"Improving the exercise of shareholder voting rights at general meetings in France"

Report Working Group AMF
Chaired By Yves Mansion, AMF Board Member

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SUMMARY

[1] As of 31 December 2003, non-residents' share in CAC 40 companies' capital stood at 44%, after growing steadily for five years. According to estimates by the Banque de France, the geographical breakdown of CAC 40 shareholders was: 17.6% in the euro area, 6.5% in the United Kingdom and 13.1% in the United States.

INTRODUCTION

Every spring, as companies hold their annual general meetings, the issue of “shareholder democracy” is debated in the business press and at corporate governance conferences. Although the merits of the expression “shareholder democracy” may be arguable, the breadth of the debate shows that individual and institutional investors are no longer interested solely in the economic value of their shares; they place increasing importance on the right that share ownership gives them to influence corporate strategy and management.

Recent French legislation, such as the New Economic Regulations Act and the Financial Security Act, has been aimed at encouraging shareholders to exercise their voting rights. And, in the wake of surveys conducted by the OECD[2] and in various Member States of the European Union[3], the European Commission initiated two consultations on improving the efficiency of cross-border voting by shareholders[4].

In France, voting at shareholder general meetings is conducted according to specific laws and regulations aimed at ensuring the quality and legal certainty of the decisions taken. These concerns are particularly important for general meetings of companies incorporated under French law, because, contrary to the provisions of company law in other European countries or the United States, shareholder general meetings in France have extensive decision-making powers; they are not held merely to provide information to shareholders. But this strict legal and regulatory framework may deter shareholders from actually voting, which means that turnout is low and that decisions made at general meetings are hard to understand.

As part of its investor protection mandate, France's securities regulator, the Autorité des Marchés Financiers (AMF), wants to encourage shareholders to exercise their voting rights at general meetings so that, with time, these rights are no longer theoretical but real.

This is the goal of the working group set up by the AMF and chaired by Yves Mansion. The group members represent various stakeholders, including listed companies, shareholders and shareholders’ associations, investors and their industry federations, academics, custodian and agent banks, analysts and specialised service providers.

Not wishing to address matters such as the importance and nature of the resolutions submitted to general meetings, the working group restricted the scope of its tasks. Its approach was resolutely pragmatic. It started by observing the current situation of general meetings in France and noted that shareholder attendance was already rising rapidly.

It then analysed each step in the voting process, before, during and after general meetings. The group tried to identify the obstacles that could prevent, delay or impede voting by individual and institutional shareholders.

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[2] Principles of Corporate Governance, April 2004, OECD.
[3] Report by Paul Myners “Review of the impediments to voting UK shares,” January 2004; Report by Japp Winter on the modernisation of company law in Europe, 2001.
[4] "Fostering an Appropriate Regime for Shareholder Rights", September 2004 and May 2005.

Then, building on the work done since 1999 by industry associations and seeking a consensus among the stakeholders, the group made a number of recommendations and proposals for reforms to remove or mitigate each of these obstacles.

In sum, this report is not an essay on shareholders' voting rights. Its sole ambition is to serve as a guide for current and future discussions by the various regulatory and industry bodies in France and Europe that share the same determination, namely to increase the intensity and quality of shareholders' involvement in the day-to-day activities of listed companies.

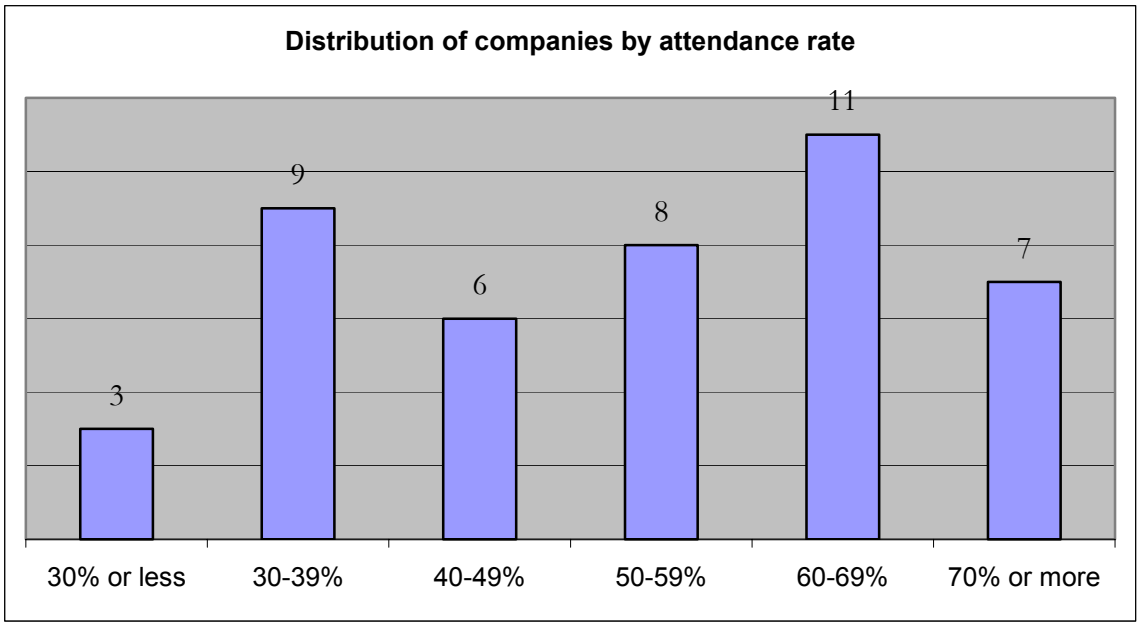
Current situation

1/ ATTENDANCE AT GENERAL MEETINGS IS COMPARABLE TO THAT IN OTHER MAJOR EUROPEAN MARKETS.

There is much impassioned debate about shareholders' attendance at general meetings, even though there are few hard statistics on attendance in France.

The Autorité des Marchés Financiers (AMF) conducted a joint survey with the French Association of Private Companies (AFEP) and the ESSEC business school to collect statistical data (Findings in Appendix 5).

Five years ago, the percentage of votes cast stood at approximately 40%, but in 2004, the average for the 44 companies in the SBF120 index surveyed stood at **53%** (47% for companies in the CAC 40 index) of shares and 60% of voting rights.



A comparison with voting patterns in other countries shows that the percentage of votes cast in French companies is similar to those seen in Germany and the United Kingdom. The percentages stand at 47% for companies in Germany's DAX index[5] and 57% for companies in London's FTSE 250 index[6].

In the United States and Japan, the percentages are much higher, at 80% and 83%, respectively[7]. The explanations for these high attendance rates lie in legislation and market practices. For example, in the United States, the law provides incentives for pension funds and mutual funds to cast their votes and it requires companies to finance the voting process, which means financial intermediaries have an incentive to collect voting forms. It should also be stressed that securities account agreements stipulate that votes must be cast by the financial intermediary itself, which explains the high percentage of voting. In Japan, most companies hold their

[5] Source: Proxinvest Report "*Les assemblées générales 2004 des sociétés cotées*," 2005.
[6] Source: Manifest survey of FTSE 250 companies.
[7] Source: OECD – Corporate Governance – 2004.

general meetings during the same week in June[8]. This has led financial intermediaries to implement special procedures, such as the use of pre-established, standardised and systematised votes for all general meetings in order to meet voting deadlines.

2/ MEETINGS ARE OFTEN HELD ON SECOND CALL

Many companies with a large free float have problems reaching a quorum at first call for their general meeting[9].

Depending on the resolutions being tabled, the general meeting will either be an ordinary meeting or an extraordinary meeting, or else a combined ordinary and extraordinary meeting, which is the most common form for large listed companies. The legally required quorum is different depending on the type of meeting being held and it is higher for meetings held on first call.

This means that, in practice, general meetings are frequently held on second call, when the quorum is one quarter of the shares[10] for an extraordinary general meeting and there is no quorum for an ordinary general meeting. In 2005, fully 51%[11] of the CAC 40 companies surveyed held their general meetings on second call.

Several explanations have been given for this practice: the notice period is too short, the quorum for meetings on first call is too high, and the process though which voting documentation is disseminated through the banking network is not smooth enough. This situation causes problems for companies and shareholders alike, and proposals to lower legal quorum requirements have been incorporated into the provisions of the "Breton" Bill[12].

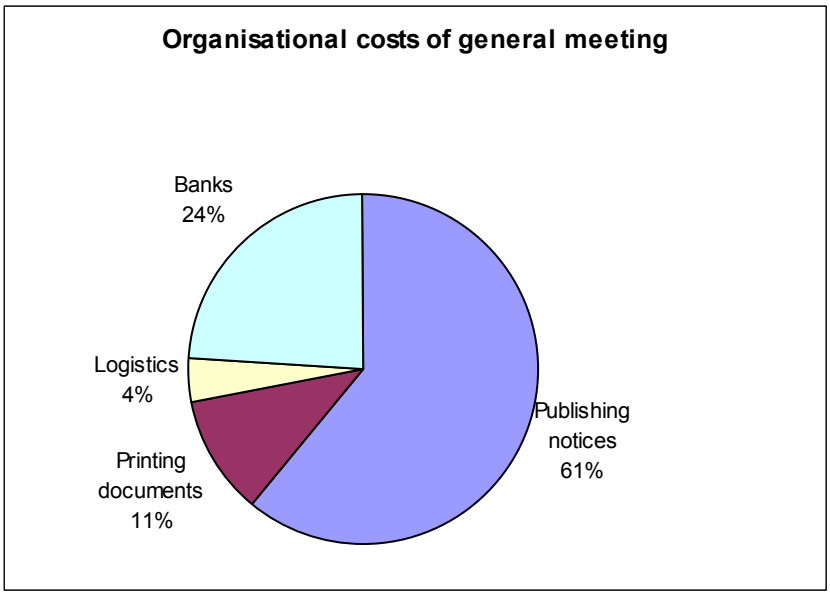
Under these provisions, the quorum for an extraordinary general meeting would be reduced to one quarter of the voting shares after first call and one fifth of the voting shares[13] after second call. The quorum for an ordinary general meeting held on first call would be lowered to one fifth of the voting shares and there would be no quorum[14] for a meeting held on second call.

3/ GENERAL MEETINGS ARE COSTLY

The cost of holding a general meeting for widely held companies can run between EUR 85,000 and EUR 2.5 million[15].

An AMF study on the breakdown of the costs[16] shows that voting by holders of bearer securities entails substantial costs for legal notices and press advertising, as well as mobilising shareholders through banking networks that have to be paid for this service.

[8] In 2005, 1,600 Japanese general meetings out of 2,300 were held on 29 June 2005.
[9] For more comprehensive statistics, see Appendix 5.
[10] Article L. 225-96 of the Commercial Code.
[11] Sources: AMF and SEITOSEI, June 2005.
[12] Economic Confidence and Modernisation Act, published in the *Journal Officiel* on 27 July 2005.
[13] Future second paragraph of Article L.225-96 of the Commercial Code.
[14] Future Article L. 225-98 of the Commercial Code.
[15] CAC 40 sample.
[16] Thirty-six companies in the SBF 120 index agreed to answer the questionnaire.



Source: AMF SBF 120 sample – 2004 AGMs

4/ INSTITUTIONAL INVESTORS ARE PLAYING AN INCREASINGLY ACTIVE ROLE AT GENERAL MEETINGS

Major changes were seen at general meetings in France in 2004 and 2005 as shareholder activism grew much stronger. Four major trends were seen in shareholder participation:

- The number of shareholders' questions asked at general meetings remained high at 1,092 in 2005 (as opposed to 1,075 in 2004[17]), with a particularly sharp increase in questions dealing with the social accountability of companies, which rose from 369 in 2004 to 438 in 2005.

- Without reaching the levels seen in the United States, the percentage of resolutions that are challenged has increased steadily in recent years, rising from 1.23% in 2001 to 3.80% in 2004[18]. As of 20 June 2005, 19 of the resolutions put to a vote have been rejected by shareholders. Of the 19, 11 were proposed by the board of directors and eight were proposed by others, such as employees, shareholders' groups and fund managers[19].

- The most remarkable developments in 2005 occurred in voting patterns for management companies. Two new provisions in the laws and regulations had an impact on voting at general meetings. The Financial Security Act amended Article L. 533-4 of the Monetary and Financial Code with rules of conduct for portfolio management companies that stipulate that these companies must exercise the voting rights attached to the securities held by the collective investment schemes under their management, "voting exclusively in the interest of the shareholders or unit holders in such collective investment schemes". These rules also require portfolio management companies to report on their "practices with regard to the exercise of voting rights under the requirements set out in the AMF General Regulation". The rules specifically state that when portfolio management companies do not exercise the voting rights, they must "explain their reasons for doing so to the shareholders or unit holders in collective investment schemes".

[17] 2005 CFIE Survey of a CAC 40 sample.
[18] Source: Proxinvest Report "*Les assemblées générales 2004 des sociétés cotées*," February 2005.
[19] 2005 CFIE Survey of a CAC 40 sample.

Articles 332-75 *et seq* of the AMF General Regulation stipulate that a portfolio management company must draw up a voting policy document setting out how it intends to exercise voting rights, as well as an annual report on its voting record.

The first reports on portfolio management companies' exercise of voting rights in 2005 will not be available until 2006, which means that we cannot measure the impact that the new rules have had so far on the exercise of voting rights[20].

Nonetheless, two consequences are already apparent. The first is the greater involvement of asset management companies, who sometimes play a decisive role in delicately balanced general meetings. The second is the trend in voting by portfolio management companies, which seem to be voting with growing independence, including several occasions where they have not voted the same way as their parent companies at general meetings.

When institutional investors, such as Fonds de Réserve des Retraites, sign mandates with portfolio management companies, they often set out the voting policy that their managers must follow beforehand. This is an increasingly common practice.

