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Sent by electronic mail:

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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island

Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland
and Labrador
Superintendent of Securities, Northwest
Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

To the attention of:

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Gentlemen and Mesdames:

Request for comment on CSA Consultation Paper 54-401 – *Review of the Proxy Voting Infrastructure*

This letter is in response to the request for comments on how Canada's complex proxy voting infrastructure operates and the concerns that have been raised regarding the integrity and reliability of the proxy voting infrastructure.

The CSA has noted in the introduction, a fundamental feature of share ownership in Canada is the right to vote on matters affecting the corporation. It is therefore necessary for the comfort of both issuers and shareholders that the voting infrastructure be designed in such a manner that the right that is intended is acted upon. Both the corporation and shareholders must have a reasonable expectation that the vote has been given to the rightful share owner and once that share owner exercises that right to vote that it will be included in the vote tally as it was intended by that share owner.

The CSA has requested comment on two particular issues identified to have the most potential to impact the ability of the proxy voting infrastructure to function accurately and reliably:

- Is accurate vote reconciliation occurring within the proxy voting infrastructure?

Registered vs Beneficial Shareholders

The reconciliation of registered holders is typically straight forward because the shares are registered directly in the name of the shareholder (a "registered shareholder"). This makes it easy for the tabulator to validate the vote against the registered shareholder list. This question really focuses on the process by which shares are held electronically (or occasionally in certificated form) with a broker or other financial intermediary on behalf of a shareholder (a "beneficial shareholder"). The tabulator receives the vote through a variety of methods that use a variety of different voting forms from several different intermediaries that may or may not disclose the name of the underlying beneficial holder. Typically beneficial shareholders represent over 95% of an issuer's overall shareholders.

Intermediated Holding System

Shares of an issuer that are held beneficially are recorded electronically with the intermediated depository holding system (the "Depository" meaning CDS in Canada & CEDE in the US). The Depository tracks trading and the total securities held by each intermediary however, the Depository does not track any information related to the underlying beneficial securityholder. This intermediated holding system often results in one share having multiple associated "owners" due to share lending and other derivatives.

Blank Cheque Voting

I have over 20 years of experience involving the tabulation of proxy votes for publically listed issuers. I have noted a great improvement over these years on the importance given to the reconciliation of proxy votes however, as the range of complicated financial products has increased it has become increasingly difficult to determine if the proxy votes received and tabulated belong to the actual share owner.

Under the current system intermediaries are given "blank cheque voting" for all of the securities it holds at the Depository for a particular issuer. The tabulator has no ability to confirm that the actual share owner is also the voter of the shares. The tabulator simply validates that the shares voted by each intermediary does not exceed the shares held on record at the Depository.

NOBO & OBO – Evidence of Blank Cheque Voting

In September 2004 National Instrument 54 -101 was introduced to allow an issuer to mail and tabulate votes for non-objecting beneficial owners (“NOBO’s”). When this option is chosen, the reconciliation of the NOBO votes has been simplified because it is easy to identify what NOBO holders have voted. When an issuer mails directly to NOBO holders the tabulator reduces the intermediary position by the total shares belonging to NOBO holders

This has highlighted the issue of blank cheque voting because now the pool of shares that the intermediary can vote has been reduced significantly and only represents the total shares held by objecting beneficial owners (“OBO’s”). Where an issuer mails proxies directly to NOBO holders we see a significant increase in the amount of shares voted that exceeds the total pool of shares that the intermediary is eligible to vote (“overvoting”).

Example

The table below demonstrates how overvoting can occur when the issuer mails proxies and tabulates proxies for NOBO’s vs the intermediary mailing and tabulating proxies for to both NOBO and OBO holders (typically through a third party called Broadridge). It also demonstrates a significant variance in the amount of votes included in the final tally based solely on the choice of the issuer on mailing. This can result in a significant number of votes being invalid and the outcome of the vote.

