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November 13, 2013

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Autorité des marchés financiers
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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

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Dear Sirs and Mesdames:

Re: CSA Consultation Paper 54-401 – Review of the Proxy Voting Infrastructure

The Portfolio Management Association of Canada ("PMAC"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding CSA Consultation Paper 54-401 – *Review of the Proxy Voting Infrastructure* (the "Consultation Paper").

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. In addition to this primary registration, some firms are dually registered as investment fund managers and/or exempt market dealers or other registration categories but generally 70% of their income is derived from portfolio manager registration to be members of PMAC. PMAC was established in 1952 and currently represents over 170 investment management firms that manage total assets in excess of \$800 billion (excluding mutual funds assets). Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at www.portfoliomanagement.org.

General Comments

PMAC supports the efforts of CSA to undertake a review of the current proxy voting system in Canada with a view to assessing the reliability of the system and identifying areas of improvement. The importance of a well functioning and reliable proxy voting system in Canada cannot be overstated and is integral to investor confidence in our capital markets.

We agree that issues directly related to the accuracy, transparency and integrity of the proxy voting infrastructure are of paramount importance in the CSA's review and in the context of well functioning capital markets generally. We find most troubling the fact that very few people understand how the proxy voting system works from end to end and this, as a preliminary matter, needs to happen in order that there be a common understanding of the system itself, so that collectively we can identify and resolve the problems that prevent the system from being effective.¹ We do, however, acknowledge the significant challenges posed by potentially taking a comprehensive reform approach to the problems identified in the current proxy voting infrastructure.

Set out below are our comments on the Consultation Paper. We note that our comments do not respond directly to each question included in the Consultation Paper as portfolio managers involved in the proxy voting process can only speak to the portions of the infrastructure to which they have access. Therefore, our comments do not reflect processes or information that is beyond the access or control of our Members but rather we highlight some key themes we feel must be addressed.

1. More Research and Analysis on Specific Issues

The following comments relate to two areas where we see a need for further analysis and consultation. Other areas identified in the Consultation Paper may also benefit from further analysis.

- *Managed Accounts*

We believe that the issues raised in the Consultation Paper concerning managed accounts and specifically, the inability of an investment manager to vote due to gaps in managed account information require more research and analysis, particularly as they relate to retail investors. Where instances of information gaps may occur, this is largely due to the incorrect set-up between intermediaries. This is an issue that could largely be solved through more robust electronic processes connecting the intermediaries (discussed below). On the institutional investor side, we are not aware of such issues arising to merit the concerns raised in the paper. However, we would be willing to engage in more consultations on this issue to determine whether there is an issue for most portfolio managers and to investigate whether changes are needed to address the concerns raised. Other issues relating to institutional investors, such as vote reconciliation, are more of a concern and warrant further consideration. In addition, as an overall capital markets issue, an inefficient and ineffective proxy voting system has implications on securities valuation, and this can impact the overall efficiency of our capital markets.

- *Securities Lending*

¹ See Davies LLP Paper titled: "*The Quality of the Shareholder Vote in Canada*", By: Carol Hansell, Mark Connelly, Michael Disney, Gillian Stacey, Tim Baron, Adam Fanaki and Richard Fridman. Available at: <http://www.dwpv.com/Sites/shareholdervoting/index.htm>

We agree that securities lending transactions is an area of potential risk for over-reporting and should be carefully analyzed to ensure that over-voting does not occur. We also understand that over voting is persistently occurring and, perhaps, is partly a result of there being no accountability within the system to address the issue. It is clear that mechanisms must be put in place to properly track lending activity. There is a commercial value associated with voting rights. We note that financial intermediaries are able to clearly account and attach a commercial value to shares held at record date for dividends with proper existing accounting systems. We query why the same systems / approach cannot be used to account for securities lent which include attached voting rights. We believe that the CSA should consider voting rights to remain with the lender just as other rights, such as dividends, remain with the lender. The issues raised in the context of securities lending must be carefully considered. As a general observation, we believe that further industry consultation on this issue needs to occur to address the multitude of connected issues, including, but not limited to: risk of large institutional clients being unable to vote their positions, share lending account reconciliation issues² and current global market practices in this share lending transactions, to name a few.

