

November 13, 2013

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial and Consumer Affairs Authority
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Financial and Consumer Services Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

And

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

**Re: CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure*
(the “Consultation Paper”)**

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Consultation Paper. Please note that our

¹The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors,

comments are based on our understanding of the complex proxy infrastructure based on our observations and discussions with other industry participants.

The CAC is supportive of regulatory measures designed to provide additional information and increase transparency in the capital markets. The proper functioning of the proxy voting system, including accurate vote tracking and entitlement attribution, is, in our view, an essential part of our capital markets. There is an economic value to voting rights, just as there is an economic value to holding shares on the record date for a dividend. A well run proxy voting system contributes to investor confidence and the integrity of our markets.

The importance of holding voting rights goes beyond just their economic value. Institutional investors often utilize the services of proxy agents and engage in other time-consuming and expensive research to help make appropriate voting decisions. For portfolio managers, exercising proxy voting rights in a diligent fashion may in fact be required in order to properly discharge their fiduciary duty owed to their clients. The CFA Institute [Standards of Practice Handbook, Tenth Edition \(effective 1 July 2010\)](#) for CFA Institute members specifically provides that part of a member's duty of loyalty includes voting proxies in an informed and responsible manner. Since proxies have an economic value, members must ensure they properly safeguard and maximize this value. The voting of proxies is stated to be an integral part of the management of investments. If members do not have confidence in the proxy voting system and whether proxies/voting instruction forms that are voted are in fact counted, it is questionable whether this standard of care is capable of being met in every instance.

We appreciate that a complete review of the proxy voting infrastructure is complicated and will take time. The system itself is extremely complex, and is not well understood by many market participants, making it difficult to identify issues and solutions. Unfortunately, those people who would benefit the most from amendments to the system, the individual voters, have diffuse interests, in contrast to the few players involved in the proxy voting system who have a more concentrated interest in any proposed reforms. We believe one of the impediments to moving forward is that no one market participant would seem to have an incentive to expend the time and money necessary to fix the system. Individual investors do not understand the proxy voting system and thus may

investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 113,000 members in 140 countries and territories, including 102,000 CFA charterholders, and 137 member societies. For more information, visit <http://www.cfainstitute.org/>.

never be aware that their vote may not have been cast as requested. However, the possibility that not all investors understand voting entitlements equally does not mean that we should not be concerned about protecting those entitlements.

In particular, we understand that there continue to be issues relating to over voting of shares. The list of owners that is generated through the existing proxy system appears to be inaccurate on a consistent basis. Our understanding is that over voting occurs because of a lack of consistently accurate record keeping among intermediaries with respect to voting entitlements. When an issuer receives too many votes at the proxy cut-off time, it has an immediate impact on the results of the meeting, as the tabulator and issuer have to make a decision about what to do with the extra votes (which translates into discounting certain votes, either on a pro rata or other basis). It is important to recognize and deal with this over-voting issue on a priority basis. Accurate voting entitlements must be recorded and tracked and votes must be counted appropriately, in order for shareholders to gain confidence that their voice has been heard and to help assure issuers that they are in fact hearing from the right people. As a result, we believe there is in fact a need for demonstrated improvement from existing market participants or further regulation in this area. We believe that in the short term, market participants and regulators should focus on the issues related to over-voting. Ideally, however, it would be prudent to consider completely revamping the proxy voting system based on principles that are necessary to maintain a properly functioning market, so that it remains flexible and useful for a lengthy period of time.

Two specific examples where we understand problems occur as a result of recordkeeping practices involve securities lending and securities placed in margin accounts.

We understand that once placed in a securities lending pool, securities are considered fungible and intermediaries cease to keep track of beneficiary ownership of the voting rights in such pools. As a result of this lack of accounting for clients' voting rights, both lenders and borrowers may end up trying to vote the same securities. It is likely that holders of securities do not fully understand what happens to their voting entitlements once their securities are placed into a lending pool. However, since it also appears that securities lenders and borrowers are able to track dividend entitlements for securities that are placed in a securities lending pool, it should be equally possible through appropriate reconciliation to track the voting entitlements for such securities.

