CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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

August 15, 2013

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Part 1 – Introduction

1.1 Shareholder voting and its importance to Canadian capital markets

A fundamental feature of share ownership in Canada is the right to vote on matters affecting the corporation.

Corporate law gives shareholders the right to vote for directors and the right to vote for their removal. It gives them the right to approve an auditor's appointment. It also gives them the right to approve certain fundamental changes and transactions, including change of control transactions or significant asset sales.

Securities legislation also gives shareholders important voting rights. Reporting issuers must obtain minority shareholder approval for certain types of special transactions.[1] Recently, we published for comment proposed new frameworks for the regulation of shareholder rights plans, including a proposal that would give shareholders voting rights to approve or terminate a rights plan adopted by a board.[2]

Finally, exchanges also require shareholder votes in a number of circumstances. The Toronto Stock Exchange's (**TSX**) policies require shareholder approval for certain types of dilutive transactions, and the detailed disclosure of the proxy votes received for individual directors.[3] The TSX is also considering whether listed companies must adopt majority voting.[4] The TSX Venture Exchange (**TSXV**) requires shareholder approval for major corporate actions such as a change of business, reverse take-over and certain qualifying transactions of capital pool companies.[5]

Shareholder voting is one of the most important methods by which shareholders can affect governance, communicate preferences and signal confidence or lack of confidence in an issuer's management and oversight. Issuers also rely on shareholder voting to confirm the approval of important corporate transactions or votes on governance matters such as shareholder rights plans or stock option plans. Shareholder voting is therefore fundamental to, and enhances the quality and integrity of, our public capital markets.

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[1] *Regulation 61-101 respecting Protection of Minority Security Holders in Special Transactions* (February 2008).

[2] Notice and Request for Comment – Draft *Regulation 62-105 respecting Security Holder Rights Plans*, Draft *Policy Statement to Regulation 62-105 respecting Security Holder Rights Plans* and Draft Consequential Amendments (March 14, 2013). The *Autorité des marchés financiers* also published concurrently Consultation Paper *An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* inviting comment on an alternative approach to that contemplated by the CSA proposal (March 14, 2013).

[3] Section 611(c) of Part VI of the TSX Company Manual.

[4] Proposed Amendments to Part IV of the TSX Company Manual (October 4, 2012), online: <http://tmx.complinet.com/en/display/display_main.html?rbid=2072&element_id=821>.

[5] Policy 5.2 *Change of Business and Reverse Takeovers* of the TSX Venture Exchange Corporate Finance Manual.

1.2 Proxy voting's relation to shareholder voting

A shareholder vote takes place at a meeting of shareholders.[6] Historically, under common law, a corporation's shareholders had to attend meetings in person in order to exercise their right to vote. However, if the corporation's articles permitted, a shareholder could appoint another individual, known as a **proxy**, to attend and act on his behalf at a meeting of shareholders in the same manner, and to the same extent as if the shareholder were himself present at the meeting. The appointment was effected through a written instrument known as an "instrument of proxy". Eventually, the term "proxy" was used increasingly to refer to the written instrument that gave an individual voting authority, while the individual who was given voting authority was known as the **proxy holder** or **nominee**.[7]

With the development of securities markets and public, widely-held corporations, it became increasingly unlikely that shareholders of public corporations could attend and vote in person at meetings. Canadian corporate legislation gave shareholders the right to attend and vote at shareholder meetings by proxy by the mid-20th century. However, corporate and securities legislation did not prescribe a detailed proxy system until after the Kimber Committee's Report of 1965 (the **Kimber Report**). The Kimber Report's recommendations formed the basis for reforms in corporate and securities legislation that established the current proxy voting regime.[8] This regime consists of the following elements:

- mandatory solicitation of proxies from shareholders by management,
- a prescribed form of proxy for management and others who solicit proxies, and
- mandatory provision of an information circular by management or others who solicit proxies.

Currently, the vast majority of voting occurs through proxy voting. Accurate proxy voting, therefore, is integral to the legitimacy of shareholder voting and fosters confidence in our capital markets. Efficient capital markets depend critically on the manner in which shareholders exercise their voting rights.

In practice, proxy voting involves the network of organizations, systems, legal rules and market practices that support the solicitation, collection, submission and tabulation of proxy votes for a shareholder meeting; we refer to this as the **proxy voting infrastructure**.

Issuers and investors have a common interest in a reliable and transparent proxy voting infrastructure that reduces transaction costs, reduces discretion in processing votes and gives each vote its full weight. Issuers and investors have recently expressed a lack of confidence in

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[6] For a high-level overview of the shareholder meeting process, see Appendix A. We use the term "shareholder" in this Consultation Paper generally to refer to all securityholders.

[7] *Report of the Attorney General's Committee on Securities Legislation in Ontario* (March 1965) at 49; Kevin P. McGuinness, Canadian Business Corporations Law, 2d. ed. (2007: LexisNexis Canada Inc.) at 1177.

[8] Welling, *Corporate Law in Canada: The Governing Principles*, 2d. ed. (1991: Butterworths Canada Ltd.) at 499.

the reliability of the proxy voting infrastructure and have engaged in discussions on how to address these concerns. Notable examples include:

- the publication by Davies Ward Phillips & Vineberg LLP of a discussion paper on "The Quality of the Shareholder Vote in Canada" in October 2010,[9]

- the Shareholder Voting Symposium held in June 2011 co-hosted by RBC Dexia Investor Services Limited (**RBC Dexia**), the British Columbia Investment Management Corporation and the Canadian Coalition for Good Governance,[10] and

- the Canadian Society of Corporate Secretaries' (**CSCS**) Shareholder Democracy Summit held in October 2011.[11]

It appears, however, that issuers and investors ultimately may not have sufficient access to information regarding, or control over, significant portions of the proxy voting infrastructure. As a result, it is difficult for them to assess the reliability of the infrastructure *as a whole*. It is important to assess the reliability of the proxy voting infrastructure as a whole because the value and weight of an individual investor's proxy vote ultimately is affected by all the other proxy votes that are solicited, collected, submitted and tabulated. For example, if an investor owns 100 shares, the relative weight of his 100 shares decreases as more shares are voted by others, and conversely, the relative weight increases as fewer shares are voted by others. Furthermore, the more others vote in accordance with the investor's vote, the more likely the investor will attain his desired voting outcome. To give full weight (but not under- or over-weight) to an investor's vote therefore requires a holistic approach to reviewing the proxy voting infrastructure.

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 have seen a broad increase in proxy contests over the last few years. We anticipate this trend to continue and result in greater stress being imposed on the proxy voting infrastructure.

Given the importance of proxy voting to our capital markets and the difficulties issuers and investors face in establishing the reliability of the proxy voting infrastructure as a whole, we think more active securities regulatory involvement in reviewing the proxy voting infrastructure

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[9] Davies Ward Phillips & Vineberg LLP, *The Quality of the Shareholder Vote in Canada* (October 22, 2010) at 64, online: <http://www.dwpv.com/Sites/shareholdervoting/index.htm>. [*Davies Paper*]

[10] RBC Dexia, *A Case for Change: Shareholder voting symposium summary report* (October 2011), online: <http://www.cscs.org/Resources/Documents/summit/Resources/RBC%20Dexia%20Shareholder_voting_report%20FINAL.pdf>. [*Dexia Report*]

[11] CSCS Shareholder Democracy Summit, online: <http://www.cscs.org/SummitResources>. See also CSCS, *Shareholder Democracy Summit Inaugural Report* (October 24-25, 2011), online: <http://www.cscs.org/Resources/Documents/summit/Summit%20Repor.pdf>. [*CSCS Inaugural Report*]

is appropriate. This increased involvement is consistent with our mission as securities regulators to, among other things, foster fair, efficient and vibrant capital markets.[12]

Part 2 – Overview of the Consultation Paper

2.1 Purpose of the Consultation Paper

We are publishing this consultation paper (the **Consultation Paper**) to outline and seek feedback from issuers, investors and other stakeholders on a proposed approach to address concerns regarding the integrity and reliability of the proxy voting infrastructure. We have identified two issues which we intend to examine further because, in our view, they have the most potential to impact the ability of the proxy voting infrastructure to function accurately and reliably. These issues are:

1. *Is accurate vote reconciliation occurring within the proxy voting infrastructure?*

Vote reconciliation refers to the process by which proxy votes from registered shareholders and voting instructions from beneficial owners of shares are reconciled against the securities entitlements in the intermediated holding system.[13] We have identified two main reconciliation challenges. First, the intermediated holding system results in one share having multiple associated entitlements. Unless there is an effective system of reconciliation, there is a risk that valid proxy votes submitted to the tabulator ultimately are discarded because they cannot be properly matched to an appropriate omnibus proxy or registered position. Second, share lending creates a risk that the same share could be voted multiple times. We want to better understand whether the proxy voting infrastructure adequately addresses these vote reconciliation challenges.