5/ FEW NON-RESIDENT SHAREHOLDERS[21] VOTE

According to a survey by ADP Investor Communications Services, Inc. (ADP-ICS)[22], actual voting by primarily non-resident management companies with access to ADP-ICS voting communication facilities averaged 19% of shares held[23] for 723 general meetings that ADP-ICS handled in France in 2004.
Foreign investors mention several reasons for why they do not vote more often. Listed by order of importance, they are as follows:

- the requirement that shares be blocked in order to vote at a general meeting is an administrative burden that forces non-resident investors to block their shares some two weeks before the general meeting is held, because of the time required for processing by the chain of intermediaries;
- the pervasiveness of paper documents is not conducive to the rapid exchange of information;
- the provisions in French companies' articles of association that restrict voting rights or grant double voting rights are seen as a French peculiarity that does not foster equal treatment of shareholders.

6/ BLOCK VOTING BY INDIVIDUAL SHAREHOLDERS IS BECOMING AN INSTITUTIONALISED PRACTICE

With principal shareholders holding stakes of one third or more in 48% of the companies in the SBF 120 index[24], block voting by other shareholders has developed through shareholders' associations[25]. Such groups have already demonstrated their influence at finely balanced general meetings.

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[20] The AMF stipulated the procedures for interpreting the General Regulation provisions on voting by management companies (AMF Communiqué of 2 June 2005).
[21] As of 31 December 2003, non-residents' share in CAC 40 companies' capital stood at 44%, after growing steadily for five years. According to estimates by the Banque de France, the geographical breakdown of CAC 40 shareholders was: 17.6% in the euro area, 6.5% in the United Kingdom and 13.1% in the United States.
[22] ADP-ICS is a company that specialises in disseminating information to shareholders and transmitting their votes. It acts as a proxy voting provider, according to the definition given in section 4 of the first part of this report.
[23] Out of 5,095,569,809 shares held.
[24] Source: Proxinvest Report "*Les assemblées générales 2004 des sociétés cotées*," February 2005.
[25] Article L. 225-120 of the Commercial Code.

But block voting is no longer the exclusive preserve of volunteer organisations, since specialised service firms called "proxy voting providers" are increasingly active in this area. These firms provide institutional investors and companies with industrial-scale services for conducting the voting process at general meetings.

However, proxy voting providers engage in different activities, which need to be explained:

- Disseminating information and transmitting voting instructions: a proxy voting provider informs shareholders about general meeting notices through an electronic interface. On the basis of this information, non-resident shareholders fill out their proxy forms online. These forms are then sent to the shareholders' bank, which is the global custodian, for signature and then sent to its local French correspondent. The same interface is used for resident shareholders, who then print out the proxy forms, sign them and send them to their banks.

- Professional voting advisers: over the last few years, a number of firms have entered the business of analysing the resolutions tabled at general meetings so that institutional investors and portfolio management companies can vote according to the recommendations of the advisers. Some voting advisers have built up strong reputations, which means their recommendations determine an increasing number of votes.

7/ THE FRENCH MARKET IS STILL STRONGLY ATTACHED TO THE PRINCIPLE THAT ONLY SHAREHOLDERS MAY VOTE.

French law gives sweeping powers to general meetings. Generally, these powers are broader than in other OECD countries, where, in some cases, all general meetings can only elect or remove members of the board of directors.

The working group's research and hearings revealed the attachment to the principle that "only shareholders may attend general meetings". This underlies many of the provisions on the conduct of general meetings in France, such as the one stipulating that proxies may be given only to another shareholder, the shareholder's spouse or the chair of the general meeting. In the words of one observer, "the general meeting is an assembly restricted to shareholders[26]."

Most stakeholders feel that this principle helps prevent general meetings from being diverted away from the shareholders' common interest. Others, who do not subscribe to this view, nevertheless acknowledge that they are not bothered by the share ownership requirement for voting at general meetings in France.

As we shall see later on, the technical repercussions of this principle, such as the requirement that shares be blocked from trading, may explain some of the complex and cumbersome processes that could impede voting.

[26] Maurice Cozian.

8/ REMOTE ELECTRONIC VOTING IS NOT COMMON

The use of electronic voting systems at general meetings is fairly common for CAC 40 companies, but very few use online voting before the general meeting is held[27], despite the low cost of such an arrangement[28]. Not one company offered remote online voting during its general meetings.

9/ THE IMPACT OF STOCK LENDING DURING THE GENERAL MEETING SEASON HAS NOT BEEN PROPERLY MEASURED

Whether stock lending is legitimate during the general meeting season is a topical issue. One of the legal effects of a stock loan is to deprive the lender of the voting rights attaching to the shares. Some observers note that stock loans mean that the beneficial owners of shares cannot vote at general meetings and that some of the decision-making powers of the general meeting rest with "borrowers," who are not exposed to the long-term economic risks of share ownership and may be acting for a number of other purposes, such as tabling counter-resolutions, pressuring management into submitting decisions to the general meeting or increasing voting rights.

There may be questions about the legitimacy of voting by borrowers, especially in light of some recent transactions.

In 2002, the Laxley Partners Fund, which owned shares in British Land, tabled a series of resolutions challenging that company's board. With a stake of only 1% in British land, Laxley Partners borrowed 8% of the company's shares to influence the voting on the resolutions, which were later rejected by the other shareholders.

In December 2004, during Mylan Laboratories' takeover bid for King Pharmaceuticals, Perry Corporation bought 26.6 million Mylan shares and arranged a stock loan with Bear Stearn and Goldman Sachs to give it 10% of the voting rights in Mylan. The deal gave Perry Corporation the biggest block of votes in Mylan and ensured that Mylan's general meeting approved the bid, even though the second largest shareholder did not approve.

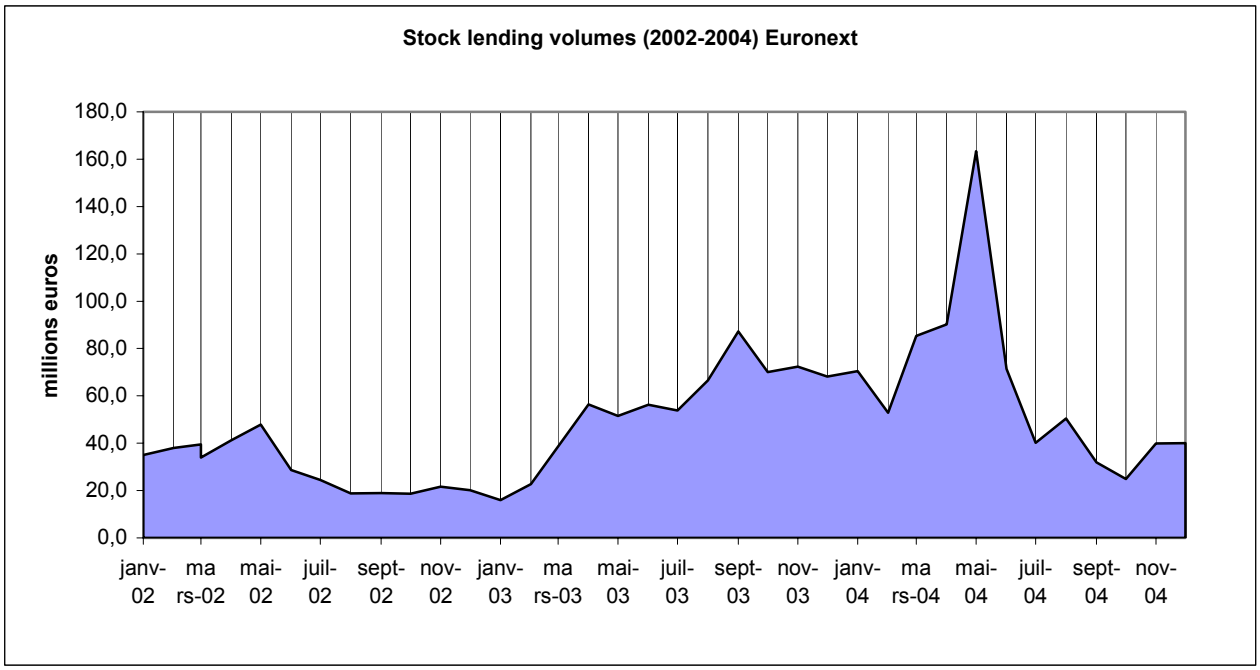
In a more recent transaction, in April 2005, the Nippon Broadcasting System (NBS) in Japan lent 13.88% of the shares it holds in its parent, Fuji Television, to Soft Bank Investment for five years in order to prevent Livedoor from succeeding in its bid for Fuji Television.

The risk that stock loans might be abused to influence general meetings has led some commentators to recommend compliance with best practices. In its proposed stock lending code put forward in June 2005, the International Corporate Governance Network[29] offers a series of recommendations, including discouraging the use of voting rights attaching to borrowed shares, returning the shares to the lender defined in a master agreement, or the choice of a sufficiently long period between the general meeting and the payment of dividends. The Myners Report in March 2005[30] recommended that when a general meeting is dealing with contentious

[27] Only three CAC 40 companies offered this voting procedure in 2004 and very few shareholders used it.
[28] The financial cost of setting up an electronic voting system stands at 10,000 to 20,000 euros per general meeting.
[29] ICGN
[30] Myners Report, "*Review of the impediments to voting UK shares*."

resolutions, investors that have lent their shares must recall them or give good economic reasons for not doing so. And Institutional Shareholder Services[31] recommends that securities loans for the sole purpose of increasing voting rights should be banned.

However, the prevalence of stock lending during the general meeting season in France has not been measured properly. The pattern shows a peak in the spring of 2004 (see chart), but the correlation between the volume of stock lending and the general meeting season may be attributable to borrowers who are in search of dividends rather than influence over voting outcomes. In France, dividends are often paid very shortly after the general meeting.



10/ BEARER SHARES MAKE THE VOTING PROCESS MORE COMPLEX

French law stipulates that securities may be registered or held as bearer certificates. The voting process for registered shares is handled directly by the issuer or a contractor, but for bearer shares, the process must be handled through the banking system.

A chain of intermediaries has to handle requests for information and voting materials, such as ballots and proxies, and the collection of marked ballots. This chain includes the commercial bank (i.e. the branch), the securities services department of the commercial bank (the custodian), the agent banks, and the issuer. When shareholders are non-residents, the chain is even longer and involves several layers of financial intermediaries.

[31] ISS

The complexity of the voting process for bearer shares is apparent in two areas:

The dissemination of information: companies "push" information and voting materials to holders of registered shares, but holders of bearer shares have to "pull" the information and request documents via the banks that hold their securities accounts. Since the company does not, in principle, know who all of its shareholders are, it cannot establish direct links with them and the shareholders have to seek out the information (pull system).

Companies may ask banks with customers holding their shares to "push" the information to these shareholders and pay a fee for this service. Under this "push system" the company and the custodians transmit the information to shareholders. In this case, the company deals with the banks directly or via the paying agent, which will contact its network of custodians so that the information and voting materials reach customers holding a given number of shares in the company.

According to a survey by the AMF and AFEP for 2004, 74% of the CAC 40 companies surveyed instructed banks to provide information documents to holders of their bearer shares[32].

Investors and, more specifically, institutional investors may call on the services of proxy voting providers to make sure that they receive the information and documents relating to general meetings.

Proof of share ownership: general meetings are open only to people who are shareholders in a company on the meeting date. Under this principle, shareholders must prove that they own shares in order to attend the general meeting.

In the case of bearer shares, the burden of proof lies entirely with the shareholders. They must inform their custodians of their intention to attend the general meeting. The custodian then forwards this message to its securities department, which will issue a certificate for the company or the agent banks stating that the shares are blocked from trading, thereby entitling the shareholder to vote.

However, because bearer shares are widely held, companies generally require such certificates to be submitted up to five days[33] before the date of the general meeting in order to gain admittance.

In practice, this means that shares are blocked for substantially longer if a chain of intermediaries is involved and even for up to two weeks in the case of non-resident shareholders.

In 2002[34], the rules were changed to allow shareholders to have their shares released for trading, as long as they notify the custodian of any sales of their shares by 3.00 pm CET on the day before the general meeting. Despite this change, institutional investors, and especially foreign ones, see these formalities to block shares and release them if they are sold as an obstacle to exercising the voting rights attaching to them.

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[32] Some 40% of the companies surveyed only send documents to bearer shareholders if they hold a minimum number of shares. The minimum varies between 80 and 2000 shares, depending on the company (2005 figures). The number varies according to share prices. For example, companies applying a minimum of 80 to 150 shares have an average share price of 79 euros. The average share price stands at 42 euros for companies with minimums between 200 and 500 shares, and at 25 euros for companies with a minimum of more than 500 shares. The response rate stood at an average of 35% for the CAC 40 companies surveyed.

[33] Article 136 of the Decree of 23 March 1967.

[34] New Economic Regulations Act of 15 May 2001 and Decree 2002-803 of 3 May 2002.

11/ INADEQUATE DISSEMINATION OF VOTING RESULTS AFTER GENERAL MEETINGS

Practices with regard to publishing general meeting results and minutes differ greatly. Of the CAC 40[35] companies surveyed, 60% post the general meeting voting results on their website, while the others merely disseminate this information to a narrow circle of shareholders through a newsletter or reports to registered shareholders, while other companies only provide such information on request.

In the vast majority of cases, it takes one month to disseminate general meeting results and only 18%[36] of companies in the survey sample publish the general meeting results within 24 hours of the adjournment.

Practices regarding the report on the general meeting to shareholders vary widely, ranging from no communication at all, to a summary of the proceedings, to a verbatim report available online.

There is very little feedback to shareholders that enables them to ensure that their votes were recorded correctly.

- Not one company has established a system for recording shareholders' votes cast before the general meeting. There is no technology available to acknowledge receipt of the shareholders' votes, since the widespread use of paper-based systems does not make such functions possible.
- Only electronic voting systems make such acknowledgement possible for votes cast in person at the general meeting.

PARTIAL CONCLUSION

The overall analysis of the voting process for bearer shareholders shows that some very positive changes have occurred, but there are other, less satisfactory, conclusions.