Intermediary mails to all holders

Holder Type	Shares Held	Votes Received	Votes Tabulated	Total unvoted
All Holders	25 million	22 million	22 Million	3 million

Issuer mails to NOBO and Intermediary Mails to OBO

Holder Type	Shares Held	Votes Received	Votes Tabulated	Total unvoted
OBO	15 million	17 million	15 million	2 million <i>overvoted</i>
NOBO	10 million	5 million	5 million	5 million
Total	25 million	22 million	20 million	5 million

Share Lending – The primary cause of over voting

Most margin accounts allow the Intermediary to lend shares without notice to the margin account holder. This often results in the account holder not being aware that the shares have been lent and therefore both the account holder and the lendee believe that they are the true owner of the shares and entitled to vote. Typically share lending agreements are written in such a manner that the vote is given to the shareholder that buys the lent shares and not holder that has lent the shares. However, in my experience reconciling these lent positions can be difficult and Intermediaries will often issue proxies to more than one holder to vote the same

shares. Intermediaries know that its entire Depository position on record is unlikely to be voted in its entirety and issuing duplicate proxies for the same shares is unlikely to be an issue.

Conclusion

Blank cheque voting by intermediaries should be legislated to ensure positions are accurately reconciled at record date for voting purposes and there should be clear rules set regarding the use of lent shares for voting purpose. Reconciliation by intermediaries does not appear to be an issue for declaring dividends because there is a financial incentive for the right party to receive payment. A broker can credit the account of the margin account holder as if they received the dividend. The same is not possible if both parties are expecting to receive the right to vote. The same responsibility for voting records because a) typically an entire intermediary position is not voted, so duplicate votes are often undetected b) there is no incentive to ensure that the voting records are accurate as an intermediary can mail more proxy voting than their position without consequence c) it is virtually impossible to validate votes received by an intermediary due to the lack of full transparency into beneficial ownership.

A secondary responsibility for reconciliation should fall to the issuer and its appointed tabulator. It is not common practice for an issuer to notify an intermediary when votes are not counted. Occasionally a proxy solicitation agent may be engaged and will reconcile voting with an intermediary but may only do so if the votes in question are favourable to the issuer.

2. What type of end-to-end vote confirmation system should be added to the proxy voting infrastructure?

Currently in Canada there is no end to end vote confirmation for all beneficial holders. Holders that vote electronically via the internet are provided a confirmation from their intermediary, however, they will not receive a confirmation that their vote was included in the final tabulation. The exception to this is when an issuer mails and tabulates proxies for the NOBO holders. In this case NOBO holders receive a confirmation when the online vote is received by the tabulator. The OBO holder, however, will continue to only receive confirmation that their vote was received by the intermediary without confirmation that the vote was accepted by the tabulator.

The simplest resolution to this would be to assign a unique identifier to each beneficial shareholder. A master list of the record date beneficial holders (by unique identifier to preserve anonymity) and corresponding share position would be provided to the tabulator who would then be able to reconcile the votes received to the master list. The tabulator could confirm when a beneficial holders' shares have been accepted and included in the tabulation. In addition the tabulator will be able to quickly identify the potential for over-voting if the master list does not reconcile with the total position held on the record of the Depository. This is an oversimplification for how the process would work for the purpose of this letter. The issue of the expense incurred in implementing this system would also need to be explored.

The following is some additional issues on which CSA is seeking information in order to better understand whether the proxy voting infrastructure is collecting, submitting and tabulating proxy votes reliably and with integrity.

Use of voting agents: If an investor delegates voting authority for its shares to a professional investment adviser or third party voting agent, there is no mechanism in place to confirm that it is the adviser, and not the investor, who is has voted the shares.

This common practice throughout the industry and ensures that issuers receive a high level of vote participation. Often the advisor is more informed than the shareholder and it is not uncommon for a shareholder to delegate voting and trading responsibility to a professional investment advisor or voting advisory service. Ultimately it is the responsibility of the shareholder to decide if the advisor or service suits their needs and is in line with their own voting objectives. However, under the current proxy voting infrastructure this process is disrupted when the issuer takes responsibility for mailing the NOBO directly. The voting instructions regarding special delivery instructions, (managed accounts, electronic delivery, etc.) are not included in the NOBO information that is provided to the issuer. As a result these votes are not received resulting in lower vote participation.

Impact of OBO-NOBO concept on voting integrity: It will be difficult to have a completely transparent proxy voting system as long as there is an OBO component to the beneficial shareholder structure. The simplest and most cost effective method to improve voting integrity is to give tabulators full access to all beneficial shareholder data as of a meeting record date. There are examples of this process in several jurisdictions outside of North America.

Thank you for the opportunity to comment. Please do not hesitate to contact me if you wish to discuss any aspects of this letter.

Sincerely,

"signed"

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