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

End-to-end vote confirmation refers to a communication provided to shareholders that their proxy votes and voting instructions have been properly transmitted by the intermediaries, received by the tabulator and tabulated as instructed. Currently, the proxy voting infrastructure does not contain an end-to-end vote confirmation system for beneficial owners of shares, although efforts are underway to develop such functionality. We think that the lack of such functionality can undermine confidence in the accuracy and reliability of proxy voting results. We want to review the current development status of an end-to-end vote confirmation system, as well as consider what features such a system should incorporate.

These issues are described in more detail in Part 5 of the Consultation Paper.

[12] CSA Mission Statement, online: <http://www.securities-administrators.ca/our-mission.aspx>.

[13] Securities entitlements and the intermediated holding system are described in Part 3.

While we recognize that there are other issues related to proxy voting that have been raised by market participants,[14] this Consultation Paper is focussed on issues that are directly related to the accuracy, transparency and integrity of the proxy voting infrastructure. However, to the extent that market participants have comments on other issues, we will consider these comments as part of our ongoing monitoring and consideration of the proxy voting system.

We are publishing this paper for a 90-day comment period and specifically seek comment on whether the focus on the two issues we intend to examine further is appropriate and whether we have asked the right questions in relation to each issue. We have also identified other potentially relevant issues for comment.

The comment period will end on **November 13, 2013.**

2.2 Structure of the Consultation Paper

This Consultation Paper is structured as follows:

- Part 3 outlines four factors that appear to have contributed, or have been suggested as contributing to, the complexity of proxy voting and vote reconciliation challenges;
- Part 4 outlines the key functions performed by the proxy voting infrastructure;
- Part 5 sets out the two issues described above and the questions we are asking about these issues;
- Part 6 set outs additional issues on which we are seeking information in order to better understand whether the proxy voting infrastructure is collecting, submitting and tabulating proxy votes reliably and with integrity; and
- Part 7 sets out proposed next steps.

Part 3 – Factors contributing to the complexity of proxy voting

In theory, all that is necessary for proxy voting to occur is for management of the issuer to send each shareholder that is recorded in the issuer's share register the prescribed management form of proxy and information circular, and for each shareholder to execute the proxy and send it back to management with directions as to how the shareholder wishes management to vote. In practice, however, proxy voting is a complicated process. We stress that we are not suggesting that a complex process necessarily lacks integrity. However, the complexity of proxy voting can make it difficult to establish that the proxy voting infrastructure is functioning reliably.

[14] Examples of such issues include "empty voting", anonymity for beneficial owners, vote reconciliation guidance provided under the Securities Transfer Association of Canada (STAC) proxy protocol, the discretion afforded to chairs of shareholders meetings to rule on proxies, broker solicitation fees and the role of proxy solicitors. These issues will not be specifically addressed in this Consultation Paper.

Based on prior feedback we have received[15] as well as our own review, the following appear to be the main factors contributing to the complexity of proxy voting as well as vote reconciliation challenges:

- the intermediated system of holding securities that supports clearing and settlement;
- securities lending;
- the use of voting agents[16] by investors; and
- the right of investors not to disclose their identities to issuers and others (the **OBO-NOBO** concept).

3.1 The intermediated holding system[17]

All major financial markets have adopted a system of centralized clearing and settlement services for publicly-traded securities in order to increase trading efficiency[18] and reduce risks in the trading, clearing and settlement process.

The clearing and settlement service settles securities transfers for participant financial institutions by crediting and debiting the relevant number of securities for each participant account if the aggregate trades by that participant results in a net change in the number of securities in the participant's account (known as **netting**).

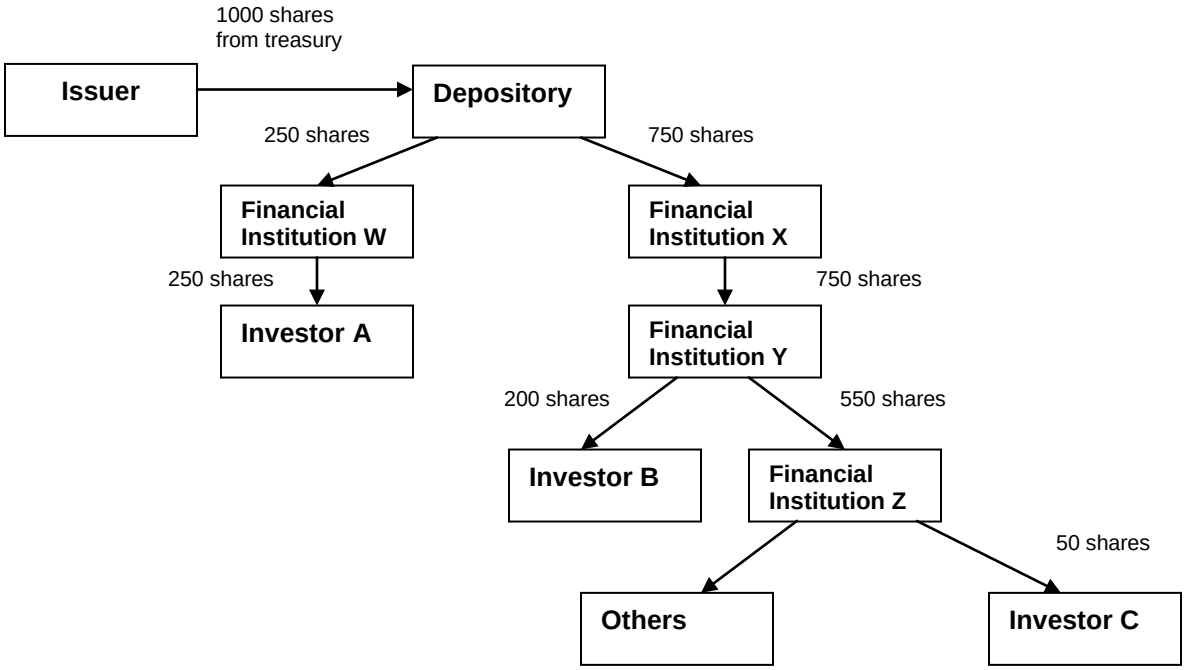
[15]See for example "CSA Notice and Request for Comments – Draft *Regulation to amend Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* and Proposed Amendment to *Policy Statement* to *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*" (April 9, 2010) and related comments, online: < http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/54-101/2011-06-17/2011juin17-54-101-avis-cons-en.pdf >, and OSC Staff Notice 54-701 Regulatory Developments Regarding Shareholder Democracy Issues (January 14, 2011) and related comments, online: <http://www.osc.gov.on.ca/en/30575.htm>.

[16] We use the term "**voting agents**" broadly in this Consultation Paper to refer to advisors such as proxy advisory firms and investment managers (see Section 3.2).