- The voting process for bearer shares involves several successive intermediaries.
- The voting process is not at all automated, since electronic voting is not used and the exchanges between intermediaries are not computerised.
- Despite the expenses incurred by issuers, practices relating to the dissemination of documents for general meetings are patchy and ineffective.
- The legislation concerning quorum requirements and share blocking before general meetings still requires issuers and intermediaries to perform complex tasks and it is hard for non-resident shareholders to understand.
- The publication of voting results and acknowledgement of receipt of remotely cast votes are not systematically disclosed.

In view of these findings, the working group sought ways to improve the situation at each step of the process.

[35] AMF-AFEP- ESSEC survey.
[36] AMF-AFEP-ESSEC survey.

Recommendations

I. BEFORE GENERAL MEETINGS

The working group examined the information provided to shareholders before general meetings (1) general meeting admission requirements for bearer shareholders (2), and, more particularly, for proxy holders (3). On this occasion, the working group looked into the issue of proxy voting providers (4) and the issue of stock lending (5). It also examined the use of registered shares, which make it easier to provide information to shareholders and to gain admission to general meetings (6).

1. Information before the general meeting: promoting dissemination of shareholder information and improving access to information

In addition to the information available to them under their right to ongoing disclosure, shareholders could have easier access to information before general meetings.

a) Developing online dissemination of information

To respond to investors' needs and avoid the time-consuming process of producing and sending paper documents, some companies have web-posted most of the information required by shareholders. Three quarters of the CAC 40 companies surveyed post notices of general meetings and draft resolutions on their websites[37].

The working group feels that companies should systematically post information relating to general meetings on their websites in order to accelerate the circulation of information. Shareholders and custodians could then download these documents, thus facilitating their distribution to shareholders.

Recommendation 1: Identical legal documents relating to listed companies' general meetings should be posted on companies' websites and simultaneously published in the official gazette.

b) Sending information to shareholders over the Internet

Even though the information is available online, shareholders will not obtain it unless they seek it out. The working group proposes that the meeting announcement and the notice of meeting, which seem to constitute the minimum information for shareholders, should be "pushed" slightly harder.

Shareholders may request that their custodians inform them of general meetings by e-mail or by posting a link on their online securities account page that will take them directly to the official gazette website or the company's website and give them access to the meeting announcement and notice of meeting and to the text of the resolutions to be tabled.

[37] AMF-AFEP-ESSEC survey.

Recommendation 2: Shareholders' access to documents relating to general meetings should be enhanced through greater use of the Internet.

c) Making resolutions easier to understand

One year after the publication of Decree 2004-604 of 24 June 2004 reforming the rules applying to securities issued by commercial companies, the working group noted that resolutions, and, in particular, resolutions dealing with capital increases, have become very complex and are now among the longest in the world[38].

Recommendation 3: To make resolutions submitted to shareholders easier to understand, the arguments and resolutions should be drafted with care to explain their purpose and there should be a relevant and objective summary for each of them.

d) Encouraging the use of foreign languages to facilitate the dissemination of information

In its second Consultation on Shareholders' Rights[39], the European Commission proposed the principle that, in addition to the language used at the company's head office, another "language customary in the sphere of international finance" should be used.

The members of the working group felt that the use of English would be helpful for promoting voting by foreign shareholders. However, in view of the expense of translation, this should not be an obligation, but merely an option, in addition to the French texts produced by companies incorporated under French law. The choice of a foreign language should be left up to the company, which should be able to determine whether the costs entailed are warranted.

Recommendation 4: In addition to French, the use of another language commonly used and admitted on financial markets, such as English, in some or all of the documents relating to general meetings should be encouraged, without being mandatory, in order to promote voting by foreign shareholders.

2. General meeting admission requirements: shifting from share blocking to the record date

General meetings are only open to people who are shareholders of a company on the meeting date. Shareholders must prove that they own shares in order to attend the general meeting. This requirement is the basis for the share blocking obligation currently imposed by French law. The working group noted that shareholders, especially non-residents, object to this requirement.

An ADP-ICS survey of practices in various countries shows a correlation between voting rates and share blocking requirements.

[38] Further comparisons show that France ranks after India with regard to the length of resolutions (source: ADP-ICS).
[39] "*Fostering an appropriate regime for shareholders' rights*," Internal Market Directorate General, 13 May 2005.

Country	Blocking	Attendance rate
Spain (ES)	NO	29%
Sweden (SE)	NO	39%
Australia (AU)	NO	40%
Great Britain (GB)	NO	42%
Finland (FI)	NO	43%
Russian Federation (RU)	NO	44%
Philippines (PH)	NO	46%
Norway (NO)	NO	50%
Taiwan (TW)	NO	51%
Brazil (BR)	NO	53%
New Zealand (NZ)	NO	55%
China (CN)	NO	58%
Denmark (DK)	NO	58%
Indonesia (ID)	NO	59%
Japan (JP)	NO	60%
India (IN)	NO	61%
Mexico (MX)	NO	64%
South Korea (KR)	NO	66%
Hong Kong (HK)	NO	70%
Malaysia (MY)	NO	70%
Thailand (TH)	NO	71%
Singapore (SG)	NO	72%
Canada (CA)	NO	82%
Argentina (AR)	YES	5%
Netherlands (NL)	YES	17%
France (FR)	YES	19%
Greece (GR)	YES	22%
Belgium (BE)	YES	23%
Switzerland (CH)	YES	24%
Italy (IT)	YES	26%
Germany (DE)	YES	27%
Poland (PL)	YES	30%
Austria (AT)	YES	42%
Egypt (EG)	YES	45%
Portugal (PT)	YES	45%
Turkey (TR)	YES	46%

Source : ADP Sample 2004

The working group feels that share blocking, even when it is revocable, is a hindrance to voting and that France should adopt the “record date” principle, which most countries in the world apply and which provides a "snapshot" of the shareholder base at a given date before the general meeting. Yet, the working group notes that applying such a system entails the risk that persons who are no longer shareholders on the date of the general meeting will still be entitled to vote.

To reduce this risk, it is important for the record date to be close enough to the meeting date so that it can be presumed that all the shareholders voting at the meeting do indeed own shares. The current reform of ownership dates in settlement systems, which aims to transfer title to shares three days after the trade date, could help solve this problem[40]. The reform[41] would mean that an accounting entry made on the trade date would be considered solely as a record of the trade and that transfer of ownership would not occur until the settlement date, three days after the trade date. This reform will facilitate the introduction of a system with a record date three days before the general meeting. The shareholders of record three days before the general meeting would be entitled to vote, even if they sell their shares in the interim, since transfer of ownership to the shares would not take place until three days after the trade.

In addition to recommending the adoption of the record date principle, the working group specifies that on the date of the final drawing-up of the list of shareholders entitled to vote (i.e. three days before the general meeting date), each custodian must update its customers’ voting instructions according to the shares held in its accounts, which are marked as “voting” shares when the voting instructions are received. Each custodian must send any corrected statements of account resulting from this reconciliation exercise to the agent banks.

[40] Decree 2005-303 of 31 March 2005 simplifying the rules for transfer of title to financial instruments handled by a central depository or delivered via a securities settlement system.
[41] To be included in the AMF General Regulation.

Recommendation 5: The current share-blocking system in France, even when it is revocable, is seen as a hindrance to shareholders' voting and we recommend the adoption of a record-date system. It is important for the record date to be as close as possible to the date of the general meeting to prevent shareholders who no longer own shares from being entitled to vote on the date of the meeting. The recent reform that establishes the date of transfer of securities ownership on the settlement date means that the record date can be three days before the general meeting.

3. Proxies: maintaining the effectiveness of traditional proxy arrangements and provide safeguards for block voting.

a) Maintain the principle of proxy voting by shareholders only

The law strictly regulates proxy voting, stipulating that shareholders' proxies can be given only to other shareholders or spouses[42], and that any clauses to the contrary shall be deemed null and void[43].

In its second consultation on shareholders' rights in Europe, the European Commission raised the question of whether it is appropriate to allow shareholders to give their proxies to persons who are not shareholders. Some Member States of the European Union do not stipulate any requirements for proxy votes, which may be cast by banks, shareholders' associations or any other person that does not necessarily own shares.

The working group discussed the potential advantages of allowing non-shareholders to cast proxy votes. For the reasons mentioned above in the review of the current situation, which relate to the concern for maintaining the integrity of the proceedings at a meeting with major decision-making powers, the working group preferred to uphold the principle that currently applies. This principle states that the general meeting is a private gathering restricted to shareholders sharing a common purpose.

Maintaining this principle is not at odds with the increasing the use of proxies, since the person given the proxy simply has to be a shareholder, no matter how few shares he or she owns.

Recommendation 6: To maintain the quality and integrity of the proceedings and respect for the shareholders' common purpose, the principle that restricts admission to general meetings to shareholders should be upheld. Consequently, the working group does not recommend allowing non-shareholders to cast proxy votes.

b) Maintain the solution of giving proxies to the chair of the general meeting

If proxies are given to the chair of the general meeting, the law[44] stipulates that the votes cast using the proxies shall always be in favour of the resolutions tabled or approved by the board of directors or the executive board and against other resolutions. The law also stipulates that proxies that have not been assigned shall be deemed to be assigned to the chair of the general meeting.

[42] Article L. 225-106 of the Commercial Code.
[43] Article L. 225-106 (paragraph 5) of the Commercial Code.
[44] Article L. 225-106 (paragraph 7) of the Commercial Code.

This provision is frequently criticised because it is felt that there is an unwarranted imbalance between the handling of proxies given to other shareholders and the handling of proxies given to the chair of the general meeting, and that preserving this provision would be a hindrance to shareholders' voting[45].

Some Member States of the European Union, such as Italy, Greece or Poland, stipulate that the chairman of the board and members of the board of directors, the executive board or the supervisory board are not allowed to cast proxy votes and that this ban even prohibits the company from paying for solicitation of proxies.

On the contrary, the working group felt that giving proxies to the chair of the general meeting is a clear and simple way for shareholders to express their opinion. Such proxy voting would be harmful only if it was involuntary and conducted on a massive scale, which is not the case in practice in France.

Furthermore, the members of the working group also found that the practice of giving proxies to the chair of the general meeting was becoming less widespread, since institutional investors are increasingly likely to cast their own votes by mail.

Recommendation 7: The shareholders' option of giving their proxies to the chairman of the general meeting should be maintained. It offers a simple way for shareholders to express their opinion without having to appoint a representative.

c) Regulate proxy soliciting

Shareholders may give their proxies to a shareholders' association[46] or to any natural or legal person, provided that the person concerned is a shareholder. This increases the number of votes cast at general meetings.

In addition to representing shareholders at general meetings, proxy voters – shareholders' associations are the best-known example – can also table resolutions if they hold enough shares and comply with filing deadlines[47].

The working group approves the development of this form of block voting by individual shareholders. Experiences in other countries have shown, however, that this development needs to be regulated to avoid situations in which shareholders' proxies are misused for purposes about which shareholders have not been properly informed and which shareholders do not fully support.

In the United States, proxy solicitation sometimes takes the form of a publicity campaign by a group of shareholders, including print advertisements, to support one or more resolutions or to oppose one or more resolutions. Proxies are solicited for this purpose. Under US regulations, the Securities and Exchange Commission supervises all proxy solicitations sent to shareholders in the run-up to general meetings and all the accompanying documents. The proxy statement must include all material facts about the topics on which shareholders are being asked to vote, along with the identities of the various participants in proxy solicitation and their biographical details. The cost of the publicity campaign also needs to be disclosed.

In Belgium, proxy solicitations must be filed with the country's Banking and Finance Commission at least three days before their publication. The Commission may require the person making the proxy solicitation to provide further information.

[45] COB conducted a survey in 1969 on the appropriateness of giving proxies to the chair.
[46] Article L. 225.10 of the Commercial Code.
[47] Article L. 225-105 (paragraph 2) of the Commercial Code.

In France, the AMF's predecessor, the Commission des Opérations de Bourse (COB)[48], looked into practical procedures for disseminating the resolutions to be tabled and recommended that:

- The notice of the meeting published in the official gazette should include the addresses of the authors of the resolutions so that shareholders can ask them for further information or even send their proxies to them.
- The arguments for each resolution should be included in the documents sent out with proxy forms.

The working group felt that it would be helpful to clarify the rules on several points that come up frequently:

- Should persons engaging in proxy solicitation be given access to the list of shareholders? The French system of bearer shares makes it impossible to provide such a list, even if the issuer were willing to do so. Companies do have the option of initiating a procedure for identifying bearer shareholders[49], but they have the sole right to conduct the procedure and exclusive access to the results. Furthermore, the list of bearer shareholders is confidential and cannot be provided to shareholders wishing to engage in proxy solicitation without violating the principle of protecting shareholders' privacy[50]. The list merely provides a snapshot of the shareholders at a given time and it quickly becomes outdated.

- How should shareholders be informed about proxies sent to the company in their name?

- How is it possible to verify that the shareholding requirement for tabling a resolution has been met and will be maintained until the meeting date?

- How can we ensure that the information disseminated by persons engaging in proxy solicitation is accurate and objective? Similarly, how can the shareholders giving their proxies be informed of any alternative resolutions being tabled in their name?

All in all, the working group notes that it would be helpful for lawmakers to specify the procedures for proxy solicitation and, as is the case in other countries, the market regulator is well placed to define the rules and enforce them.

[48] COB Bulletin October 1977, p. 8.
[49] Article L. 228-2 of the Commercial Code.
[50] Unless shareholders give their explicit consent.

Recommendation 8: Proxy solicitation should be subject to specific laws and regulations and supervised by the AMF. These laws and regulations would specify the information to be provided to shareholders with regard to the purpose for which their proxies are being solicited and with regard to the exercise of their proxies after the fact.

d) Ensuring the necessary involvement of institutional investors and/or their management companies in voting.

