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Sent By E-mail

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Dear Sir or Madam:

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

This letter is submitted in response to the CSA Consultation Paper published on August 15, 2013. It reflects the views of a working group made up of issuers having a combined market capitalization of more than \$ 80 billion (the **Working Group**). We thank you for affording us the opportunity to comment on this important topic.

General

The Working Group strongly agrees with the view of the Canadian Securities Administrators (**CSA**) that accurate proxy voting is integral to the legitimacy of shareholder voting and fosters confidence in our capital markets. As such, all market participants benefit from a reliable, efficient and transparent proxy voting infrastructure that reduces transaction costs and accords each vote its full weight.

Shareholder activism in Canada has been increasing at a rapid pace. The past few years have seen an increase in the frequency of high-profile proxy contests, resulting from the rise in institutional share ownership of public companies, the presence of activist hedge fund investors and the greater willingness of shareholders generally to challenge boards and management on governance and performance matters. This new corporate environment demands increased market transparency and has prompted such reforms as the recent CSA proposal to decrease the early warning reporting trigger from 10% to 5% ownership of shares.

Shareholder activism has now focused attention on the proxy voting infrastructure and has led to the realization that there are many unknowns about the processes, functioning, information flow and internal controls surrounding proxy voting. Issuers know and have confidence in the parts of the infrastructure that are within their control. However, there are various issues regarding other portions of the proxy voting process on which the CSA should focus their attention.

The Working Group supports the CSA's initiative to review the proxy voting infrastructure and believes that a detailed, comprehensive understanding of the processes and policies underpinning the handling of proxy voting

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by actors within the intermediated system is essential. The Working Group looks forward to reading, absorbing and analysing the responses and comments from intermediated system participants. For instance, as mentioned below, the Working Group wishes to better understand why the issues raised regarding the vote of shareholders do not seem to be problematic for the distribution and payment of dividends.

Although the CSA's questions are predominantly directed towards actors within the intermediated system, the Working Group has provided a number of comments, which it hopes will advance discussion and debate as to appropriate solutions. These comments reflect the Working Group's belief that improvement of the proxy voting infrastructure may be tackled from different angles.

Working Group's Comments

1. The proxy voting infrastructure would benefit from increased accountability of actors in the intermediary system. Notably, the lack of transparency surrounding internal protocols of intermediaries make them impervious to repercussion and sanction for any mismanagement of proxy materials or votes. In reality, little is known about the back-room processes and the actual costs incurred in their processing of proxy materials.
2. Both the downward flow of voting materials to beneficial owners and the upward flow of votes to the tabulators should be normalized to reflect best practices. Brokers' back office protocol should be reviewed and analyzed to determine how best to disseminate information while avoiding information gaps and facilitating end-to-end vote confirmation. Once such a process has been mapped out, the CSAs should consider standardizing this process with brokers and other relevant intermediary actors.
3. Standardizing the intermediated system could increase transaction costs and may create a disincentive to investing, especially for retail investors. Hence, any new requirements on the actors in the intermediated system should focus on existing structures in order to avoid added costs for the investor. The Working Group strongly cautions against any regulation of the intermediated system that increases operating costs of intermediaries while being unable to show significant empirical benefits in terms of proxy vote tabulation.
4. Some members of the Working Group believe that regulators could reconsider the OBO/NOBO distinction. The market inefficiencies resulting from the OBO/NOBO distinction impose an unnecessary requirement (and cost) on issuers in their dissemination of proxy materials. Further, the concept of beneficial owners objecting to the disclosure of their holdings runs in direct contradiction with the demands for more transparency in the market. The most effective way to improve the downward dissemination of voting materials would be to have access to all voter identities and contact information. Should the OBO/NOBO distinction be maintained as it is, similar results may be achieved by temporarily lifting OBO status, solely for the purposes of disseminating materials. Neither quantity nor position of the OBO investor would be disclosed. The Working Group believes that temporarily allowing tabulators to access limited information from OBOs would promote direct solicitation and remove many of the complexities inherent in the current proxy voting infrastructure. The Working Group would also like to re-emphasize the CSA's reference to the NYSE survey whose results found that if the full consequences of the NOBO-OBO status were explained to the investors, and if there was an administrative price tag of \$50 for being an OBO, 95% of investors would *not* choose to be an OBO.¹
5. To improve reliability and address over-voting and share lending problems, members of the Working Group believe that two complementary solutions could be explored:
 - (a) first, there should be a way to follow each investor's position in an issuer. For instance, the brokers could manage an identification number which would be attached to the voting block of

¹ See section 3.4 of the CSA Consultation Paper (The OBO/NOBO concept).

an investor and follow it throughout the system. In such a scenario, the identification number would be entered by the beneficial owner or its broker in order to vote that particular block of shares. Upon the identification number being entered, the vote could be changed but the shares would be "closed off" to double voting. In addition, such an identification number would likely be instrumental in facilitating confirmation by brokers and beneficial owners that the votes they cast have been timely received and accurately recorded and included in the tabulation of votes;

- (b) second, in order to avoid the use of more than one media to vote shares, investors could be encouraged to vote their shares electronically, through secured and controlled portals. The Working Group believes that the proxy voting infrastructure could benefit from significant or complete de-materialization. A concerted effort to disincentivize hard copy dissemination of materials in favour of an online review and voting of proxy materials should decrease transaction costs and the possibility for information gaps as well as facilitate information flow. Additionally, electronic dissemination and voting would allow for the implementation of the abovementioned identification number system.
6. The reality in Canada is that all investors entitled to receive dividends do, indeed, receive dividends. This fact begs the question: why is the same consistency seems to be lacking in the transmission and processing of proxy materials? Further, is it feasible to fuse the proxy voting infrastructure to the existing infrastructure used to distribute and process dividends in a cost-effective manner? These questions need to be explored further as this could be an efficient, cost effective and low-impact solution to existing deficiencies.

Conclusion

In short, members of the Working Group support the CSA's initiative to reform proxy voting. This consultation is certainly the first step in identifying inherent problems of the intermediated system. The Working Group believes that improvement of the proxy voting infrastructure may be tackled from a number of different angles. Specifically, the normalization of information flows by determining and adhering to industry best practices, reconsidering the OBO status and encouraging the electronic dissemination and voting of proxy materials, will likely decrease information gaps. These proposals intend to create a more accurate and reliable proxy voting infrastructure, while keeping transaction costs low and maintaining the existing efficiency and liquidity provided by the intermediated system.

Thank you for allowing us to comment on this subject.

Yours truly,

Norton Rose Fulbright Canada LLP