[17] This section is derived from Paech, Phillip, "Cross-border issues of securities law: European efforts to support securities markets with a coherent legal framework", Briefing for the European Parliament's Committee on Economic and Monetary Affairs (May 2011), online: <http://www.lse.ac.uk/collections/law/staff/philipp-paech.htm>. [*Paech*]

[18] For example, intermediation was necessary for the formation of modern stock exchanges.

Figure 1: Intermediated holding system (simplified)



Note: The 1000 shares could be certificated or uncertificated, depending on the particular legal framework or market practice.

In conjunction with the clearing and settlement system, a central securities depository will take custody of security certificates or maintain electronic records of securities holdings. The depository will maintain accounts for the participant financial institutions (W and X in the illustration above).[19] The participant financial institutions (W and X) maintain accounts for their clients, who can be investors (Investor A) or other intermediaries (Y is a client-intermediary of X, and in turn, Z is a client-intermediary of Y). In most jurisdictions, there will be at least one and often more than one layer of intermediaries between an ultimate investor and the depository. This system of holding securities is known in Canada and the United States as the **indirect holding system**; however, it is more precise to refer to the **intermediated holding of securities** or **intermediated holding system**, as it can be unclear what is meant by an "indirect" holding.[20]

[19] In Canada, there has been a significant move away from paper certificates. For more information on this process in Canada, see CDS Clearing and Depository Services Inc., "Going Paperless in the Canadian Securities Market: Presentation to Issuers, Underwriter and Law Firms" (2010), online: <http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-BEOservices?Open>.

[20] For example, an investor sets up a holding company and holds shares of an issuer through that company. The holding company in turn is registered on the issuer's share register as the holder of those shares. In this situation, the investor is holding the shares "indirectly", but not through the intermediated holding system.

Another important feature of intermediated holding systems is that while an intermediary's own securities and client securities are booked to distinct accounts with the intermediary's own account provider, client assets generally are "pooled" in the client account and cannot be distinguished per client:

> Intermediaries typically hold securities on an unallocated basis. In other words, the interests of all participants or investors holding interests in like securities are held together in a commingled pool or fungible bulk. The rights of the participants and lower-tier investors relate to securities held in a designated account rather than attaching to particular securities. Pooling all like securities in a single account results in greater settlement efficiencies by reducing the overall costs of administering and reconciling separate holdings.[21]

Currently, a significant majority of shares of reporting issuers are held in the intermediated holding system. [22]

While the development of the intermediated holding system was clearly important for trading efficiency and reduction of systemic risk, two important policy issues had to be addressed.

The first issue involved property rights. An investor historically established ownership of a share either by being registered on the corporation's register, or possessing a share certificate. What was the property interest an investor had in shares they purchased and held in intermediary accounts? This question was ultimately resolved through the adoption of provincial securities transfer legislation based on the concept of a **securities entitlement**.[23] A "securities entitlement" is a right that is equivalent to, but not actually, a direct property right in the security. The entitlement holder's interest is asserted against the entitlement holder's own immediate intermediary, e.g. a client against the dealer with whom he has his account, or the dealer against the clearing agency/depository. Another feature of this securities entitlement model is that the Canadian Depository for Securities Limited (**CDS**) is registered as the holder of most shares on the reporting issuer's register. The securities entitlement model is used in Canada and the U.S.; other jurisdictions have different legal frameworks – see Appendix B.

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[21] Mohamed F. Khimji, "The Securities Transfer Act – The Radical Reconceptualization of Property Rights in Investment Securities", (2007) 45 Alberta L. Rev. 137, at 142. See also CDS Participant Rules (Release 2012.12.10), s. 6.1.3 Holding of Securities: "Securities deposited in the Depository Service and identified by the same Security Identifier form a fungible bulk."

[22] It is difficult to provide definitive statistics on what percentage of reporting issuer shares are held in the intermediated holding system. However, note that in the case of TELUS Corporation, approximately 95% of its shares were held by CDS. See *TELUS Corporation v. CDS Clearing and Depository Services Inc.*, 2012 BCSC 1539 (CanLII).

[23] The CSA established a task force at the request of the CSA Chairs and the Uniform Law Conference of Canada (**ULCC**) to (i) develop a uniform securities transfer act (**USTA**) that would be as uniform and harmonious as possible with Revised Article 8 of the Uniform Commercial Code; and (ii) promote the uniform implementation of the USTA in each province. A final version of the USTA was adopted as a uniform act by the ULCC on August 26, 2004. To date, securities transfer legislation based on the USTA has been adopted in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut.

Although investors in the intermediated holding system do not actually own shares, but rather have securities entitlements, we will use the term "shares" instead of "securities entitlements" in this Consultation Paper for ease of discussion.

The second issue involved voting rights.[24] Under corporate law, only the registered holder has the right to vote, either in person or by proxy, at a meeting. How would investors who hold their shares in the intermediated holding system (as securities entitlements) be able to exercise their voting rights? To address this concern, the CSA approved National Policy Statement 41 Shareholder Communication (**NP 41)** in the late 1980s. NP 41 was subsequently reformulated as *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (**Regulation 54-101**) which came into effect on July 1, 2002.[25]

Regulation 54-101 requires, in connection with a reporting issuer meeting, that the reporting issuer, CDS and each intermediary that holds shares of that reporting issuer in the intermediated holding system, take certain steps. The purpose of these steps is to facilitate investors or **beneficial owners**[26] directing their intermediaries how their shares are to be voted at the meeting.[27] The following is a highly simplified summary of these steps:

- CDS must transfer its authority to vote in person or by proxy to each CDS participant in respect of the shares that the CDS participant holds in its account with CDS. The document that transfers voting authority from CDS (as the top-most intermediary and registered holder) to its participant intermediaries is commonly referred to as the **CDS omnibus proxy**.[28]

- A reporting issuer must provide each CDS participant who holds shares of the reporting issuer with the appropriate numbers of copies of meeting materials requested by the CDS participant for forwarding to all beneficial owners (including beneficial owners who hold through an intermediary that is a client account holder of the CDS participant).

- Each CDS participant must send the meeting materials and a request for voting instructions to each of its client account holders. If the account holder is itself an intermediary, then the CDS participant will provide the account holder with the appropriate quantity of meeting

[24] Another issue was information rights, i.e., how investors would receive disclosure that shareholders were entitled to such as financial statements. This issue will not be discussed in this Consultation Paper.

[25] NP 41 was based on the recommendations of the Joint Regulatory Task Force on Shareholder Communication, whose members were securities regulators, corporate law administrators and representatives of stock exchanges, depositaries, transfer agents and other interested groups.

[26] The term "beneficial owner" has a specific meaning under Regulation 54-101. For purposes of this paper, the term "beneficial owner" will be used in a looser sense to refer to an investor who is not a registered holder of shares, and whose ownership is through a securities entitlement in an intermediary account.

[27] Canadian and U.S. securities legislation explicitly places the primary onus for soliciting voting instructions from beneficial owners on the issuer and the intermediaries. In contrast, Australia and the U.K. legislation leave it to beneficial owners and intermediaries to make these arrangements privately.

[28] Form 54-101F3 *Omnibus Proxy (Depositories).*

materials so that the intermediary can send them to its own account holders. The intermediary also will include a request for voting instructions.

- If the reporting issuer chooses to send meeting materials directly to, and solicit voting instructions from, non-objecting beneficial owners or NOBOs, the CDS participant must transfer its authority to vote in person or by proxy (obtained from CDS) to management of the reporting issuer. The document is known as the **NOBO omnibus proxy**.[29]

Dissidents are permitted but not required to send meeting materials and solicit voting instructions from beneficial owners. However, dissidents are incentivized to solicit votes from beneficial owners, as under securities law and some corporate statutes, shares held by an intermediary on behalf of an investor cannot be voted without instructions from the investor.[30]

In order to streamline the process of soliciting votes and collecting voting instructions through multiple levels of intermediaries, intermediaries developed an **intermediary omnibus proxy**. The intermediary omnibus proxy allows meeting materials to be sent to, and votes to be returned from, the intermediary that is closest to the ultimate beneficial owner, by-passing higher levels of intermediaries.[31] Intermediary omnibus proxies are not contemplated by Regulation 54-101, and were developed based on interpretations of statutory corporate law and the common law on proxy voting. They generally are of relevance only for institutional holdings and cross-border holdings.