The working group drew an analogy with the provisions of the Financial Security Act[51], which require management companies to have a transparent voting policy and to disclose their voting record, and deemed that management companies with mandates that specifically include the right to vote in the shareholders' name[52] should explain how they intend to vote on resolutions and give the reasons for their doing so. They must provide shareholders with a proxy voting record and provide assurance that their votes were cast; especially when they do not vote in accordance with the management companies' proclaimed voting policy.

Recommendation 9: Management companies must provide transparent information and give shareholders an objective and detailed history of their voting.

Working group members noted that some fund managers exercise the voting rights attaching to the shares under management either by following the recommendations of voting advisers systematically ("box ticking") or by delegating their votes to intermediaries who fill out the voting forms on their behalf. In the latter case the fund managers sometimes give common voting instructions that are the same for every company in which the fund holds shares. Practices vary from one investor to another, with some carrying out a final check and others relying entirely on their intermediaries.

Asset management companies should exercise the voting rights attaching to the shares they have under management, after careful examination of the resolutions. They should not rely entirely on others, since this approach does not ensure compliance with the principle that the shareholders' interests must prevail.

Recommendation 10: Exercising voting rights is a major responsibility for institutional investors. It should be preceded by a careful examination of the significance and scope of the resolutions in order to arrive at a detailed judgment. This examination should not be limited to unsupervised implementation of analytical tables or recommendations from voting advisers. It is recommended that institutional investors and/or their management companies implement the necessary resources to analyse the resolutions proposed by the companies in which they hold shares in order to make informed choices.

[51] Article L. 533-4 of the Monetary and Financial Code.
[52] Portfolio management companies must own one share in order to vote their proxies at general meetings.

4. Proxy voting providers: clarify the requirements for engaging in this business.

Providing services that handle some or all of the voting process on behalf of shareholders is a fast-growing business[53].

However, these services have been criticised because of the lack of clarity in the links between companies and the shareholders using proxy voting providers, which means that there are suspicions about the system, particularly with regard to the possible consequences of uninformed or "blind" voting based on inadequate advice. The worst fear is that voting will be reduced to ticking boxes on the voting forms without thinking about the issues involved.

It should be noted that proxy voting providers engage in two separate activities.

· Disseminating information and transmitting voting instructions, in which case the provider's services are purely logistical: the proxy voting provider informs shareholders about meeting announcements and/or notices through an electronic interface. On the basis of this information, the shareholders then fill out their voting forms online. The shareholders, or non-resident shareholders' global custodians, then print out the forms and sign them by hand.

  They then send them to their global custodian, which must then be able to certify the number of shares held and that the shareholder owns them.

· Voting advisers provide "intellectual" services. Over the last few years, companies have developed the business of analysing the resolutions tabled at general meetings so that institutional investors and portfolio management companies can vote according to the recommendations of such companies.

The working group noted that some voting advisers combine advisory and operational services, as well as defending shareholders' interests, rating corporate governance practices and even providing portfolio management services.

Furthermore, some members of the working group pointed out that, when shareholders have not specified which way to vote in a voting policy document, for example, advisers fill out their customers' voting forms according to their own recommendations.

The working group feels that the practice of mechanical delegation of voting (or "box ticking") should be strongly discouraged, and that the requirements for engaging in the proxy voting provider business need to be clarified.

Recommendation 11: In view of wide-scale outsourcing of shareholders' voting to specialised service companies, the working group recommends that the requirements for outsourcing be clarified.
Shareholders should know whether the service provider is merely transmitting the votes or whether it also engages in providing analysis and advice.
Voting advisers must base their recommendations on thorough and independent analysis of the resolutions under conditions similar to those applying to financial analysts.

Advisers should state their voting policy officially.

[53] In 2004, the ISS examined 208,607 resolutions tabled at 29,000 general meetings on behalf of 1,200 institutional investors, which involved 321,533 analyses and voting recommendations. ADP-ICS handled more than 50,000 general meetings in 90 countries in 2004.

Customers of voting advisers should conclude contracts with their advisers that stipulate whether they will implement some or all of the adviser's voting policies.

Custodians must be able to certify the number of shares held and that the shareholders own them.

5. Rules for stock lending during general meetings

The working group was sharply divided on the issue of stock lending during general meetings.

Some members are opposed to the practice of lending stock during general meetings, feeling that investors must not deprive themselves of their voting rights and that lenders should take every step to recall lent stock before general meetings. This must be done to prevent voting rights from being used to support short-term moves by certain types of investors to influence general meetings or move stock prices without taking any real risk of ownership. In other words, shareholders must be accountable for sound management of their voting rights. Furthermore, many management companies' voting policy documents include a provision for taking back stock lent by a collective investment scheme.

On the other hand, other members of the working group stressed that stock lending contributes significantly to market liquidity and that banning the exercise of voting rights attaching to borrowed stock during general meetings would be harmful for the smooth operation of the markets. In addition, stock lending is a significant source of revenue for many institutional investors since specialised investors borrow shares a few days before the general meeting is held in order to get the dividend. More investors would prefer the trade-off in favour of stock lending compared to exercising the voting rights because voting involves administrative complications and financial expenses, particularly in certain countries. Finally, custodians' systems provide no way of reliably distinguishing lent stock from other stock.

All in all, without adopting a position on the principle of the legitimacy of voting lent stock, the working group recommends transparency in stock lending and that asset management companies[54] recall lent stock when general meetings are held.

Recommendation 12: The provisions of a stock loan contract should inform the contracting parties about the effects of transferring stock on the voting rights.
When an intermediary asks permission to use the stock it holds on behalf of a customer, it must explain clearly to the customer how the attached voting rights would be affected if the shares were loaned.
Management companies should take back lent stock when general meetings are held.

[54] International Securities Finance conducted a survey of 117 investors on the return of lent stock and found that 42% report that they take back lent stock. Of those, 44% do so in the event of "contentious" general meetings, 19% do so to comply with an explicit contract clause, 22% take back lent stock because a merger or acquisition is planned and 14% want to vote for members of management and directors' compensation.

6. Registered shares promote voting by shareholders

a) Dissemination of information

Some listed companies prefer to issue registered shares. This makes it possible to send shareholders information and documents relating to general meetings automatically and it facilitates the task of proving share ownership. Shares do not have to be blocked from trading and it is easier to identify shareholders.

b) Easier admission to general meetings

Registered shares are recorded in accounts opened in the name of each shareholder by the company. This means that the company knows who the registered shareholders are. Proving share ownership for each registered shareholders merely requires checking the company's records and does not require shares to be blocked from trading. It should be noted that the company may require registration of shares within a certain period, which cannot be more than five days, in order to gain admission to the general meeting.

c) Promoting the use of registered shares with administered registered shares

Individual shareholders often have their diversified portfolios of registered shares managed by custodians, which means they frequently use the "administered registered" system. Securities professionals and Euroclear France developed a system for updating share registries that is competitive with bearer shares in order to promote the use of registered shares. The main users of administered registered shares are non-resident shareholders (46%) and institutional investors (33%)[55].

From the issuer's point of view, the experience of several large companies with issuing only registered shares has been seen as highly positive in fostering communication between the company and its shareholders. These companies have higher turnouts at general meetings and tend to be better liked by their shareholders.

Recommendation 13: Registered shares make it easier to accomplish the formalities involved in proving share ownership and improve shareholder access to information. In view of these advantages, companies and custodians are encouraged to facilitate the development and use of registered shares.

[55] Banque de France, Securities Survey, 2005.

II. VOTING AT GENERAL MEETINGS

A distinction must be made between votes cast before the general meeting (1) and votes cast during the general meeting (2).

1. Remote voting before the general meeting: automating existing legal resources

a) Standardising mail-in votes

The National Committee on Banking Standards and Organisation (CFONB), a standardisation body approved by ministerial decision, is in charge of drafting standards for the banking industry. It joined forces with the National Association of Stock Corporations (ANSA) to draft a standard document (*AFNOR NF K 12-164 of April 2001*) to ensure improved processing of voting forms. Many listed companies use this standard document. According to an AMF survey of a sample of SBF 120 companies, some 34% of the voting forms sent out for general meetings in 2004 were returned.

Recommendation 14: The AFNOR standard for voting forms should be the standard of choice to ensure smooth and secure handling of ballot collection.

b) Developing online voting[56]

Despite its relatively low cost[57], online voting before general meetings is rarely available[58] and accounts for fewer than 0.2% of the votes cast on average. The working group noted that the primary constraints on the development of online voting were legal obstacles.

In view of the provisions on the exercise of voting rights[59] contained in the Financial Security Act that lead to mandatory invalidation of general meetings, companies are reluctant to use systems that are likely to give rise to disputes about the identity of a shareholder, which could result in an entire general meeting being declared invalid. For this reason, several companies have decided to drop electronic voting.

Furthermore, the requirements regarding electronic signatures need to be more flexible. The working group feels that electronic signatures for online voting before general meetings are held could take the form of a plain electronic signature. Shareholders' electronic signatures that rely on a login and a single password should be accepted as a reliable identification process that ensures its linkage to the item being voted upon, in the same way that electronic signatures based on codes and passwords are used to conduct actual banking and market transactions[60].

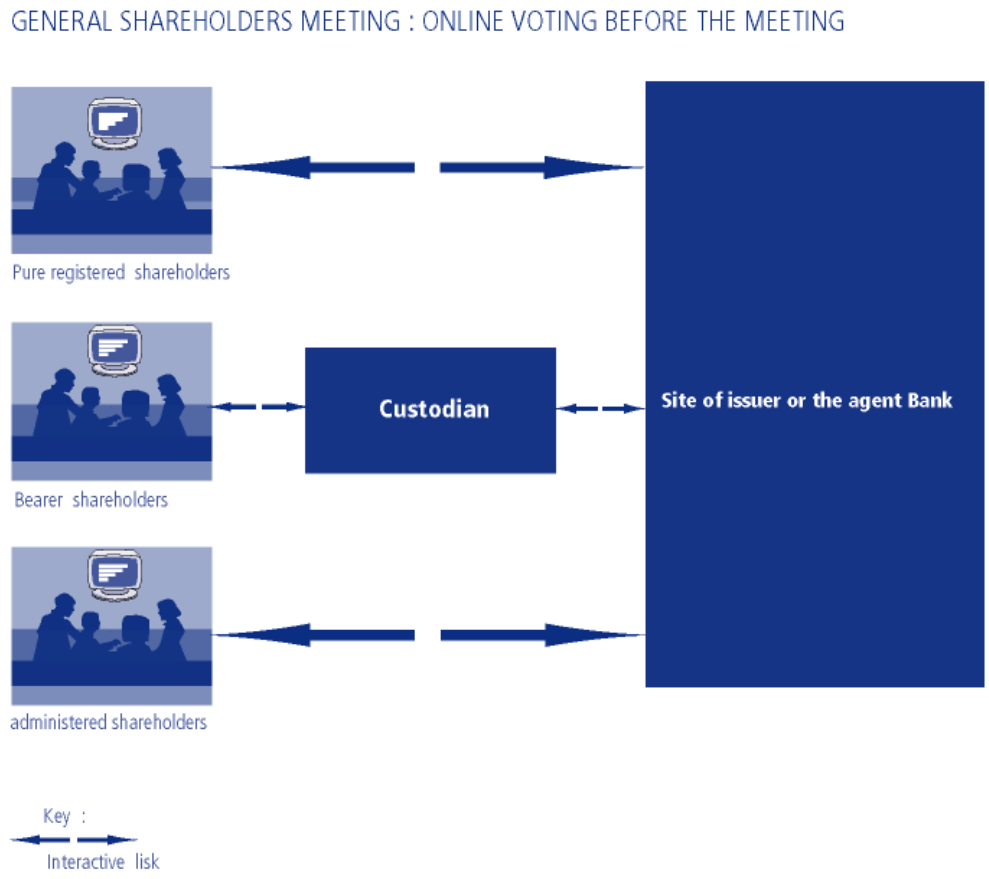
Proposed market architecture for promoting online voting before general meetings[61]. In 2001, ANSA and the CFONB developed an information processing architecture for online voting before general meetings. This was published in a manual that constituted a market agreement and was disseminated by the French Banking Federation (FBF) circular 2002/155 of 14 May 2002. Agent banks have implemented other procedures. A look

[56] More specifically, the working group looked at one electronic voting procedure, which is online voting. The working group did not examine voice-recognition voting, as it is used in the United States.
[57] According to a bank that handles voting formalities, the cost of setting up an electronic voting system stands at 10,000 to 20,000 euros per general meeting.
[58] Only three companies offer such voting systems.
[59] Article L. 235-2-1 of the Commercial Code, which was added by the Financial Security Act of 1 August 2003.
[60] See the Appendix for proposed legislation on electronic signatures.
[61] See the Appendix for a detailed presentation of the architecture proposed by the working group.

at these shows that the architecture should be revisited to enable effective deployment of online voting by institutional and individual shareholders.

The model under consideration has two pillars: the first is the custodian and the second is the joint platform for communications between custodians and companies or the banks handling their voting formalities.

Shareholders will send their voting instructions, like they send ordinary payment instructions, from the web pages where they view the securities accounts held with the custodian.



The voting site is a centralised site operated by the company or its agent, or a site operated by the agent banks. General meeting notices shall be sent to the shareholders by:

- custodians[62], if the shareholders have bearer shares,
- by the company for shareholders with pure registered shares and administered registered shares.

· Shareholders with pure registered shares or administered registered shares will be given their access codes by the company or the agent banks. Shareholders will then vote on an interactive page of the general meeting website.

[62] For the sake of clarity, commercial banks and custodian banks are collectively referred to as “custodians”.

· Shareholders with bearer shares: Starting on the page for viewing their securities accounts on the custodian's website, shareholders:

Solution 1: will be directed to the centralised voting site with certification from the custodian that they own shares and information about the number of shares held, which is the maximum number that can be voted. Solution 2: will vote on the website of the custodian, which will then send the votes to the centralised site for the general meeting along with certification that the shareholders own shares and the number of shares voted. Under the second solution, custodians have access to a centralised site where they are recognised by the system, which means that they must receive the necessary identifiers before the general meeting is held.

