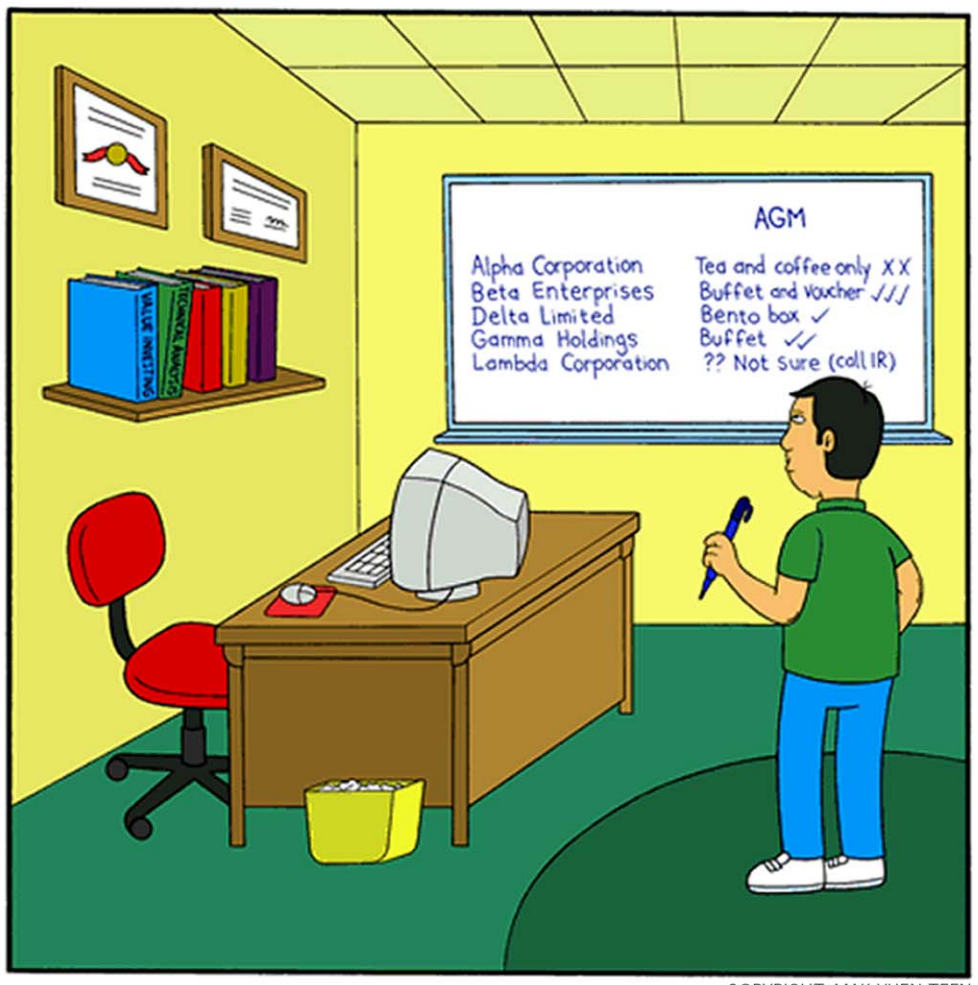
Source: *The Business Times,* p25
Date: 28 April 2017



COPYRIGHT: MAK YUEN TEEN

Be open to ideas on addressing AGM clustering

One can't simply walk away from the problem if the aim is to encourage greater retail participation in our markets and raise the role that shareholders play in holding boards to account. BY MAK YUEN TEEN

TODAY, those who hold shares in multiple issuers may have to choose from the 120 meetings being held starting from 9 am – comprising 117 annual general meetings (AGMs) and three standalone extraordinary general meetings (EGMs). In 2016, there were already nearly 100 meetings held on each of the last two days of April, but the problem is clearly getting worse.

Clustering adversely affects the ability of shareholders to participate effectively in these meetings. In Singapore, this problem is particularly severe in April, given the large number of issuers with December year-ends.

It is difficult to see how those issuers with many shareholders that hold their AGMs during the busiest meeting days of the year can argue that they have complied with the spirit of Principle 16 and Guideline 16.1 of the Singapore Code of Corporate Governance which respectively state: "Companies should encourage greater shareholder participation at general meetings of shareholders, and allow shareholders the opportunity to communicate their views on various matters affecting the company" and "Shareholders should have the opportunity to participate effectively in and to vote at general meetings of shareholders".