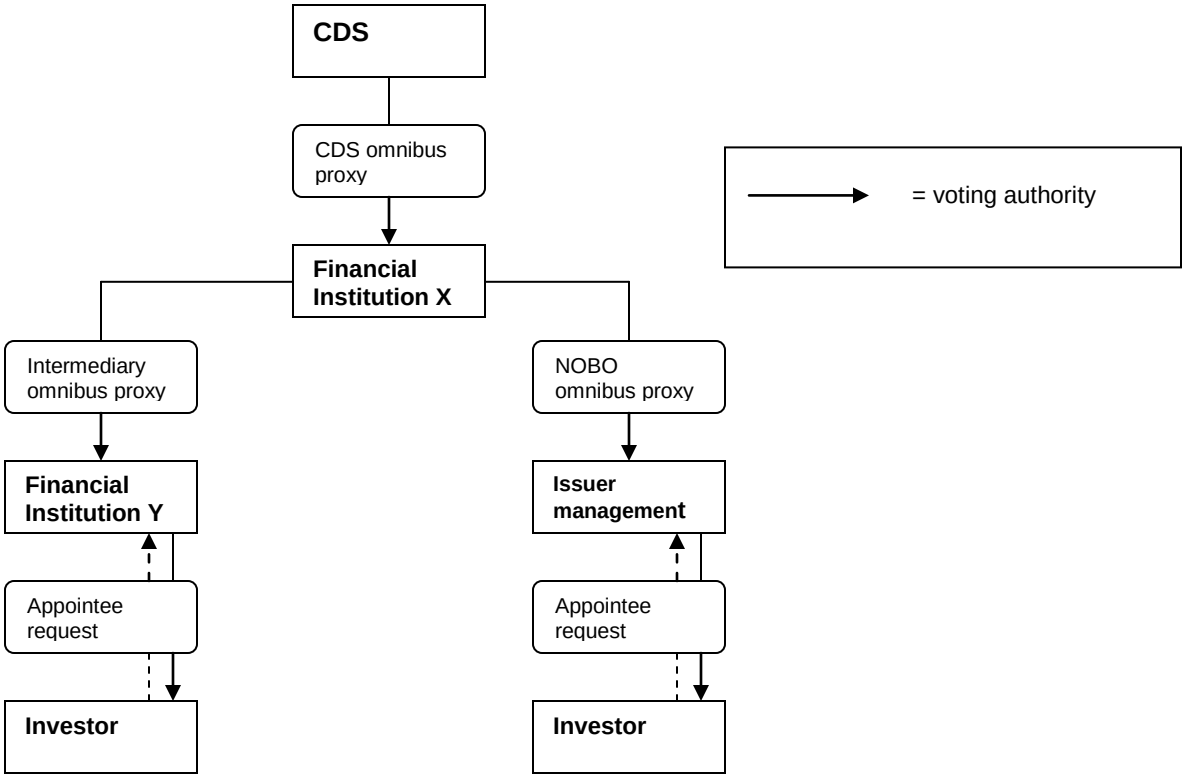
The last intermediary in the chain, i.e., the intermediary with whom the beneficial owner holds an account, generally will not transfer voting authority down to the investor unless the investor specifically asks for it. Regulation 54-101 requires that an intermediary include an option for the investor to request voting authority from the intermediary (commonly known as an **appointee request**) in the request for voting instructions. A request for voting authority can be made by appropriately filling in the request for voting instructions or by another document in writing. Beneficial owners will not typically request this voting authority through an appointee request. Instead, they will provide voting instructions to the intermediary they have an account with directing how the intermediary should proxy vote.

[29] Form 54-101F4 *Omnibus Proxy (Proximate Intermediaries).* The OBO-NOBO concept is further discussed in s. 3.4 below.

[30] See, for example, the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (**CBCA**), s.153.

[31] Also known as a **mini omnibus proxy**.

Figure 2: System of proxies down the intermediated holding system



Note: In the case of cross-border issuers, the U.S. depository, Depository Trust and Clearing Corporation (**DTCC**) issues a similar DTCC omnibus proxy. The DTCC omnibus proxy is not regulated by Regulation 54-101 or other Canadian securities regulation.

3.2 Share lending

Share lending is the market practice whereby shares are temporarily transferred from one party (the **lender**) to another party (the **borrower**) in return for a fee.

Although share lending transactions are commonly described as "loans", they in fact involve a transfer of title of the shares against a collateralized undertaking to return equivalent shares either on demand or at the end of an agreed term. The "borrower" is the new owner of the shares, and is entitled to vote the shares, receive any dividend or interest payments paid during the loan term or sell the shares on (e.g., to satisfy a short sale). However, the borrower is generally contractually required to make equivalent payments to the "lender" for any dividend and interest payments on the securities over the life of the loan; therefore the lender still "owns" or is "long" the share in economic terms.

Share lenders are generally institutions such as pension and mutual funds and insurance companies. Dealers may also be able to lend any shares that retail investors have purchased on margin. Borrowers are generally dealers and hedge funds who require shares for trading

activities. In between are market intermediaries (in the broad sense of the term), who establish lending programs to facilitate lending. As noted by one commenter,

> The importance of intermediaries in the market partly reflects the fact that securities lending is a secondary activity for many of the beneficial owners and underlying borrowers. Intermediaries provide valuable services, such as credit enhancement and the provision of liquidity, by being willing to borrow securities at call while lending them for term. They also benefit from economies of scale, including the significant investment in technology required to run a modern operation. Intermediaries such as custodian banks lend securities as agents on behalf of beneficial owners, alongside the other services provided to these clients. In some markets specialist securities lending agents have also emerged. Agents agree to split securities lending revenues with lenders and may offer indemnities against certain risks, such as borrower default.[32]

Share lending results in investors retaining economic exposure to lent shares without corresponding voting rights. This aspect of share lending generally only becomes important when a meeting is about to occur, and an investor decides that it wants to vote. Unless the lender (or its lending intermediary) has made appropriate arrangements, such as arranging to recall equivalent shares from the borrower or some other source in time for the record date, or contracting with the borrower that voting authority remains with the lender, the lender will not be legally entitled to vote. Nevertheless, the investor may still be noted as an "owner" in the intermediary's records. Without mechanisms in place to properly track lending activity and prevent investors who have lent shares from voting, therefore, there is a risk that a lent share may be voted by both the lender and whoever is the owner of that share on the record date.[33]

3.3 Use of voting agents

It is quite common for an investor to fully or partially delegate the voting authority for shares in its account to a professional investment advisor such as an investment manager.[34] While this practice has most commonly been associated with institutional holdings, retail investors who hold their shares in managed accounts (i.e., an investment account that is owned by an individual investor, but managed by a professional investment manager) will also delegate voting authority to the investment manager.[35] In this situation, we note that there is no mechanism in place to confirm that it is the advisor, and not the investor, who is solicited for voting instructions. Regulation 54-101 does not explicitly address this issue.

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[32] Mark C. Faulkner, "An Introduction to Securities Lending", at 9-10, online: <http://www.bankofengland.co.uk/markets/Documents/gilts/securitieslending.pdf >.

[33] The interaction of share lending with proxy voting is not regulated by Regulation 54-101 or other securities legislation.

[34] The term "investment manager" in this Consultation Paper is equivalent in broad terms to a person registered in the category of "portfolio manager" under securities legislation, who is authorized to provide advice to a client with respect to investing in, buying or selling any type of securities, with or without discretionary authority granted by the client to manage the client's portfolio. However, we use the term "investment manager" as this is the more common term.

[35] Often known as **wrap accounts**.