Recommendation 15: Online voting before general meetings are held would encourage shareholders to vote. The proposals to enable the development of online voting include:
-eliminating the mandatory invalidation of general meetings linked to online voting under the provisions of Article L. 235-2-1 of the Commercial Code;
-simplifying the legal requirements for identifying shareholders voting online. An login and a single password assigned before the voting process and complying with certain guidelines should be deemed to constitute a reliable identification procedure.
- adopting technical architecture based on making a website available to custodians where they can send shareholders' voting instructions to a dedicated platform for centralising votes and to which all custodians can connect.

2. Voting during general meetings: improving the conduct and oversight of the voting process

a) Counting abstentions

The working group discussed the significance of abstentions and concluded that they are a specific form of expression for shareholders. For some members of the group, abstentions represent a third way of voting that could send a warning signal to decision-makers. Consequently, it seems appropriate that shareholders should be able to explicitly abstain on resolutions when filling in their mail-in voting forms and that such abstentions should not be counted as "no" votes.

However, several major changes will be required before implementing such a reform. They include:

Legal changes:

- abstentions should no longer be counted as "no" votes,
- the vote counting procedure only counts votes cast (yes and no), which means it will probably be necessary to propose amendments to the Second European Directive of 13 December 1976, which is based on the principle of votes cast;

The necessary technical changes include an overhaul of the mail-in voting form and changes to the relevant computerised vote-processing systems.

Recommendation 16: To increase voting, abstentions should be counted separately from "yes" and "no" votes. This will require major legal and technical changes.

b) Providing for the right to submit written questions

The working group noted that the right to submit written questions about agenda items can be exercised freely between the date that notice of the meeting is given and the date the meeting is held. Use of this right has increased greatly recently, especially since the board of directors is required to decide on an answer and give it during the general meeting. This obligation can give shareholders' questions significant impact. Some companies received massive numbers of written questions, some of which arrived late or addressed very narrow issues. In practice, dealing with all these questions can tie up a general meeting and even alter its very nature.

Therefore, the working group felt that it was appropriate to keep the option of setting a deadline for submitting written questions of at least five days before the meeting is held. If the deadline were set any earlier it would be too restrictive.

Recommendation 17: Written questions should be received at least five calendar days before the general meeting is held in order to give the board of directors a reasonable amount of time to prepare its answers. Such questions must relate to items on the agenda.

c) Managing answers to written questions

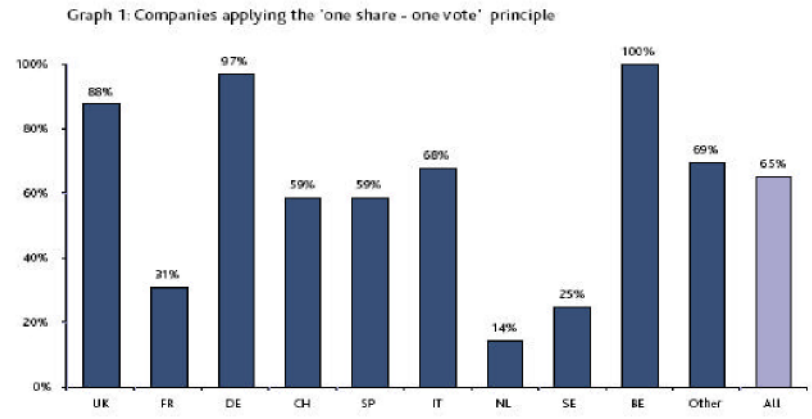
To encourage debate, it was suggested that the conduct of general meetings should be better organised. It should be noted that the AMF encourages the general meetings of listed companies to dispense with the reading of the reports[63] by the board of directors or the supervisory board and the statutory auditors and to dispense with the reading of the resolutions[64], since shareholders can read them before the meeting.

The same principle could be applied to the board's answers to shareholders' written questions. The answers should not tie up the general meeting and, if they are too long, use up the time needed to hear the arguments and debate about the resolutions.

Recommendation 18: The board of directors should summarize written questions and their answers to them and group them by topic.

d) Making double voting rights more transparent

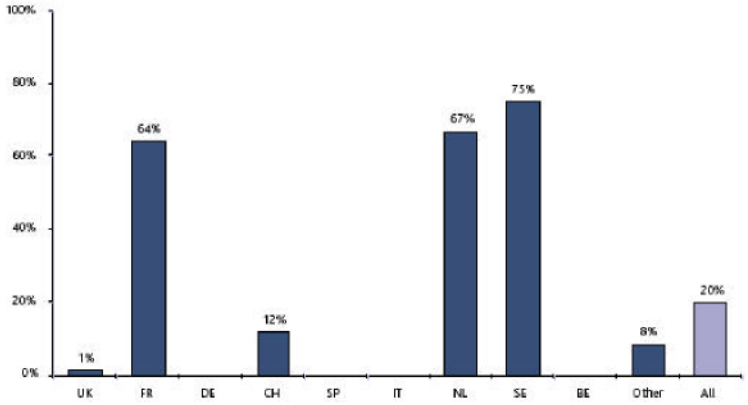
Granting double voting rights is one way of rewarding the loyalty of certain shareholders. However, investors, especially British and American pension funds, as well as such professional groups as France's Financial Management Association (AFG), support the 'one share – one vote' principle. They feel that the practice of granting double voting rights, which could result in a minority shareholder acquiring a controlling stake in a company, is open to abuse.



Countries applying the 'one share – one vote' principle. Source Deminor – Application of the principle 'one share, one vote', March 2005

A Deminor survey conducted in several countries showed that the practice of granting double voting rights is very rare and can only be found in a few European countries.

[63] COB Bulletin, April 1978.
[64] COB Bulletin, February 1989.



Countries where multiple voting rights can be granted. Source Deminor – Application of the principle 'one share, one vote', March 2005

This issue divided the members of the group. Some of them felt that it was a distinctive feature that should be protected, since double voting rights are granted to all loyal shareholders, without discrimination, while other members of the working group felt that the practice created inequality between shareholders and hindered shareholder voting. During the negotiations on the European Union's Takeover Directive, France managed to preserve double voting rights, which, unlike freely transferable multiple voting rights, cannot be transferred since they are attached to the shareholders, who earn such rights by holding shares for a given number of years.

On the other hand, the working group unanimously recommended greater transparency with regard to the practice of granting double voting rights.

Recommendation 19: Full transparency must be provided with regard to double voting rights. Shareholders must be clearly informed: before general meetings, through all means, of the existence of such clauses in the company's articles of association and - after the general meeting of the number of double voting rights counted in adopting or rejecting resolutions.

e) Informing shareholders of restrictions on voting rights

Restrictions in the articles of association on the number of votes each shareholder is allowed help to ensure the protection and expression of small shareholders. However, some investors and the AFG are opposed to restrictions on voting rights.

As was the case above, the working group preferred not to take a position on this issue, which is a matter to be addressed in the discussions about the drafting and transposition of the Takeover Directive.

On the other hand, the working group recommends the same transparency as for double voting rights and it also notes that vote counting must be conducted equitably. If the articles of association call for restrictions on the voting rights of each shareholder, there could be a problem with proxies.

If the restrictions on a shareholder's voting rights are combined with other restrictions on proxies, the working group recommends that shareholders holding proxies should not be subject to a 'double penalty'.

Recommendation 20: If the articles of association restrict voting rights, then shareholders must be clearly informed of such clauses by any means before the general meeting. Proxies should not be subject to any restrictions other than those on the number of proxies held.

f) Overseeing the use of electronic voting systems

Voting procedures are not defined by laws or regulations. Unless otherwise stipulated in the article of association, the procedure is determined by the meeting officers with the agreement of the general meeting. Several procedures can be used: voting by a show of hands, ballots with optical scanning or electronic voting systems, in the case of listed companies.

Electronic voting systems used during the meeting can include remote voting over the Internet or a push-button electronic voting system for the use of the shareholders present at the meeting.

The law permits and provides guidelines for 'live' remote online voting, but not one company uses it in practice, because the technology currently available does not ensure complete reliability. Furthermore, industry associations, including ANSA, do not recommend the use of such systems.

Push-button electronic voting systems are frequently used for voting by the shareholders present at meetings. However, there are no hard and fast rules about these systems, which means that shareholders may be concerned about such systems, or even mistrustful of them in more contentious general meetings.

Several incidents were noted during the early years of the use of such systems. Industry professionals think that the reliability of these systems could be improved, thus boosting user confidence.

Recommendation 21: Companies providing electronic voting systems should agree on system specifications and procedures. The guidelines could be: traceability, robust protection against intrusion, or failing that, guarantees for the integrity of the data exchanged, storage of data for three years and confirmation of votes.

g) Enhancing control of general meetings: the role of the meeting officers

The meeting officers, which means the chair and two scrutineers[65], must certify the attendance roster, declare the quorum, ensure that the meeting proceeds in orderly fashion, verify the voting on resolutions and sign off on the minutes of the meeting.

The members of the working group discussed the actual fulfilment of these obligations. They felt it would be appropriate for meeting officers to have a step-by-step guide, setting out their legal obligations at general meetings so that they can deal with any of the problems that may come up in the course of a meeting.

[65] According to Article 147 of the Decree of 27 March 1967, the scrutineers shall be the two members of the general meeting with the most votes who agree to fulfil this function.

AFEP and representatives of banks in charge of organising general meetings have drafted such a manual for meeting officers.

The purpose of the manual for scrutineers is to:outline the legal tasks of the meeting officers and the main rules governing general meetings, especially the rules on voting;

- encourage scrutineers to gather information about attaining a provisional quorum before the general meeting is held;
- review the legal problems that may come up during general meetings and outlining some possible solutions;
- review the main types of incidents occurring during general meetings and providing advice on how to deal with them;
- draw attention to the quality of information disseminated after the general meeting, about the course of the meeting, the discussions and the voting.

The document was tested by a few companies at their 2005 general meetings and proved to be an invaluable help for scrutineers. A final draft of the document should be available in the fall of 2005.

Recommendation 22: The task entrusted to the meeting officers is to ensure the orderly technical conduct and the credibility of general meetings. General meeting officers are encouraged to use the AFEP manual.

III. AFTER THE MEETING

1. Distribution of results after the meeting: making information more readily available

The working group recommends wider distribution and improved transparency for information issued after shareholder meetings. In practice, there are many gaps in the publication of voting results and meeting reports. Provision of information remains patchy and belated except in the case of meetings receiving heavy media coverage.

Recommendation 23: Voting results and a meeting report should be made promptly available to all shareholders.
The company should release voting results shortly after the meeting and post them on its website, giving the breakdown of votes on each resolution.
A meeting report should be posted online within three months.

2. Confirmation that votes were taken into account: improving traceability.

Discussions with industry found that no company had a system to confirm that pre-meeting votes by shareholders were duly allocated. Votes cast during the meeting itself, meanwhile, can be confirmed only by using electronic voting facilities. As with the pre-meeting distribution of information, the use of corporate websites seems to be the only way of improving the situation. The absence of a vote confirmation mechanism exercises some shareholders who lack confidence in vote processing arrangements.

However, there is no technology to acknowledge receipt of mail-in votes cast by shareholders before the meeting. Widespread use of paper-based formats stands in the way of developing this type of technique.

Computerising the entire process may therefore be the best answer.

Recommendation 24: Every shareholder should be able to receive confirmation, on request, that his or her vote has been taken into account. End-to-end traceability should be in place for all votes. End-to-end computerisation of the voting process is the only economically viable way to deploy these procedures on a general basis.

Overall conclusion

The working group looked at different ways to enhance shareholder involvement in general meetings. It organised its approach by dividing the voting process into three phases: before, during and after the meeting.

- The pre-meeting stages are crucial to increasing and facilitating shareholder participation. Starting from the observation that people who hold bearer shares do not always get the information needed to take part in general meetings, the working group examined a way to "push" information to interested shareholders by **automating the data posted on company websites and having banks play an active role vis-à-vis their customers.**

- Shareholders wishing to vote must prove their status, since French company law says that only shareholders may attend general meetings. The working group affirmed its commitment to this principle. As matters stand, however, to provide evidence of their status, bearer shareholders are required to block their shares before the general meeting. Noting that this administrative constraint had a significant effect on shareholder participation, especially among non-residents, the working group recommended **doing away with the requirement to block shares from trading before general meetings and recommended introducing the record date principle. For the sake of consistency with reforms to the transfer of title date, the record date could be set at three days before the general meeting.**

- Given the powerful influence of block voting, with proxy voting providers in particular playing a more prominent role, the working group looked at how proxy votes are solicited and implemented. **The group recommended creating a regulatory framework for soliciting and implementing proxy votes, to be placed under AMF supervision.** The working group also considered the status of investors that temporarily become shareholders when they borrow shares. Should these participants, who are not exposed to the economic risk of share ownership, be excluded from general meetings? At this stage, the group merely recommended greater transparency, but called for a detailed analysis of the issue.

- Noting that more and more shareholders cast mail-in votes ahead of general meetings, the working group examined ways to improve this approach. It looked closely at web-based options, which are not widely used at present. Recognising that the Internet represents a means to improve shareholder participation in the long run, **the working group recommended a series of legal and practical measures to promote Internet voting ahead of general meetings.**

- Finally, the working group recommended **using computer technology to increase the dissemination of voting results** and meeting reports.

Appendix 1 Letter of invitation and project statement

Mr Chairman,

The French securities regulator has traditionally played a role in investor protection. As such, it has always paid close attention to the ability of shareholders to exercise their votes at general meetings.

Since the New Economic Regulations Act came into force in 2001, France's lawmakers have gradually lifted a range of legal barriers to the exercise of these rights. Stakeholders in the voting process have however drawn the regulator's attention to the relatively cumbersome and costly operational constraints that persist.