We should therefore continue to explore how we can ease the clustering problem. Recognising the importance of shareholder meetings to the Singapore market – given the high percentage of shares held by retail investors for which AGMs are often the only opportunity to meet the board and management – Chew Yi Hong and I have been tracking this and other issues relating to shareholder meetings here over the last few years. So far, we have published three reports on the subject, together with recommendations. However, according to Kenneth Lim ("AGM bunching: Don't fight it, just step around it", BT, April 14), shareholders should just resign themselves to the clustering problem and he also downplays the importance of attending AGMs. His views are obviously not shared by others like Philip Smith ("Shareholders now increasingly engaged, key that they attend AGMs", BT , April 18) and us.

Mr Lim cites our third report which recommended that issuers be given five months to hold their AGMs, together with a limit on the number of AGMs per day, and said that even with five months, there is "no good or fair way to force companies to spread out their meetings". But is it "fair" when shareholders are forced to choose from so many AGMs especially on the last few days of April?

Moving to a five-month deadline will still put us on par or ahead of other major markets like Australia, Hong Kong, UK and US.

There are other potential benefits of extending the AGM deadline to five months. With the introduction of the enhanced auditor reporting requirements, some issuers may need more time for the conduct of the audit and the preparation of the auditor's report. It may also allow audit committees more time to provide responses on matters raised in the enhanced auditor's report, something that issuers are being encouraged to do.

A longer AGM deadline may also allow issuers to provide longer notice for their meetings. According to the Asian Corporate Governance Association's Asian Proxy Voting Survey 2006, the global best practice for notice of meetings is 28 days. International institutional investors prefer longer notice periods and more time to vote their shares. In fact, in the US, the Securities and Exchange Commission regulates the notice period rather than the AGM deadline. However, in 2016, only 4.7 per cent of meetings in Singapore with only ordinary resolutions provided at least 28 days of notice, compared to 5.8 per cent and 4.9 per cent in 2015 and 2014 respectively. It is difficult to give 28 days of notice when the AGM deadline is only four months. Extending the AGM deadline may allow more issuers, especially the larger ones with global institutional investors, to give longer notice periods.

While we are under no illusions that clustering can be completely eliminated, we believe that more can be done to ameliorate the situation and extending the AGM deadline to five months will help. Based on an analysis of different markets in our first report, there appears to be a correlation between the clustering of AGM dates and both the time issuers are given to hold their AGMs and the clustering of financial year-ends.

SIGNIFICANT IMPROVEMENT

Let's take a closer look at Mr Lim's objections to our recommendation. First, by assuming (optimistically) that the number of issuers with December year-ends doubles, he argued that even if we limit the number of AGMs per day, there will still be at least 45 meetings per day if these meetings are spread over the 20 business days of April (if the deadline remains at four months). This would still be a significant improvement over the current situation.

We should perhaps also ask whether more issuers should consider having non-December year-ends. In a large charity where I served on the board several years ago, the charity changed its year-end from December to June. This was to avoid the peak period for audits for listed issuers with December year-ends and preempt a proposed increase in fees during the worst peak period of the year. As a member of the audit committee at that time, with an audit committee chairman who is an experienced listed company director, former senior audit partner of a Big Four accounting firm and former CFO of a large listed company, we could see no reason why we could not move away from a December year-end. As expected, the change turned out to be rather painless.

For listed issuers, not only might having a non-December year-end help reduce clustering and improve the ability of shareholders to participate in AGMs, it may also have other benefits in terms of better service from auditors and less fee pressure – which may be particularly relevant to smaller issuers. Perhaps potential new issuers can be educated about the benefits of having non-December year-ends before they list, rather than just have them join the December year-end logjam.

Mr Lim also objects to a five-month deadline because it "raises the likelihood of companies reporting their first-quarter results before shareholders have had a chance to approve the financial statements of the previous year. To avoid that situation, companies might delay reporting their first-quarter results." He is over-stating an imagined problem. There are other markets where issuers have to report their first quarter results before their AGM is due. For example, issuers listed on Bursa Malaysia have to announce their quarterly results within 60 days of the quarter end, but have six months to hold their AGM. US has mandatory quarterly reporting but allow issuers the entire year to hold their AGM.