3.4 The OBO-NOBO concept

A unique feature of the Canadian (and U.S.) proxy voting infrastructure is the OBO-NOBO concept, which was first developed in the 1980s in the U.S. and introduced into Canadian securities policy shortly thereafter. An **OBO** (or "objecting beneficial owner") is a beneficial owner of shares in the intermediated holding system who objects to the intermediary disclosing his name, contact information and securities holdings. A **NOBO** (or "non-objecting beneficial owner") is a beneficial owner who does not object to disclosure of the above information.[36]

It is important to note two significant differences between how the OBO-NOBO concept is applied in Canada versus the U.S.:

- In the U.S., an issuer is not permitted to send meeting materials (except annual reports) and solicit voting instructions directly from NOBOs; in Canada, an issuer has the option of doing so.

- In the U.S., issuers must send meeting materials through intermediaries to all beneficial owners regardless of OBO-NOBO status and pay the associated intermediary fees; in Canada, an issuer can choose not to pay the fees charged by intermediaries for sending meeting materials to OBOs.[37]

Currently, just over half of all beneficial owner accounts in Canada are OBO accounts, and this trend has been increasing over the past few years.[38]

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[36] In Canada, Regulation 54-101 requires intermediaries to obtain a client's OBO-NOBO preferences when the client opens an account.

[37] Both these aspects of Regulation 54-101 were the subject of extensive comment and discussion during the formulation of Regulation 54-101. Some have criticized the absence of a requirement in Canada that issuers pay intermediary fees for sending meeting materials to, and soliciting voting instructions from, OBOs leading to the disenfranchisement of OBOs. Others take the view that such a requirement would effectively impose a surcharge on Canadian reporting issuers where an investor has selected OBO status.

Further information can be found in the notices accompanying the publications for comment during the formulation of Regulation 54-101. See, for example, *Avis concernant le projet de norme canadienne 54-101, Communication avec les porteurs véritables des titres d'un émetteur assujetti* (Bulletin de la Commission des valeurs mobilières du Québec, 27 février 1998, vol. XXIX, no 7); *Avis de consultation concernant les changements proposés au projet de norme canadienne 54-101, Communication avec les porteurs véritables des titres d'un émetteur assujetti* (Bulletin de la Commission des valeurs mobilières du Québec, 17 juillet 1998, vol. XXIX, no 27); *Avis de modifications proposées au projet de norme canadienne 54-101, Communication avec les propriétaires véritables des titres d'un émetteur assujetti, et d'abrogation de l'Instruction générale n^{o} C-41* (September 1, 2000), online: <http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/54-101/2000-09-01/2000sept01-54-101-avis-cons-fr.pdf>.

For a discussion of how the U.S. developed its NOBO-OBO concept, see Alan L. Beller and Janet L. Fisher, "The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareholder Communication and Voting,", online: <http://www.sec.gov/comments/s7-14-10/s71410-22.pdf>. [*U.S. OBO-NOBO Paper*]

[38] *Davies Paper*, *supra* note 9 at 64.

For Canadian **institutional investors**, whom we believe generally prefer OBO status, choosing OBO status originally appeared to have been motivated by the factors listed below:

1. *Ability to ensure that meeting materials are delivered through desired proxy voting channels*

Canadian institutional investors access their meeting materials and vote electronically through proxy voting channels offered by their intermediaries. In Canada, choosing NOBO status could result in an issuer sending them meeting materials and soliciting voting instructions outside of these preferred channels. As described by one custodian at the CSCS Shareholder Democracy Summit:

> When OBO/NOBO forms first came out, and RBC [Dexia] tried to explain it to clients, the big question in return was "what does this mean for me as an investor/voter?"
>
> Majority decided to be OBO so as to be able to electronically vote [through their preferred voting platform] and go through Broadridge and not be inundated by mailings.[39]

2. *Ability to maintain anonymity when voting*

When an issuer conducts a NOBO solicitation, the issuer is able to identify the votes submitted by each NOBO, as there is no legal requirement that proxy votes be kept confidential from the issuer. Choosing NOBO status in effect prevents an institutional investor from having sole discretion over whether to vote anonymously through its intermediary,[40] or to disclose how it has voted to the issuer.[41]

3. *Ability to keep investment strategies confidential from issuer and/or the public*

Certain investors may wish to keep their investment or their broader investment strategies confidential. Investors may also have concerns that an issuer's management would have a negative view of the investment or that third parties would attempt to replicate particular investment strategies by obtaining information regarding the holdings of a particular issuer.

4. *Institutional investors generally are still able to receive meeting materials and vote even if they are OBOs*

Under Regulation 54-101, issuers are not required to pay intermediaries for forwarding meeting materials to, and soliciting voting instructions from, OBOs. They are, however, required to pay intermediaries for these activities in respect of NOBOs. This nuance of Canadian securities law generally has been immaterial to institutional investors, because they have made their own

[39] *CSCS Inaugural Report*, *supra* note 11 at 47.

[40] This process will be described in more detail in the next section.

[41] *CSCS Inaugural Report*, *supra* note 11 at 78.

arrangements with their intermediaries to receive meeting materials and requests for voting instructions through electronic proxy voting channels.

For Canadian **retail investors**, the reasons for choosing OBO status are less clear, and some suggest that retail investors would not choose to be OBOs if they fully understood the concept. One frequently-cited study is a survey conducted by a proxy working group of the New York Stock Exchange, which found that if the full consequences of NOBO-OBO status were explained to the investor, and if there was an administrative price tag of $50 for being an OBO, 95% of investor would ***not*** choose to be an OBO.[42]

Some participants have suggested that eliminating the OBO-NOBO concept and permitting direct communication and solicitation in all cases can make the proxy voting system more reliable. The U.S. Council of Institutional Investors, for example, supports an "incremental approach that promotes less reliance on – or eliminates altogether – the OBO/NOBO distinction and otherwise increases the potential for direct communications"; while acknowledging that elimination of the OBO-NOBO concept would "implicate complex strategic, cost, logistical and other considerations of critical importance" and would require "detailed analysis by the various affected constituencies to obtain a clearer picture of the logistical changes, costs and potential disruptions it could entail".[43]

Part 4 – Overview of the proxy voting infrastructure

The proxy voting infrastructure in Canada encompasses the following functions:

1. identifying the entities in the intermediated holding system who, for the purposes of a meeting, have the right (broadly-defined) to submit voting instructions and direct intermediaries how to vote. These entities include the voting agents to whom the investor has delegated partial or full voting authority;

2. delivering the appropriate materials to these entities and soliciting voting instructions; and

3. collecting the voting instructions and executing them by transmitting proxy votes to the official tabulator, including provision of any necessary supporting documentation to establish that the entity that is transmitting proxy votes has authority to do so.

In Canada, the vast majority of intermediaries (approximately 97%) have contracted with a single service provider to perform these functions: Broadridge Investor Communication Solutions Canada (**Broadridge**). Broadridge's parent, Broadridge Financial Solutions, Inc., is a U.S. public company that provides investor communications and other technology-based services

[42] Opinion Research Corporation, Investor Attitudes Study Conducted for NYSE Group (April 7, 2006), online: <http://www.nyse.com/pdfs/Final_ORC_Survey.pdf>. The result of this survey should be treated with caution in the Canadian context. Unlike in the U.S., one of the consequences of choosing to be a NOBO is that the issuer has the right to send meeting materials to and solicit voting instructions from the NOBO.

[43] *U.S. OBO-NOBO Paper*, *supra* note 37, at 2 and 21.

to banks, broker-dealers, mutual funds, and corporations in the United States and globally. Broadridge supports 72 proximate Canadian intermediaries representing 230 financial institutions and approximately 3,600 public issuers in Canada, as well as custodians and institutional investors. The following sections, therefore, will focus to a large degree on Broadridge's operations in its capacity as agent for the intermediaries.

4.1 Generating the voter list

As noted above, securities legislation requires issuers and intermediaries to take positive steps to send materials and solicit voting instructions from beneficial owners in the intermediated holding system.