These practical difficulties have taken on added significance with the arrival of two milestones in domestic and European regulations:

- 2005 is the first year of enforcement for the provisions in the AMF General Regulations that cover the conditions under which fund management companies are required to report on the exercise of their voting rights

- Last September, the European Commission organised a public consultation on cross-border voting, and it intends to present a proposal for a Directive to improve the mechanism in spring 2005.

These developments bring the exercise of shareholder voting rights into a broader debate extending beyond asset management or custody account-keeping. At stake is the definition of a competitive French model capable of ensuring that shareholders in France and the European Union (EU) can exercise their voting rights.

To guide its thinking, weigh up the financial implications of the voting process, and promote the actual exercise of voting rights, the Board of the AMF wants to join forces with the financial community to carry out a detailed analysis of this subject. To this end, the Board has given me the task of assembling a working group made up of experts in this area. I would like to ask you to chair that group.

Given the breadth of the issue, the AMF intends to focus on the most practical aspects. This will entail:

Analysing the voting process, looking at the roles and responsibilities of different participants in procedures for providing information to shareholders before and after general meetings, as well as the conditions for attending, voting at, and organising meetings, taking into account the direct and indirect costs that such meetings represent, especially for widely held companies ;

Analysing the conditions for cross-border voting in the light of the objectives set by the European Commission, highlighting areas of similarity or conflict with market practices; Examining the role played by proxy providers, a new category of participant in the voting process ;

Studying the procedures for using proxy votes, with a focus on proxy solicitation ; Analysing the issues surrounding stock lending and temporary transfers of securities and voting rights; Leading a broader debate on the extent to which the need to promote the exercise of voting rights at general meetings is compatible with the French system of bearer securities, which prevents issuers from contacting their shareholders directly.

Each of these efforts will take into account domestic practices, rules and regulations, while also drawing on other countries' experiences and leading international standards.

The working group shall propose such changes to regulations and industry practices as it deems necessary. Ideally, the group will submit its report by the end of the first half of 2005, with the proposals being put out for public consultation in the second half of 2005.

I trust, Mr Chairman, that our proposed undertaking meets with your agreement and I look forward to your reply.

Best regards,

Michel Prada

Appendix 2 Composition of the working group on the exercise of shareholder voting rights in France

Chairman

Yves Mansion (AMF Board member)

Members

Patrick Billioud (Suez)

Philippe Bissara (EALIC)

Jean-Pierre Carrafang (Crédit Agricole Investor Services Corporate Trust)

Patricia Charléty (ESSEC)

Antoine Courteault (Alcatel)

Brigitte Daurelle (Euroclear France)

Odile de Brosses (AFEP)

Pierre Dinon (AGF Asset Management)

Philippe Dujardin (PHD Consultants)

Martine El Sakhawi (Crédit Agricole Asset Management)

Jean-Pierre Hellebuyck (Association Française de Gestion)

Laurence Meneboo-Guiheux and Silvia Mariel (France Telecom)

Pierre Novarina (Tourpagel-Agrigel)

Marianne Paris (Caisse des Dépôts et Consignations)

Nicolas Passariello (ISS-Institutional Shareholder Services)

Pascal Pommier (BNP Paribas Securities Services)

Jeannick Quéruel (Société Générale)

Fabrice Rémon (Deminor)

Hakan Benito Sapmaz (ADP Investor Communication Services Inc.)

Jean-Paul Valuet (ANSA)

Also present were

Hubert Reynier (AMF, Managing Director for Regulation Policy and International Affairs)

Michel Karlin, (AMF, Investment Services and Asset Management)

Pierre Walckenaer (AMF, Corporate Finance)

Christine Anglade-Pirzadeh (AMF, Communication)

Guillaume Guérin (AMF, Legal Affairs)

Rapporteur

Miriasi Thouch (AMF, Regulation Policy and International Affairs)

Appendix 3 List of people interviewed and consulted by the working group

Interviewees

Wouter Rosingh and Josiane Fanguinoveny, Hermes Investment Management Ltd
Arcady Lapiro and Catherine Desson,
ProCapital Pierre-Henri Leroy, Proxinvest

Thierry Mbeka, Bank of New York
Yolaine Fourié and Timothy C. Mercer,
Michelin Viviane Neiter, APAI

Colette Neuville, ADAM

Bruno de la Villarmois, Air Liquide

People consulted

Patrice Billaut and Jean-François Bay, Representative, AF2i
Henri Chriqui, Court-appointed administrator

Eric de Maupeou, Ixis Investors Services
Mathilde Guérin, Laurent Boudet, Société Générale
Mathieu Simon- Blavier, Georgeson Shareholder
France Tanneguy du Chastel, Compagnie de Saint-
Gobain Benjamin Dornic, Lafarge

Eric Eludut, Seitosei

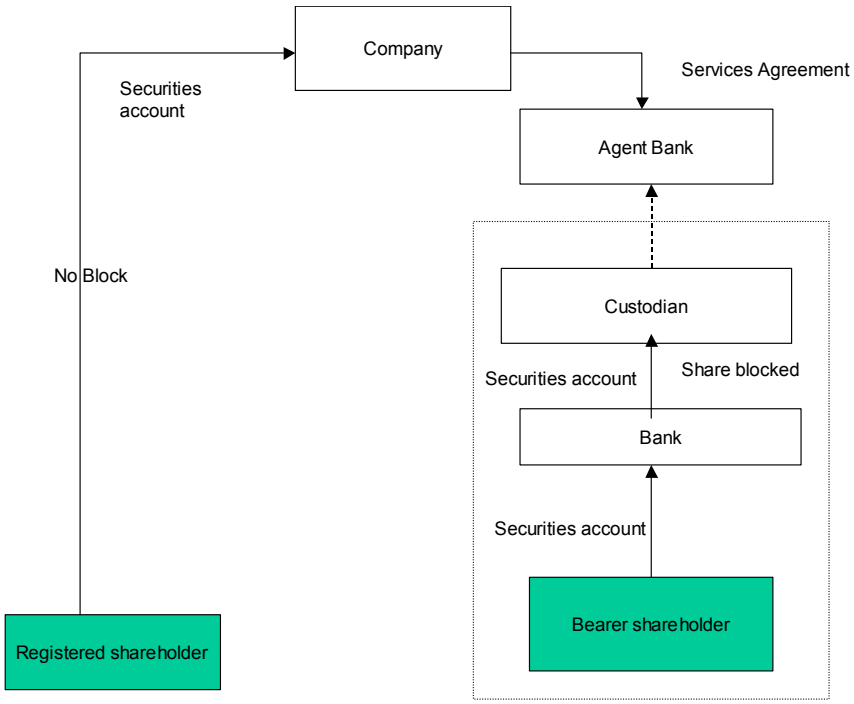
Gilles Robine and Gilles de Labareyre, EADS – Defence and Security Systems SA

Pierre Martinez, Aline Tempesta, Axelle Wurmzer, BNP Paribas Securities Services
François Massut, Fonds de Réserves des Retraites
(FRR) Brigitte Molkhou, CNP Assurances
Alex Muir, ISS
Philippe Pauzet and Jean-Jacques Guilhem,
Lagardère Vincent Serain, Air Liquide

Patrick Viallanex, AG2R

Appendix 4 Description of the voting process

1. Participants

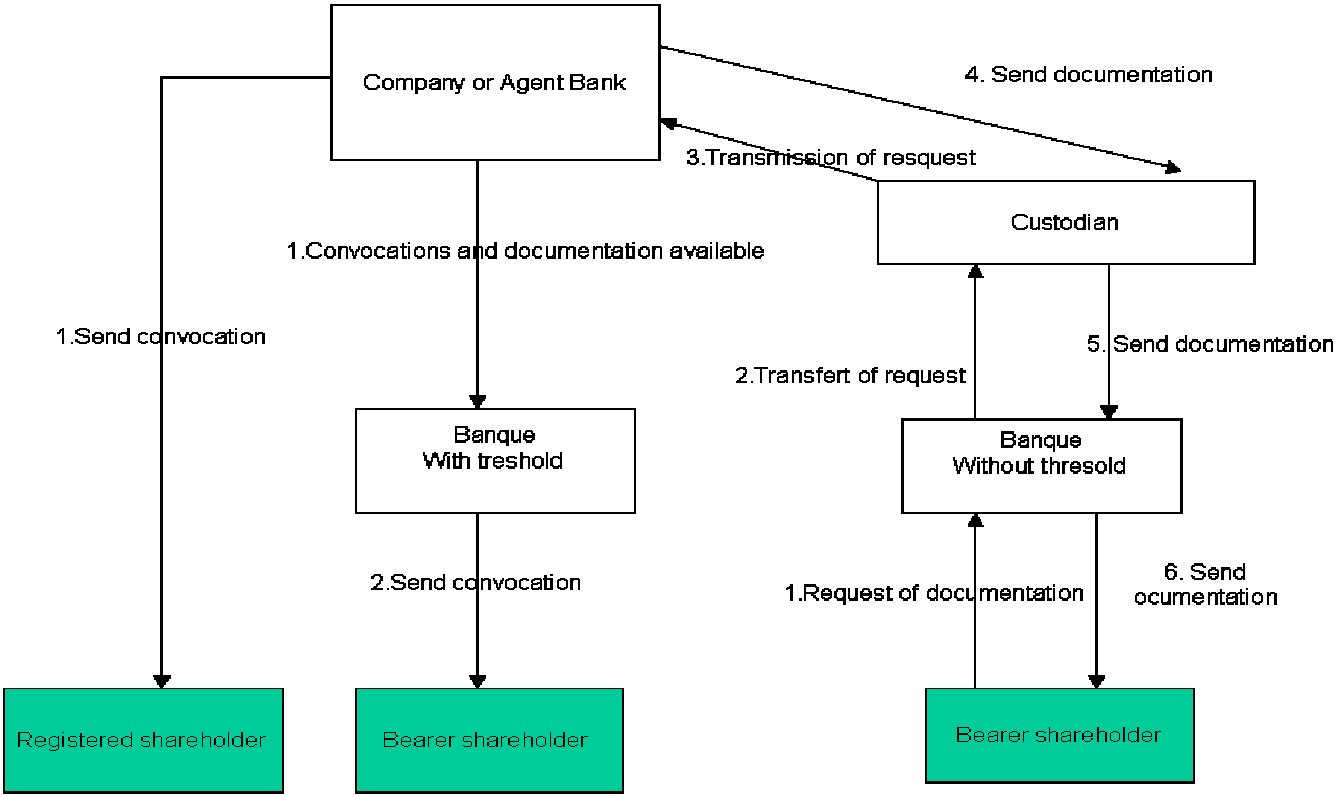


At least in France, the voting process involves a small group of participants.

If the shares are held in registered form, a securities account is opened in the company's books and identified as such.

If the securities are held in bearer form, the shareholder's identity is not known to the company. The shares are entered in an account with a global custodian, which is the bank that manages securities accounts on behalf of the shareholder's bank. When the shareholder wants to vote, he contacts his commercial bank (the branch office), which in turn asks the custodian to undertake the necessary steps to request documentation, voting forms or an attendance card application from the company or from the paying agent bank appointed by the company to take care of the administrative formalities of the voting process.

2. How information circulates



Minimum shareholding thresholds: the company may set minimum shareholdings above which banks are required to issue documentation.

The Commercial Code and the Decree of 1967 list the information that shareholders are entitled to receive before the general meeting.

Information about the general meeting can be issued through several channels.

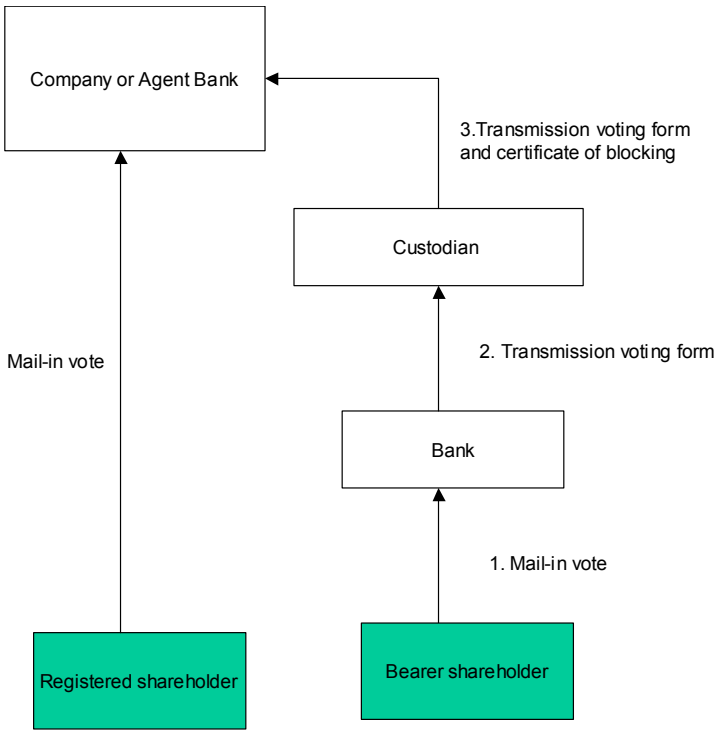
Registered shareholders must be sent a written invitation at least two weeks before the meeting, even if they have not requested this.

Bearer shareholders get their information primarily through banking channels, since the company does not know the identity of all its shareholders. Two options are available.

Shareholders can ask their bank for documentation about the general meeting. Before the documents can be dispatched, however, shareholders must provide proof of ownership by producing a certificate from their bank's global custodian indicating that the shares in question have been blocked from trading. The custodian will request the necessary documentation from the company or from the paying agent bank appointed by the company to take care of voting formalities.

The company may ask global custodians to send voting forms directly to anyone whose shareholding exceeds a certain percentage. The law requires the voting forms to be accompanied by certain documents.