In addition, we understand that margin accounts unintentionally provide other obstacles to accurate recordkeeping. Investors who open margin accounts must do so in accordance with the dealer's standard margin documentation. Such documentation would normally provide that securities placed in a margin account are fungible, and that when margin is used they become "house securities", owned by the dealer. The dealer then has full discretion to subsequently lend out those securities without any further acknowledgement or approval by the investor. The account holder does not usually have the opportunity to ask to maintain proportional voting rights, and may in fact believe they still retain voting rights. An investor may thus lose his or her voting entitlements simply because they are utilizing a strategy (such as selling a put option) that requires margin. A

securities borrower can, without the knowledge of the account holder “buy” their right to vote without the beneficial owner receiving any further financial consideration for giving up the voting rights. Voting confusion could potentially occur if an intermediary were to send a proxy or voting instruction form directly to the account holder.

There does not appear to be any binding rule that would require those most closely involved in the proxy voting system to ensure that over-voting does not occur. National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* (“NI 54-101”) does not contain any specific provision requiring an intermediary to reconcile the votes received. The only reference to reconciliation occurs in the Companion Policy 54-101CP to NI 54-101 (“54-101CP”). Section 4.3 of 54-101CP provides in part that it is important that the records of an intermediary reconcile accurately with the records of the person / company through whom the intermediary holds the securities or the security register of the issuer if the intermediary is the registered holder. The reconciliation should include securities held both directly and through nominees. In addition, Section 4.4 of 54-101CP provides in part that the issuer must be provided with the specified information in order to reconcile voting instructions received from a NOBO to the corresponding position registered in the name of the intermediary or its nominee. At a minimum, we believe that these requirements for reconciliation should be moved to the National Instrument itself and not be contained only as guidance in a companion policy.

In addition, Section 4.3 of 54-101CP provides in part that the total number of votes cast at a meeting by or through an intermediary should not exceed the number of votes for which the intermediary itself is a proxyholder. We believe this statement, which deals with the over voting phenomenon, should also be moved into the National Instrument. In the past, over voting may have gone unnoticed because a large number of people simply chose not to vote, and thus the fact that certain investors cast votes for shares for which they did not have the voting rights was not highlighted. Over voting should not occur if every intermediary were required to ensure they did not cast more votes than what they were entitled to cast as a proxy holder. There could still be instances where a few investors over-vote, but if there was no over-voting in aggregate, it would not be necessary for the chair and proxy tabulator at the meeting to make random decisions with respect to which votes to discount.

In order to help emphasize the importance of accurate voting results, intermediaries could be required to certify to the regulators that the reconciliation referred to above has occurred. We understand that under the existing system, some brokers are compensated for ensuring their clients vote on extraordinary items, which has had a positive impact on voter engagement. Absent some monetary or regulatory incentive or penalty, there may be little motivation for intermediaries to expend the time and funds required to adjust their systems and processes accordingly.

The issue of over-voting could also be addressed by shortening the length of time between the record date and the meeting date, to help eliminate the possibility of a large volume of trades occurring during the intervening period. We recognize that any such

change would also require changes to relevant corporate legislation, and that the requirements would still have to allow for enough time for issuers to deliver materials to investors and provide investors with sufficient time to review such materials to make an informed investment decision. However, given the proliferation of electronic delivery of information, it should be possible to shorten the period to some extent.

We would also support a process of end-to-end vote confirmation. We believe voter anonymity can be maintained by withholding the identity of the beneficial holder from the issuer itself, and requiring the intermediaries and/or transfer agents to confirm to the beneficial holder that their proxies/voting instruction forms have been acted upon. Investors should receive confirmation at the investor account level, and not the intermediary level. If investors have taken the time, and in many cases, incurred the costs of proxy agents, to ensure their voting instructions are provided, they should be entitled to receive direct confirmation that the instructions have been followed.

It appears to us that the OBO-NOBO concept may have compromised the accuracy and reliability of proxy voting. Outside of North America, the ability to identify beneficial holders appears more commonplace. There may be a number of legitimate reasons why institutional investors choose to designate themselves as OBOs, particularly when they wish to remain below the early warning reporting thresholds and do not wish to divulge sensitive information about their holdings directly to competitors. However, there should be a system whereby OBOs are required to identify themselves, if not to the issuer or the public, then at least to an intermediary such as the transfer agent, for the purposes of permitting end-to-end vote confirmation.

It is important to continue to examine and to address, as soon as possible, the issues raised in the Consultation Paper. We would strongly encourage the CSA to consider the type of proxy voting system they would like to have and that would support the principles of accountability, integrity and transparency in the capital markets. If the public believes more strongly in the integrity of Canada's capital markets, of which the proxy voting system forms an integral part, it would naturally encourage additional investment, including foreign investment, in Canadian issuers.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Ada Litvinov*

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