The first step in this process is generating a list of voters. In operational terms, this involves the following activities:[44]

1. The issuer (generally through its transfer agent[45]) notifies Broadridge of a shareholder meeting and the record date for notice for the meeting;

2. Broadridge notifies the intermediaries of the shareholder meeting on the evening of the record date;

3. On the record date plus one, the intermediaries send Broadridge their back office files, which contain details of client accounts holding the issuer's shares as of the record date[46]; and

4. Broadridge loads the data into its proxy processing system, and applies a number of criteria, set by the issuer (i.e., meeting selection type and material delivery), to determine which of these accounts ultimately will be sent meeting materials and solicited for voting instructions. These criteria will be described in the next section.

Each individual intermediary, not Broadridge, generates the back office files and determines which applicable client accounts will be included in those files. Broadridge offers a reporting

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[44] These and other processes set out in the Consultation Paper are described in Broadridge's *Canadian Intermediary Services Guide 2011*, online: <https://materials.proxyvote.com/Approved/EPLST1/20110323/OTHER_82813/HTML1/broadridge-cisg2011_0037.htm>.

[45] A ***transfer agent*** is generally a trust company appointed by a corporation to transfer ownership of its shares. In the majority of instances, the trust company in its capacity as transfer agent maintains the shareholder register and provides other related services. Transfer agents in Canada generally belong to the Securities Transfer Association of Canada. Current STAC members are: Alliance Trust Company, Canadian Stock Transfer Company Inc., Capital Transfer Agency Inc., Computershare Investor Services, Eastern Trust, Equity Financial Trust Company, Olympia Trust Company, State Street Trust Company Canada, Trans Canada Transfer Inc. and Valiant Trust Company.

[46] Note that back office files for intermediaries that are CDS participants are distinct from the records of shares in the intermediary's CDS account. CDS has one list of records and the intermediaries have another list.

service to intermediaries[47] if it detects that the share position in an intermediary's back office file does not match the intermediary's CDS position, or there is no record of that position at all.[48]

4.2 Sending the materials and soliciting voting instructions

Daily data processing occurs for all intermediary back office files. A number of data routines are processed to determine the criteria for which records will be processed, i.e., who will be provided with meeting materials and solicited for voting instructions. The following are the main factors that determine if a record is loaded.

1. Client account preferences (subject to issuer override)

Intermediaries are required by Regulation 54-101 to obtain their clients' preferences as to what types of meeting-related materials their clients wish to receive.[49] Broadridge determines their preferences from the data provided by the intermediary. These preferences are made at the intermediary account level, and not on an issuer-specific level. Specifically, a client can choose to receive no materials at all (thus surrendering the right to have his voting instructions be solicited), all materials, or only those materials relating to "special meetings".[50] However, an issuer can send materials to and solicit votes from any beneficial owner (thus overriding a beneficial owner's preference in this regard), so long as it pays all associated intermediary fees for sending the materials.

2. Whether the issuer is doing a NOBO solicitation

As discussed above, issuers have the choice under Regulation 54-101 of sending materials directly to, and soliciting voting instructions from NOBOs.[51] If an issuer has made this choice, NOBO records will not be processed and NOBO information will be provided to the issuer's transfer agent (the **NOBO list**). In this case, issuers generally will use their transfer agents to send the meeting materials to the NOBOs.

[47] The intermediary must participate in the service.

[48] There are two reports generated as part of this service. The **CDS Record Date Position Comparison Report** is generated 72 hours after record date and displays, among other things, whether an intermediary's position is over or under the CDS reported position. The **CDS Position Missing Report** is also generated 72 hours after record date and alerts an intermediary where no depository position is recorded for the intermediary, but the intermediary has reported a position to Broadridge.

[49] Regulation 54-101, s. 3.2. There is no equivalent concept under US securities law.

[50] Regulation 54-101, s. 1.1.

[51] Under U.S. securities law, issuers cannot mail meeting materials directly to their investors (other than the annual report).

3. Whether the issuer is paying for sending of materials to OBO accounts

Under Regulation 54-101, issuers are required to pay fees to the intermediaries if they use intermediaries to send meeting materials to, and solicit voting instructions from, NOBOs. However, issuers are not required to pay fees to intermediaries in respect of OBOs.[52] Broadridge has standing instructions from intermediaries as to whether the intermediary will bear the sending and solicitation costs where the issuer does not pay. If neither the issuer nor the intermediary pays for sending, the OBO accounts for that intermediary are not processed. The issuer's decision not to pay for the material distribution may result in OBO investors not receiving the materials and being solicited for voting instructions.

4. Whether the account is a managed account

Intermediaries can provide Broadridge with data as to which accounts are "managed accounts", i.e., an investment account that is owned by an individual investor, but managed by a professional investment manager with voting authority. Managed accounts are created through an intricate process that requires the assignment of account designators through the intermediary and the "wrapping" of accounts through a series of preference management tables maintained by Broadridge. Broadridge will "suppress" the individual account record from mailing so that only the investment manager is provided with an aggregated voting instruction form. This function is not required by Regulation 54-101 but was designed as an efficient and cost saving proprietary feature for investment managers who have discretionary voting authority over client accounts.

Once the records are loaded, Broadridge will apply additional processes to refine to whom the meeting materials will be sent based on information provided by the intermediaries.

1. Aggregating shares in managed accounts

Broadridge will aggregate shares for the investment manager who has voting authority over those shares. This process is not required by Regulation 54-101 but is required to support managed account processing.

2. Intermediary omnibus proxy processing

As previously discussed, there may be multiple levels of intermediaries in between the ultimate investor/beneficial owner and CDS. In order to enable the intermediary closest to the investor (i.e., the intermediary with whom the investor holds an account) to submit proxy votes to an official tabulator, each intermediary along the holding system must execute an intermediary omnibus proxy and notify the tabulator.

If an intermediary provides Broadridge with information as to which of their client accounts is an omnibus account, Broadridge's proxy processing system is able to process this information so that:

[52] See footnote 37.

- meeting materials are sent to the client-intermediary for forwarding to its clients, and not to the account provider intermediary; and

- an intermediary omnibus proxy is generated that transfers voting authority from the account provider intermediary to the client-intermediary. This intermediary omnibus proxy is sent to the official tabulator and is matched against the proxy votes submitted by the client-intermediary.

Broadridge will also generate a NOBO omnibus proxy where the issuer is sending meeting materials to NOBOs directly, which transfers voting authority from the intermediaries to issuer's management.

3. Identifying which sending channel and method will be used

Broadridge offers distinct channels based on preferences for intermediaries to send meeting materials and request voting instructions that supports both institutional investor and retail investor clients.

Institutional investors may subscribe to Broadridge's institutional "ProxyEdge" service for accounts held through intermediaries. Institutional investors are able to view meeting materials electronically as well as vote. In addition to ProxyEdge®, Broadridge's proxy processing platform can also provide data to other service platforms such as ProxyExchange®, the proxy voting channel established by Institutional Shareholder Services. At least one institutional investor, Ontario Teachers' Pension Plan (**Teachers'**), has also developed a custom channel with Broadridge, which enables Teachers' to receive and download meeting information via a data file from Broadridge.[53]

Intermediaries who are account providers for **retail investors** will use Broadridge to send meeting materials in paper form by mail or, where the intermediary has obtained a consent to electronic delivery from the client beneficial owner, by email containing an embedded link to the issuer's material and to Broadridge's Internet voting site, www.ProxyVote.com. Broadridge will also generate the request for voting instructions required by Regulation 54-101 (known as a **voting instruction form**) for inclusion in the meeting materials. The paper voting instruction form will have a 12-digit control number printed on it that enables an investor to vote. Where an email is sent, the control number is embedded as a hyperlink.