3.Voting in general meetings

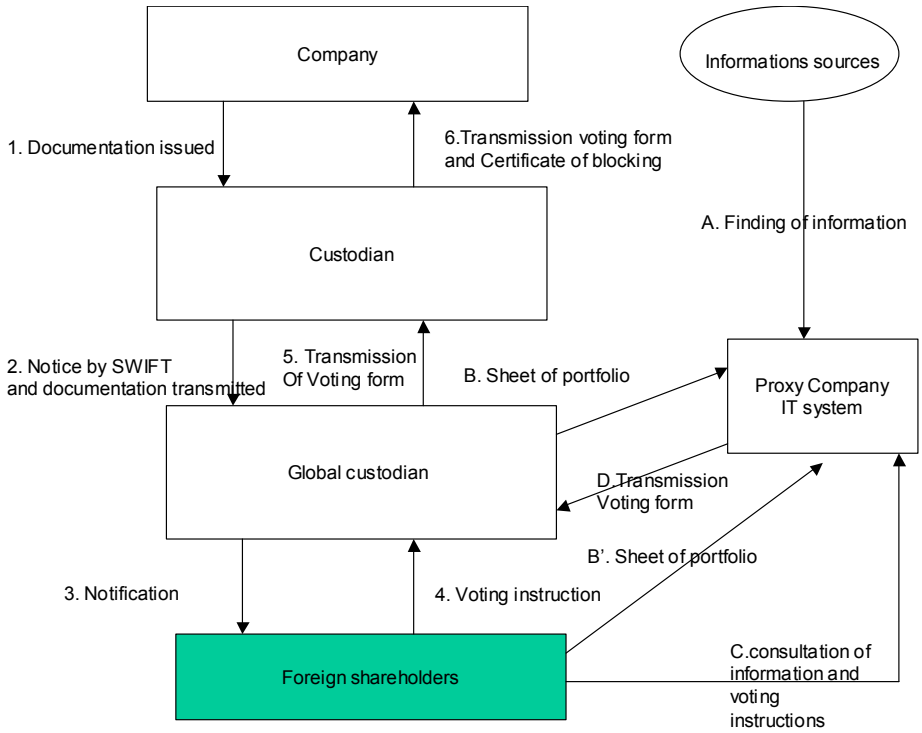


Shareholders have four ways to vote:

- They can personally attend the meeting by requesting an attendance card from their bank. The bank forwards the request to the bank in charge of voting formalities, which issues the card to the shareholder
- They can cast a mail-in vote by completing a voting form and returning it to their bank. The bank will
- send the form to the company or to the bank in charge of voting formalities
- They can name another shareholder or a spouse to represent them
- They can appoint the chairman of the meeting to vote on their behalf.

Whichever option they take, shareholders wishing to attend must produce a certificate from their custodian indicating that the shares in question have been blocked. This certificate is sent to the company or to the paying agent. Companies require these certificates to be submitted within a period of between five and one days depending on the voting method used or the company's articles of association.

4. Voting by non-resident shareholders



The sequence of letters indicates an alternative circuit using a proxy voting provider. The link labelled “B” between the bank and the proxy voting provider is not a standard procedure and could be replaced by a link between the non-resident shareholder and the proxy voting provider.

There is a fairly specific chain of voting procedures for non-resident shareholders.

Information is provided to shareholders through banking channels. Non-resident shareholders with French shares will tell their global custodian that they want to vote in France. Note that the non-resident’s bank must provide this service in the first place.

If the bank has a local correspondent in France, it will arrange to obtain the information and documentation needed to vote in French general meetings from that source. Once again, the French bank must offer this service in the first place. The information (in English) is delivered via SWIFT and the documentation sent by post or by email if the documents can be scanned.

Based on the documents that they receive, non-resident shareholders send voting instructions to their bank. Unlike resident shareholders, non-residents are not required to sign their voting form, because under the provisions of the New Economic Regulations Act, a foreign bank acting as registered intermediary has a standard authorisation to represent non-resident shareholders and sign voting forms on their behalf.

The voting form is sent to the French bank and follows the normal route from then on.

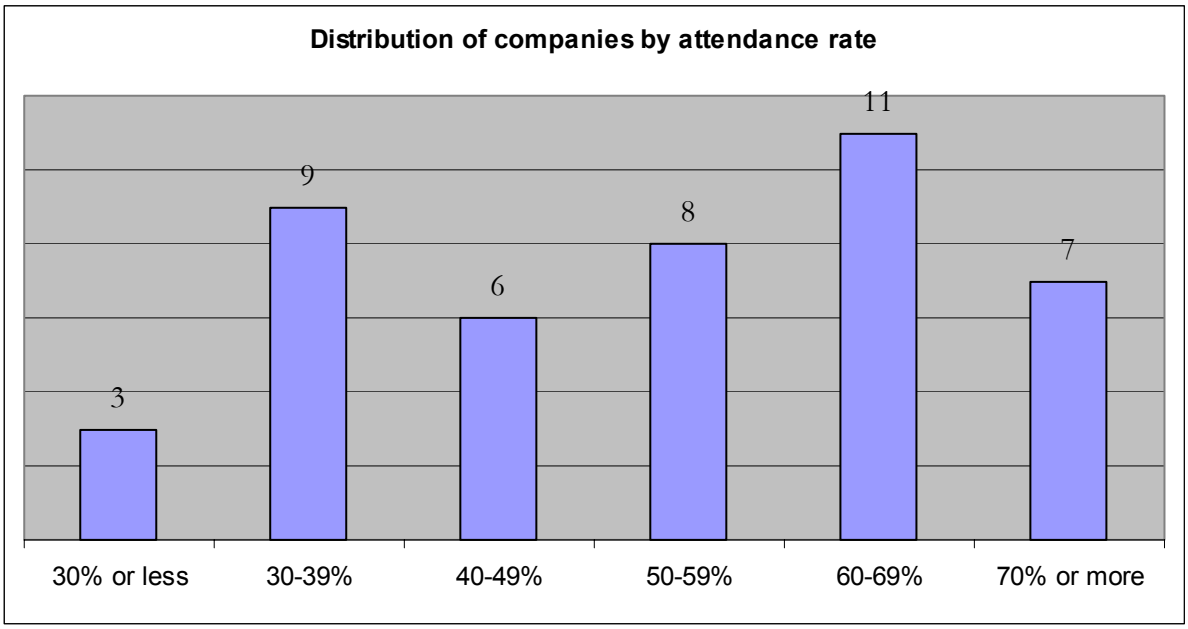
Non-resident shareholders may use the services of a proxy voting provider (or their bank may provide them with access to such a service). The provider’s task is to make it easier to access information and issue voting instructions. Thus, the shareholder bypasses the banks and uses his workstation or internet connection to

access the information and documentation pertaining to the securities in his portfolio. These data are updated daily by a file exchange between the shareholder's bank and the proxy voting provider. The provider receives the voting instructions and fills out the voting form. The form is then sent to the shareholder's bank, which signs it in its capacity as registered intermediary. Afterwards, the voting form follows the standard route to the bank in charge of voting formalities.

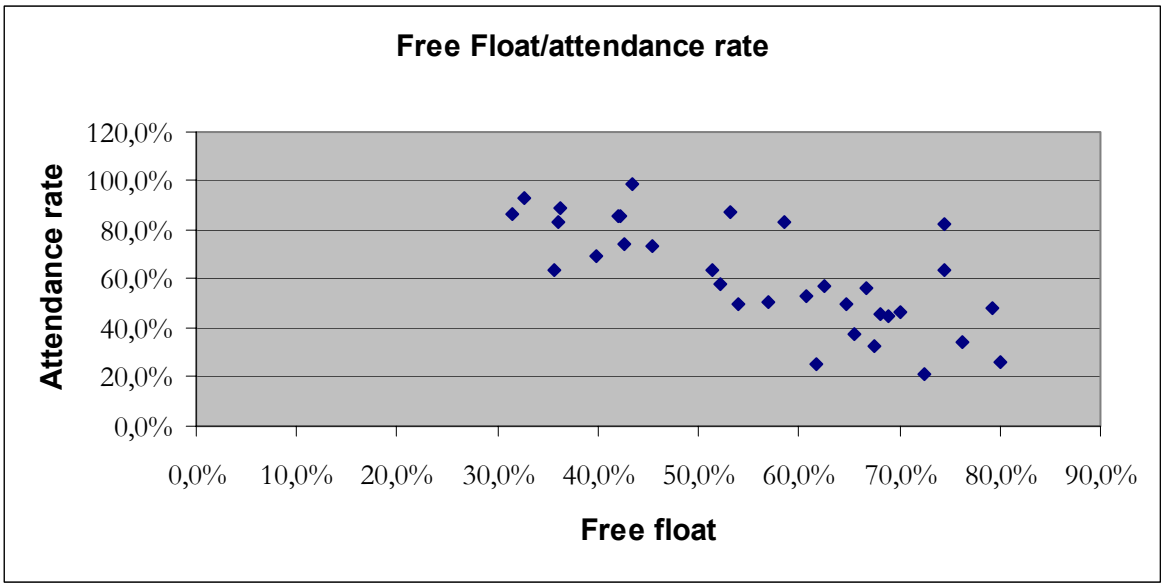
Appendix 5: Summary of AMF/AFEP/ESSEC survey (General Meetings, 2004)

1. Attendance rates in 2004

For a sample of 44 companies in the SBF 120 index, the average attendance rate at general meetings in 2004 was 53%. The average rate for CAC 40 companies was 47%.

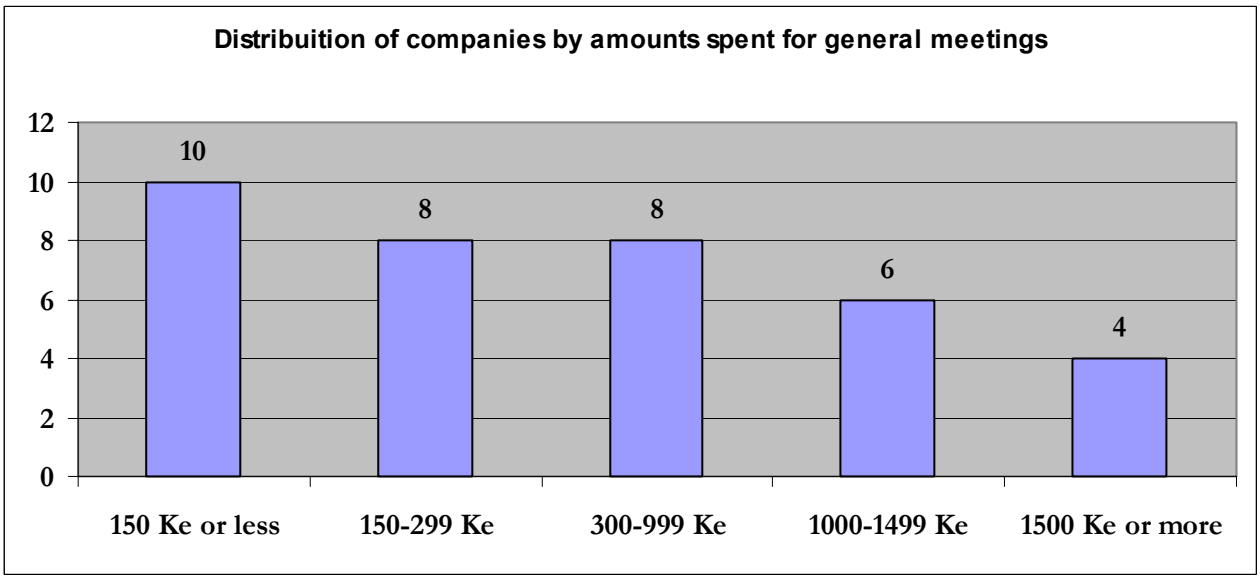


An analysis of the ownership structures of the same 44 companies reveals a relationship between the free float and the attendance rate: as the free float increases, it becomes harder to reach a quorum.

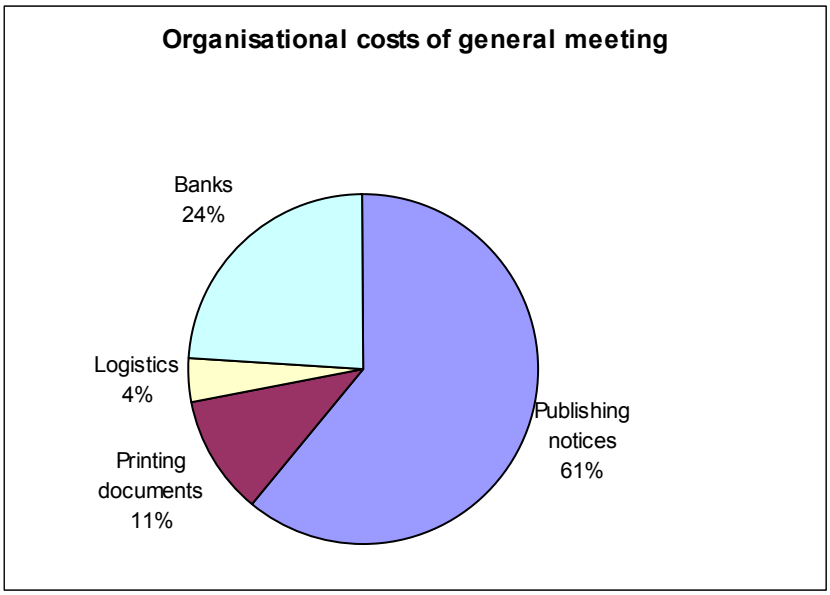


2. Costs of holding a general meeting

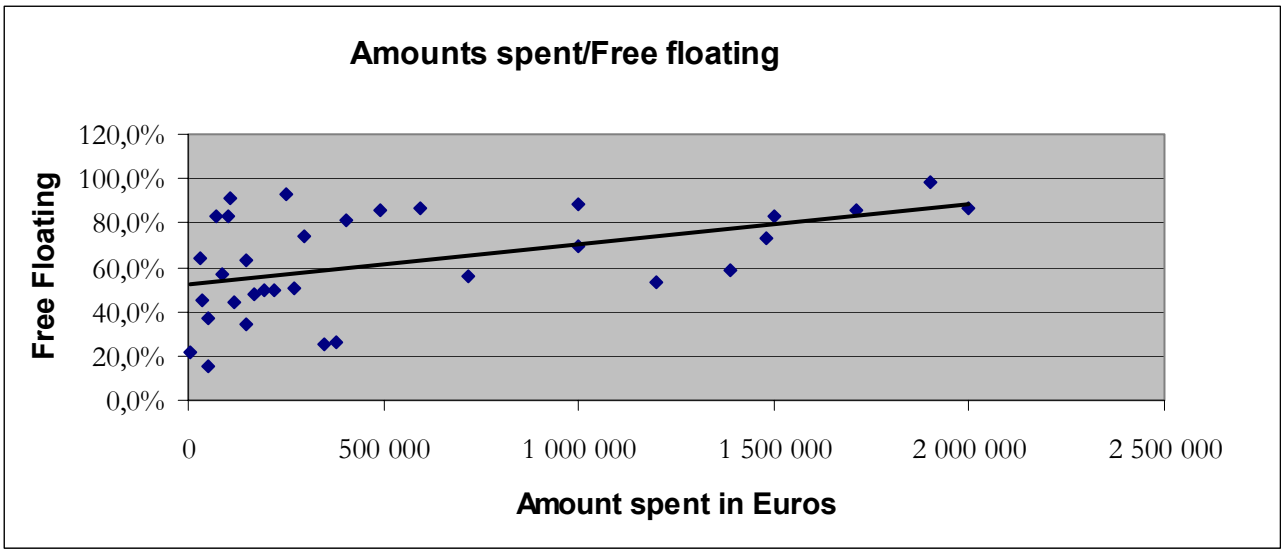
The average cost of organising a general meeting was EUR 576,880 for the 36 companies in the SBF 120 index that responded to the survey.