2. Increased Transparency

We agree that enhancing the reliability and transparency of the existing system would address some of the concerns outlined in the Consultation Paper. For instance, the development of an end-to-end vote confirmation system would fulfill the need for a transparent system where participants can get confirmations that their votes have been received and properly counted after they are cast. We believe that with today's technology this can be achieved entirely by electronic and systematized means; this would ensure accuracy. A digital end-to-end process would benefit all participants in the process by allowing for automated confirmation of voting and providing transparency with a built in audit process. With the redesign of this type of process, controls and procedures need to be in place to ensure the integrity of the voting system. We strongly believe that there must be sufficient transparency in the voting system so that both issuers and investors are confident that the system works.³

3. Operational and Technological Improvements

We acknowledge that the proxy voting system in Canada is complex and while some improvements to operations and procedures have been developed or are being developed by participants in response to particular challenges that have been identified, the process remains excessively complex and error-prone. Increased transparency (as indicated above) will allow participants to identify mistakes when they happen. Technological advances, as seen in many areas of the capital markets, should also enable do-able solutions to address the issues raised in the Consultation Paper. In many cases, electronic processes have come to replace paper-based processes and this shift is also necessary in the proxy voting context.

The system has various layers of participants who deal with shareholders, brokerage firms, transfer agents and other intermediaries who distribute vote materials, collect proxies and forward voting information to tabulators using a variety of different paper and computer systems. As a result, there is little coordination. Further exploration and collaboration is needed to establish a robust electronic based system that could achieve efficiencies, accuracy and operational effectiveness. A fully-based electronic voting infrastructure is the only way that voting information can be processed quickly, effectively tracked and reconciled.

² For instance, circumstances where institutional clients have been unable to recall their shares on loan on time for a particular vote and, as a result, have not been able to vote their positions. One possible solution may be to create financial penalties for those who don't return borrowed securities to the lender.

³ *Ibid.*

In our view, the significant operational limitations in the current system would be significantly improved with current technology.

4. Regulatory Oversight, Coordination and Accountability

We believe regulatory oversight of all intermediaries and participants along with increased coordination among the players will increase accountability and improve the current problems identified in the proxy voting system. The CSA should aim to facilitate cooperation among all participants including educating investors and issuers on corporate governance issues, proxy solicitation and voting rights. While we think the system could benefit from more oversight, we do not think it is necessary at this time to increase regulation *per se* (at least in the short term) and consideration should be given to whether issuing guidance around voting practices should constitute a first immediate response in resolving some of the issues identified in the Consultation Paper.

The system is also lacking accountability and in order for this to change, the industry must understand who is making decisions and to whom the decision-makers are accountable. Many of the participants in the proxy voting system are not regulated (i.e. proxy agents, solicitors and advisory firms), which creates an accountability disconnect to other proxy system participants.

5. Reform Must be Collaborative

While we commend the CSA for initiating this review, the shareholder voting process goes beyond just securities regulation and is an issue of corporate law as well. Proxy solicitation is dealt with in both the corporate law and securities legislation. For example, objecting beneficial shareholders (OBOs) and non-objecting beneficial owners (NOBOs) are concepts that are not defined in the same ways under corporate and securities laws. Disclosing voting results is also hampered by differing applications of corporate and securities laws.⁴ Similarly, as acknowledged in the Consultation Paper, addressing reconciliation challenges ultimately may require longer-term reforms of the various record dates and proxy cut-offs under corporate law.

In order for the proxy voting infrastructure to be improved, all of the applicable regulating bodies in Canada (i.e. securities regulators, provincial and federal corporate law administrators, etc.) need to come together and collaborate to address both shareholder rights and the voting processes. The regulators should also (within their review) complete an assessment of the costs associated with a regulatory overhaul of the system and proxy solicitation, along with the impact of such costs on issuers and other participants. An automated electronic voting system would undoubtedly incur cost savings for all involved.

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We strongly support the CSA's recent announcement to hold roundtables on this topic. We believe that workable solutions will be achieved if input is provided by all participants in the system and all applicable regulators. In addition, we hope the CSA urges service providers to be active participants in these discussions.

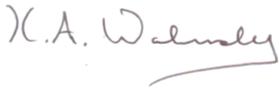
If you have any questions regarding the comments set out above and/or any of our recommendations, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Julie Cordeiro at (416) 504-1118.

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<sup>4</sup> *Ibid 1 at p.110.*

Yours truly,

**PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA**

Handwritten signature of Katie Walmsley in black ink.

Katie Walmsley  
President, PMAC

Handwritten signature of Scott Mahaffy in black ink.

Scott Mahaffy  
Chair, Industry, Regulation & Tax Committee  
Vice President Legal, MFS McLean Budden Limited



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