Where an issuer sends meeting materials and solicits voting instructions from NOBOs, it generally will use the services of a transfer agent to send meeting materials in paper form by mail, or where the transfer agent has obtained a consent to electronic delivery, by email. The transfer agent will provide its own voting control number.

[53] Bill Mackenzie et al., "Shareholders' Panel Combined Paper", at 6, online: <http://www.cscs.org/Resources/Documents/summit/Resources/Day1/Shareholders/Institutional%20Investor%20Paper.pdf> [*CSCS Shareholders' Panel Combined Paper*].

4.3 Collecting voting instructions and transmitting proxy votes to the official tabulator

Institutional investors by and large submit their voting instructions to their intermediary account providers through Broadridge's ProxyEdge® or Institutional Shareholder Services Inc.'s ProxyExchange®.

Retail investors can submit voting instructions to their intermediary account providers through any of the following methods:

- *Online voting* at www.ProxyVote.com, using their 12-digit control number;
- *Telephone voting* at toll-free numbers established by Broadridge, also using the 12-digit control number; or
- *Mailing* in the voting instruction form to Broadridge.

Broadridge will generate **tabulation reports** (also known as **vote reports**) that contain the voting instructions received from investors, aggregated by intermediary. Broadridge, under the authority of a **client proxy**[54] that authorizes it to submit proxy votes on behalf of the intermediary, provides these tabulation reports to a meeting's official tabulator. The data in the tabulation reports constitute the proxy votes submitted by the intermediaries for the meeting.

Broadridge does not modify any of the voting data that is transmitted by beneficial owners through the intermediaries. However, Broadridge also offers an **Over Reporting Prevention Service**, for intermediaries that wish to participate, that notifies intermediaries when Broadridge receives voting instructions for an intermediary that in the aggregate exceed the intermediary's CDS position as at the record date. An **Overvote Pending Report** is made available online for access by the intermediary to review the voted positions that have caused the situation. This service will "pend" or hold all voting transactions for records received over the depository position, and pended votes can only be released for submission in a tabulation report if the positions are matched, either because:

- the intermediary adjusts its reported depository position; or
- the intermediary adjusts positions for one or more of the intermediary's client accounts.

If an issuer has sent meeting materials to NOBOs, its transfer agent will have its own voting channels for investors. For example, Computershare Investor Services (**Computershare**) offers online voting at www.investorvote.com, telephone voting, and the option to return voting instructions through the mail. These votes will not be included in the tabulation reports submitted by Broadridge, and are submitted directly to the tabulator.

[54] Neither the tabulation reports nor the client proxy are regulated by Regulation 54-101 or other securities regulation.

4.4 Tabulating the votes

Issuers will designate a person, usually its transfer agent, to act as an **official tabulator** for a meeting. The official tabulator will review the proxy votes it receives and assess whether these are valid votes that should be counted for the meeting.[55] The official tabulator will apply the "presumptions" contained in the STAC Proxy Protocol where there is a dispute whether to accept a proxy unless the issuer's governing statute, articles or bylaws provide otherwise or unless factual evidence rebutting any of such presumptions is presented to the official tabulator. However, the meeting chair has considerable discretion over whether a particular proxy vote count tabulated by the official tabulator should be accepted or not and can overrule the STAC Proxy Protocol presumption.

As a first step, a tabulator must reconcile or match the intermediary proxy votes it receives against:

- the depository omnibus proxies and intermediary omnibus proxies that have been sent to the tabulator; and/or

- registered holders' positions on the issuer's share register.

In addition to the depository omnibus proxies and intermediary omnibus proxies, tabulators may also receive **restricted proxies**. A restricted proxy refers to a proxy used by an intermediary to directly submit proxy votes to the tabulator (i.e., outside the tabulation reports generated by Broadridge) on behalf of a client for whom it holds shares.

For example, if a purchaser has acquired shares of an issuer after the record date and has made it a condition of purchase that the seller give the purchaser voting authority, the purchaser may be able to vote the shares even though he or she was not a shareholder on the record date by contacting its intermediary and asking for the issuance of a restricted proxy. The intermediary will execute a proxy that states that the intermediary is submitting proxy votes for that portion of shares that it holds on behalf of the client who has purchased the shares (with the name of the client and amount of shares disclosed). Generally speaking, if the number of shares covered by the restricted proxy does not exceed the number of shares that the intermediary is entitled to vote (as verified by the tabulator), the tabulator will accept the proxy votes for tabulation.[56]

If a particular intermediary submits proxy votes that the tabulator is unable to reconcile against an appropriate omnibus proxy, the tabulator will try to resolve the problem. However, if no resolution is achieved before the tabulator completes its tabulation for the meeting, the excess votes could be discarded, or some other downward adjustment could be made to the proxy votes submitted by that intermediary, depending on the approach taken by the meeting's chair.

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[55] Vote tabulation is not regulated by Regulation 54-101 or other securities legislation. STAC has issued a proxy protocol that outlines the reconciliation process that transfer agents apply. See STAC, "**Proxy Protocol**" (March 2012) online: <http://www.stac.ca/Public/PublicShowFile.aspx?fileID=199>.

[56] Restricted proxies are not regulated by Regulation 54-101 or other securities regulation.

Part 5 – Proposed issues for further review

Based on stakeholder feedback provided to us, as well as our own review of proxy voting and the proxy voting infrastructure, we have identified two issues that we intend to examine further:

1. Is accurate vote reconciliation occurring within the proxy voting infrastructure?

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

With respect to each issue, we set out a non-exhaustive list of questions that we think are relevant to our examination.

We are seeking comment on whether our focus on these two issues is appropriate in reviewing the accuracy and reliability of the proxy voting infrastructure. We are also seeking comment on the specific questions we have identified as relevant to addressing these two issues.

In addition to identifying these two primary issues, we have also identified other issues that are relevant to the integrity of the proxy voting system. These issues are outlined in Part 6.

We stress that we have not come to any conclusion as to whether any further securities regulation is warranted in these areas. We also note that, depending on the securities regulatory response proposed, we may have to seek rule-making authority to regulate some of these areas.

5.1 Vote reconciliation

A central function of the proxy voting infrastructure is to facilitate vote reconciliation. We have identified two main reconciliation challenges. First, the intermediated holding system results in one share having multiple associated entitlements. Unless there is an effective system of reconciliation, there is a risk that valid proxy votes submitted to the tabulator ultimately are discarded because they cannot be properly matched to an appropriate omnibus proxy or registered position. Second, share lending creates a risk that the same share could be voted multiple times. We want to better understand whether the proxy voting infrastructure adequately addresses these vote reconciliation challenges.

We note that reconciliation issues are not uniquely Canadian, and have been identified as a concern in the U.S., the U.K. and in Australia – see Appendix C.

Effectively addressing reconciliation challenges ultimately may require longer-term reforms of the various record dates and proxy cut-offs under corporate law, as well as investments in technology to increase the speed at which reconciliation can occur. Over the short- to medium-term, however, we think that examining specific aspects of the proxy voting infrastructure in more detail may enable us to better understand reconciliation challenges and possible solutions.

We note that we do not suggest that the list below is exhaustive. As part of our examination, we also would like to find out if there are other situations of multiple voting.

5.1.1 Impact of share lending on generating the voter lists

We know that some intermediaries include lent shares in the intermediary back office files provided to Broadridge for purposes of generating the voter list. The Investment Industry Association of Canada (**IIAC**) has stated in a comment letter to us that member practice and standard industry procedure are not to adjust client ownership data downward to reflect any lent shares. It submits that it is also standard industry practice to treat the lender as the beneficial owner of shares on loan with an entitlement to vote; but that IIAC members would not submit a vote for a lent share unless they received a proxy from the dealer who borrowed the shares allowing the lender dealer to vote the lent share. If the lender dealer is unable to obtain such a proxy, the record date position held by the lender will be reduced by the appropriate number of shares on loan.[57]

There is a concern that this practice creates an operational risk that beneficial owners may be able to submit votes even if they are not entitled to do so.