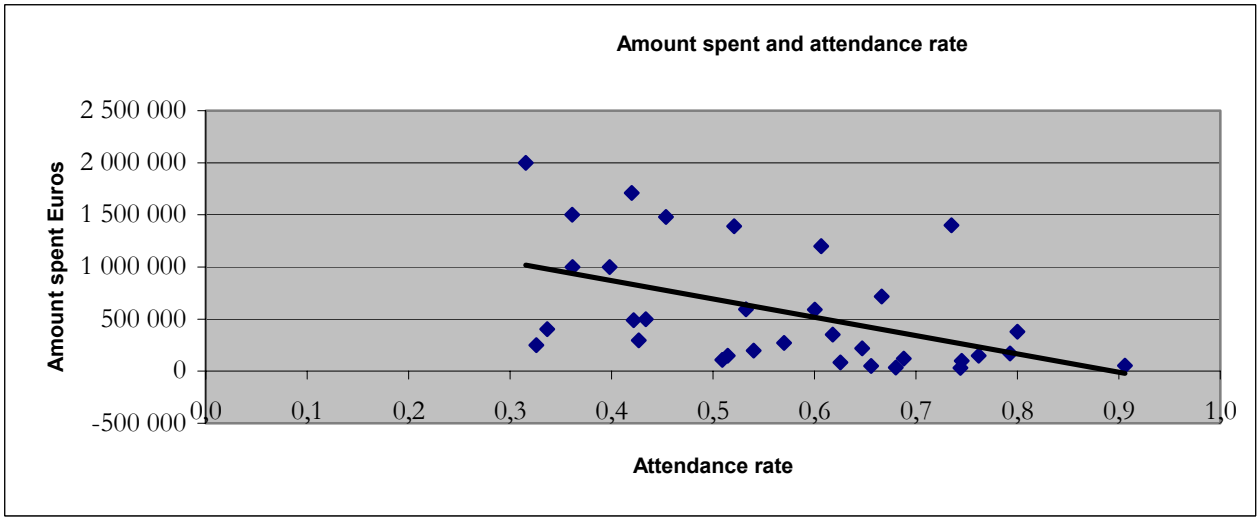
The costs break down as follows:



As the free float increases, so does the cost of organising the general meeting.



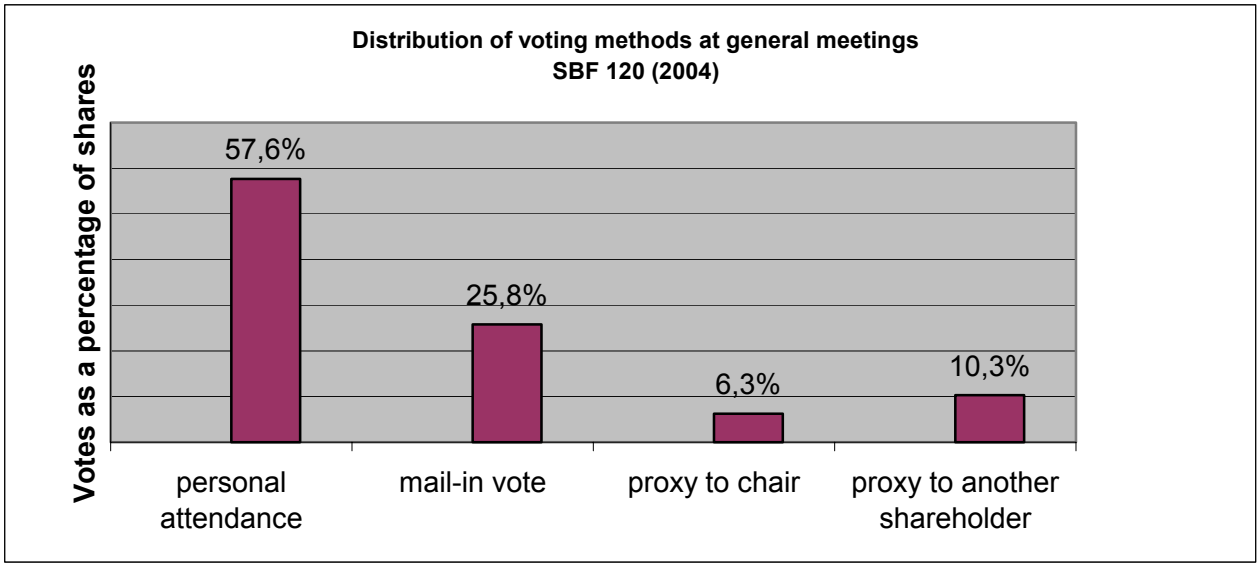
Is there a correlation between the amount spent and a high attendance rate? The findings suggest not. Paradoxically, they show that some of the companies that spent the most to organise their meetings reported the lowest attendance rates. Still, it is important to take into account the effects of company size and free float.



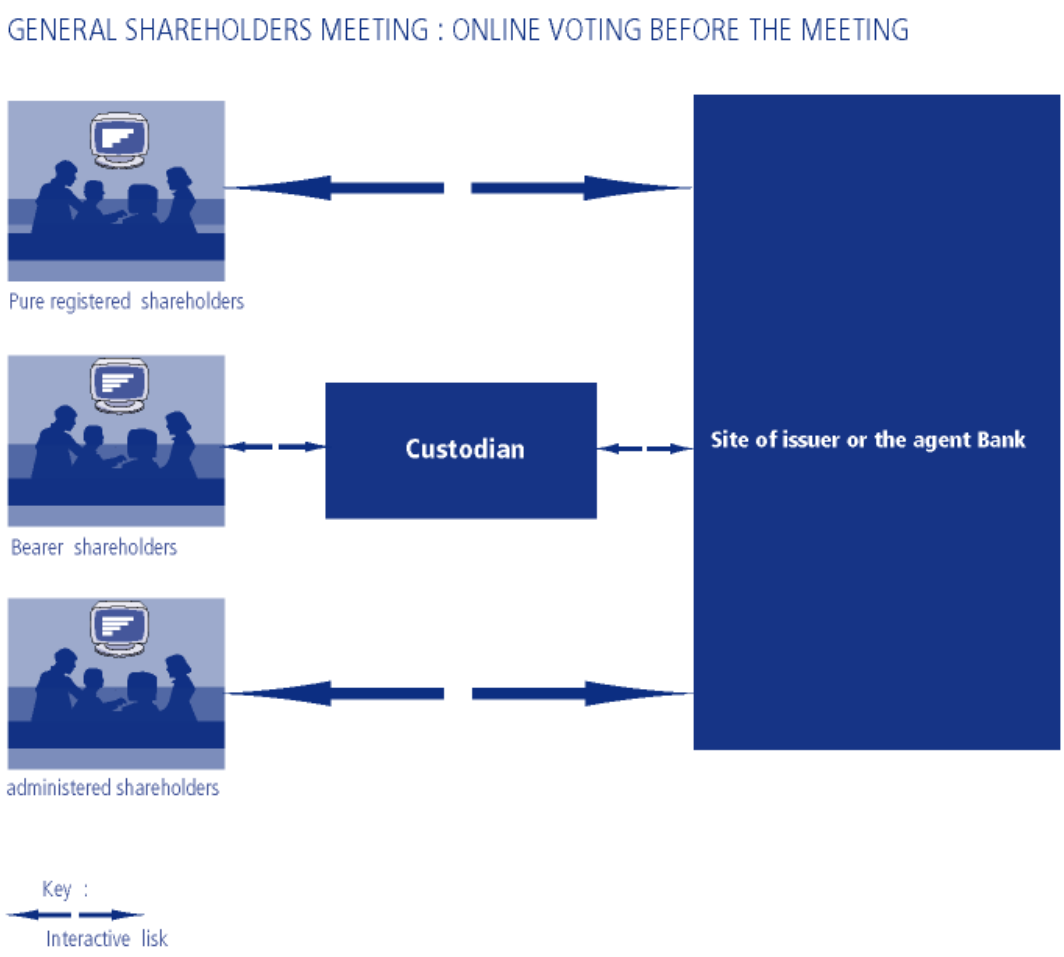
3. Methods of voting at general meetings

Shareholders can cast their votes in one of four ways. They can attend the meeting personally, send a mail-in vote, or name another shareholder or the chair of the meeting to act as their proxy.

The chart shows the distribution of voting methods for the 44 SBF 120 companies in 2004.



Appendix 6 Proposed architecture for electronic voting



The voting site is a central website run by the company (or its representative) or by the entity appointed to take charge of meeting formalities.

Different entities issue the formal invitations depending on whether shareholders have bearer or registered shares:

- account keepers send formal invitations to holders of bearer shares
- the issuer sends formal invitations to holders of “standard” or “managed” registered shares.

The company (or its representative) or the entity in charge of meeting formalities assigns access codes to holders of standard or managed registered shares. The shareholder uses an interactive link to vote on the meeting website.

· Holders of bearer shares follow one of two routes from their securities account on the website of the global custodian:

- solution 1: they are directed to the central voting website. The custodian certifies that the voter is a shareholder and indicates the number of shares held (maximum number to which voting privileges are attached)
- solution 2: they vote on the custodian’s site. The custodian sends the vote to the meeting website certifying that the voter is a shareholder and indicating the number of shares that voted. Here,

custodians have access to and are recognised by the central website. They must therefore receive the information needed to be recognised before the meeting. The custodian has a subsidiary site with a provisional ballot box.

Appendix 7 Proposal for a decree on the votes and electronic signatures of shareholders participating in general meetings by electronic means of telecommunication, amending Decree 67-236 of 23 March 1967

I – Two new Articles 131-2-1 and 131-2-2, worded as follows, are added to Decree 67-236 of 23 March 1967:

Art. 131-2-1 – Shareholders may, in accordance with the conditions laid down by Article L. 225-107-II of the Commercial Code and Articles 119 and 131-1 *et seq.* of this Decree [……], send their proxy form or mail-in voting form for any general meeting either in paper form or, following a decision by the board of directors published in the notice of meeting and in the formal invitation to shareholders, by electronic means of telecommunication.

Art. 131-2-2 – The Internet and electronic mail services using the Internet are deemed to be means (…..) of telecommunication within the meaning of Article L 225-107-II of the Commercial Code and electronic means of telecommunication within the meaning of Article 119 of this Decree. Shareholders may use these means to appoint a representative, to send a blank proxy to the chairman of the meeting, or to cast a vote on draft resolutions. An electronic vote employing these means shall be considered to be a mail-in vote within the meaning of the said Art. L 225-107 of the Commercial Code and Article 131-2 of this Decree.

The shareholder shall be assigned a login and a unique password enabling him or her to be recorded on the dedicated electronic site in accordance with Article 119 of this Decree (……). Issuance of the login and password shall follow a procedure that verifies the person's identity and shareholder status, and shall be done by the intermediary acting as account keeper in the case of bearer shares, by the issuer or its representative in the case of registered shares, or by the entity in charge of the meeting formalities. This electronic signature process shall be deemed to be a reliable process of identification that guarantees the link to the related document. Contractual compliance with the terms of this article shall constitute an agreement on forms of proof within the meaning of Article 1316-2 of the Civil Code. Consequently, a proxy or a vote issued before the meeting using these electronic means, and the subsequent acknowledgement of receipt thereof, shall, provided these documents are signed electronically in accordance with the above stipulations, be irrevocable instruments that are enforceable against company shareholders and all parties to agreements to provide electronic voting services for general meetings.

At least four files must be maintained for these electronic voting procedures to be effected: the file of shareholders, the file of electronic votes cast remotely, the file of electronic proxies and the "electronic ballot box" file, which contains the results of electronic votes cast at each meeting.

II – After the words "where appropriate electronic", the following shall be added to indent 3, paragraph 2 of Article 131 of Decree 67-236 of 23 March 1967: *"as stipulated in Article 131-2-2 of this Decree,..."*.

III – After the words "where appropriate by an electronic signature process", the following shall be added to Article 133 of Decree 67-236 of 23 March 1967: *"as stipulated in Article 131-2-2 of this Decree,..."*.