monitor securities class action suits and file claims on behalf of their clients.”
- Studies show that less than 50% of institutional investors file claims for settlements to be paid in securities class action judgments. In other words, investors are leaving literally hundreds of millions of settlement dollars on the table.”
- “With scrutiny expected to continue in this area, institutional investors must manage their risks in this area and demonstrate their commitment to recouping every dollar to which their clients are entitled.”

Quotes from RiskMetrics Group (Riskmetrics.com), our notification vendor

Impact on the Rest of the World – Legal vs. Practical Issues

Countries that have been Mentioned in Connection with Class Actions can be Grouped into Three Types

- Countries that allow Class Actions or something very like them
 - Canada
 - Netherlands, Germany
 - Australia (opt in)
 - Taiwan (local representation in local language)
 - Israel
- Countries that “in theory” allow Class Actions
 - Denmark, Norway, Sweden
 - Italy [most problematic]
 - South Korea
 - Hong Kong
- Class actions not allowed, but legislation pending (or rumors heard)
 - Legislation Pending
 - France
 - India
 - “Rumors”
 - England

The practical challenges are still vague and daunting. As there are no standard practices in the US, each country is likely to determine their processes independently.

Industry groups

Financial Services Industry Groups on Securities Class Actions

- The Bank Depository User Group (BDUG) has formed a Focus Group (over 40 institutions and over 60 individuals participate) on Class Actions. It is chaired by Citi (Jane Kenyon):
 - There are no ‘standard best practices’ in Class Actions. The lawyers, courts, Claims Administrators, Investment Managers, Banks, Custodians all act independently. The Focus Group has developed standards for:
 - Announcements
 - Proof of Claims Filings
 - Payment process
 - Other Rules and Guidelines
- The BDUG task force is working with Professor McGovern who influences lawyers, judges and claims administrators and will participate in a conference on Securities Class actions in March.
- The Association of Global Custodians (AGC) Class Actions Task Force focuses on the custodians’ role in international class actions

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Citi works with its clients in greenhouse gas intensive industries to evaluate emerging risks from climate change and, where appropriate, to mitigate those risks.



efficiency, renewable energy & mitigation