While I have heard one large issuer say that it prefers its AGM not to be distracted by shareholders asking questions about the first-quarter results, is it a bad thing at all if the AGM is able to discuss not only the annual financial results but also the latest quarter results?

In this regard, the practice of Micro-Mechanics, a small-cap company that is regularly lauded for its governance and transparency, is enlightening. The company announces its first-quarter results before its AGM. When I asked its CFO about this practice, his reply was: "Yes, it has been our practice to announce Q1 result on or before our AGM so that shareholders attending our AGM will be updated with the latest data of our business which are more relevant to their decision making. In FY2016, we announced the Q1 result in the morning of the same day of the AGM which was held in the afternoon. We find that it is a good practice in terms of transparency – timely reporting to the public."

At the FY2016 AGM, the CFO did talk about the FY2017 first-quarter results. How refreshing to find a small-cap company embracing quarterly reporting and being so progressive in its thinking on engaging shareholders at its AGM.

In Singapore, we should not be deceived by stereotypes of retail investors attending AGMs only for the food and asking irrelevant questions and jump to conclusions that physical attendance is unimportant for retail investors generally.

Beyond the financials, an AGM deals with other important matters where shareholder participation is also important, such as the election of directors, share issue and share buyback mandates, and adoption of share and share option schemes. Clustering adversely affects the ability of shareholders to ask questions about these other matters.

As we have mentioned in our reports, some clustering is unavoidable. We suggested possible factors that shareholders can consider when they have to choose which AGM to attend, such as selecting AGMs of smaller issuers that are not well covered by analysts, proximity of meetings to one another, weightage in the shareholder's portfolio, and how potentially contentious the AGM is. We certainly hope they don't choose on the basis of the food or door gifts on offer!

PHYSICAL ATTENDANCE

We also recommended other measures to mitigate the effects of clustering, such as electronic online voting, webcasting of AGMs and making available detailed minutes of meetings, which Mr Lim agrees with. However, they are not a substitute for physical attendance at AGMs, which as pointed out by Mr Philip Smith, is important for shareholders who are increasingly more engaged and asking good questions.

I personally find that attending AGMs gives me insights beyond what I can gain from just reading the company's annual report and announcements. For instance, on April 25, I attended the Natural Cool Holdings' AGM. The independent chairman proceeded to delegate the conduct of the entire AGM to one of the executive directors after asking if there was any objection from the shareholders present, who were probably speechless at that point. In the annual report, it was disclosed that he missed the one board meeting that had been convened since he was appointed as board chairman, and he also missed the remuneration committee meeting (for which he is also chairman) and the two other meetings for the audit and nominating committees (for which he is a member) since appointment. It made me wonder if he is indeed a real chairman.

When I asked, an independent director retorted that I was mistaken even though those absences were clearly stated in the company's corporate governance report. This was then followed by an attempt at explaining which did not convince. I then pressed the company to disclose the additional advisory fee it paid to the chairman, which turned out to be S$5,000 per month for an initial period of three months. It was hesitant to disclose the amount of the advisory fee for reasons I cannot understand, especially when the "chair-delegate" kept mentioning the word "transparency" at the meeting. Together with other shareholders, we raised a number of other questions. This resulted in the company releasing an update to shareholders on some of these matters the following day.

A recent *New York Times* article cited resistance from institutional investors to the growing trend of US companies using "virtual-only" meetings because these investors believe that there are benefits from being able to physically attend meetings. In Singapore, we should not be deceived by stereotypes of retail investors attending AGMs only for the food and asking irrelevant questions and jump to conclusions that physical attendance is unimportant for retail investors generally.

If we want to encourage greater retail participation in our markets and raise the role that shareholders play in holding boards to account, we should be more open to different ideas for addressing clustering rather than simply walk away from the problem.

The writer is an associate professor at the NUS Business School where he teaches corporate governance. He is also an investor who attends as many AGMs as he can.

Source: The Business Times © Singapore Press Holdings Ltd. Permission required for reproduction.