Questions:

1. What processes do intermediaries implement to prepare their back office files for transmission to Broadridge? In particular what, if any, adjustments are made before the files are provided to Broadridge, e.g., in the case of retail clients, to address margin account shares that can be loaned by intermediaries, and in the case of institutional clients, shares that are part of a share lending program?

2. How frequently do intermediaries' back office files transmitted to Broadridge reflect share positions that exceed their CDS reported position? What percentage of their positions are being voted?

3. If Broadridge notifies an intermediary that the share position in its back office file exceeds its CDS position, what, if any processes does the intermediary implement to reconcile the share positions?

4. How do the dealer members of IIAC in practice ensure that no vote is submitted for a lent share unless they have received a proxy from the dealer who borrowed the shares?

5. Where do intermediaries document the relevant processes, and is a client investor or an issuer able to access this information?

6. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

[57] IIAC response letter to OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues* (March 31, 2011), online: <http://www.osc.gov.on.ca/en/30575.htm>.

7. Which party (the lender or the borrower) should have the right to vote in a share lending transaction? Should securities regulators specifically address which party to a share lending transaction should have the right to vote?

5.1.2 Omnibus proxies and restricted proxies

It appears to us that missing or incomplete omnibus proxy documentation can create reconciliation challenges for tabulators that could result in proxy votes being discarded or otherwise adjusted downward.

It also appears to us that the use of restricted proxies could create a risk that the same position is voted twice. Using the example of a share purchase after the record date, there should be a mechanism in place to determine if the seller (who was the beneficial owner of the shares on the record date) has voted the shares, and if so, to subtract those votes from the relevant Broadridge tabulation report; however, it is not clear if this is in fact the case.

Questions:

1. How often are tabulation issues caused as a result of missing or incomplete omnibus proxy documentation? How could this be remedied?

2. How often, and in what circumstances, are restricted proxies being used?

3. Do intermediaries have documented policies and procedures regarding when they will issue a restricted proxy for a client?

4. An intermediary who submits a restricted proxy should ensure that the same position is not also being voted through the tabulation report submitted by Broadridge. Are intermediaries doing so, and how do they document that they have done so?

5. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

5.1.3 Over-reporting and over-voting

Over-reporting refers to the situation where an intermediary returns more votes than are reflected in the intermediary's CDS participant account. This practice is also referred to as **over-voting**, although some use the term over-voting more narrowly to refer to a situation where intermediary proxy votes accepted by a tabulator are later determined to be invalid due to the vote exceeding the intermediary's actual position. The existence of over-reporting and over-voting are cited as proof that proxy voting results lack integrity.

Questions:

1. How often do over-reporting and over-voting occur (including pending over-votes that are ultimately resolved)?[58]

2. To what extent do over-reporting or over-voting situations actually reflect a situation where an investor is attempting to vote when it does not have the right to vote (e.g., because it has lent shares and has no voting entitlement as at the record date), as opposed to other reasons such as missing omnibus proxy documentation?

3. Is over-reporting or over-voting more common for certain types of intermediaries than others, e.g., smaller intermediaries, intermediaries who do not subscribe to Broadridge's services? Are NOBO solicitations by issuers a factor in the frequency of over-reporting or over-voting?

4. If Broadridge notifies an intermediary of a pending over-vote, what processes does the intermediary implement to reconcile the share positions?

5. Where do intermediaries document these processes, and is a client or an issuer able to access this information?

6. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

5.2 End-to-end vote confirmation

Currently, investors do not have the ability to confirm that voting instructions they submit to their intermediaries have ultimately been received and counted. As Teachers' has noted:

> Our main issue with the current proxy voting system is the lack of an end-to-end vote confirmation. Once we have voted, there is no communication to tell us that 1) our vote was ultimately received by the company and 2) that the vote was entered as instructed. This lack of confirmation becomes more problematic as meetings become more contested. Without a confirmation that the vote was received and recorded as cast, there remains a nagging question as to whether or not our votes were received and/or cast as instructed. This anxiety increases the closer the vote is."[59]

[58] According to a Computershare analysis of public company meetings held in Canada for which Computershare acted as transfer agent between 2009 and 2011, unresolved over-reporting situations occurred in at least 17% of the meetings. See Computershare response letter to OSC Statement of Priorities for Financial Year to End March 31, 2013 (May 28, 2012), online: <http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20120528_11-766_donaldsonl_makuchc.pdf>.

[59] *CSCS Shareholders' Panel Combined Paper*, *supra* note 53 at 6.

Questions:

1. Broadridge has advised us that it has started to develop end-to-end vote confirmation functionality.[60] What is the current formulation and development status of end-to-end vote confirmation functionality in Canada?

2. What functionality should be part of an end-to-end vote confirmation system? For example, should voter anonymity be built into the functionality, or is disclosure of voter identities necessary for an effective system? At what point in the proxy voting process should investors receive confirmation as to whether their vote will be accepted, and at what level, e.g., at an intermediary level or at an investor account level?[61]

6. Other issues

6.1 Impact of the OBO-NOBO concept on voting integrity

There has been some suggestion that the OBO-NOBO concept reduces the reliability of proxy votes.

Questions:

1. Are there any specific instances where the existence of the OBO-NOBO concept has compromised the accuracy and reliability of proxy voting?

2. Would temporarily allowing issuers and official tabulators access to the identity of OBOs for purposes of tabulation improve the reliability and accuracy of proxy voting? Would it make the reconciliation process more effective? Would this prejudice investors?

6.2 Inability of investment manager to vote due to gaps in managed account information

As described above, in order to submit voting instructions to intermediaries, beneficial owners must receive a request for voting instructions with a 12-digit control number.[62] If a beneficial

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[60] Broadridge response letter to OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues* (March 31, 2011), online: <http://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20110331_54-701_roschp.pdf>.

[61] The University of Delaware's John L. Weinberg Center for Corporate Governance convened a roundtable on proxy voting consisting of 33 members representing all parts of the U.S. proxy voting system (the **Weinberg Center Roundtable**). Under the Weinberg Center Roundtable's formulation of end-to-end voting, confirmation would only occur after the intermediary (Broadridge) has submitted its final tabulation report and the official tabulator for the meeting would confirm that the intermediary's aggregate share position was voted in accordance with the tabulation report. It was not explicitly contemplated that proxy votes to the tabulator would be broken down by beneficial owner account (e.g., through use of the 12-digit control number on the voting instruction form), nor would the tabulator be required to confirm that it has counted the shares associated with a specific account. See University of Delaware, "Report of Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation" (August 2011), online: <http://www.sec.gov/comments/s7-14-10/s71410-300.pdf>.

owner does not receive it, or it receives it late, the owner's shares may not be voted or may not be voted by the proxy-cut-off.

Managed account processing was designed to facilitate the voting of discretionary accounts in a retail environment for an investment manager. We understand that clients within a managed account relationship can make arrangements with their investment manager to vote their position directly if requested. However, a concern has been raised that some managed account platforms offered to retail investors do not offer the option for a third party investment manager to vote the shares owned by the investor. In particular, it has been suggested that there are not enough address fields associated with a managed account to accommodate both the beneficial owner and investment manager information. Another difficulty is that managed accounts often aggregate multiple investment managers in one pool.[63]

As a result, it has been suggested that some of the intermediary back office files provided to Broadridge do not have the information necessary to send meeting materials to, or solicit voting instructions from, the appropriate investment manager(s).

Questions:

1. Are managed accounts in fact experiencing the issues that have been identified? If so, what are the causes for an investor not receiving or receiving a request for voting instructions late?

2. Are clients made aware of these issues and, if so, what are the remedies?

3. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these issues?

6.3 Accountability of service providers

The complexity of proxy voting and of the proxy voting infrastructure means that it can be difficult for issuers and investors to obtain the necessary information to understand and use the proxy voting infrastructure. Issuers and investors rely heavily on service providers such as transfer agents and proxy solicitors to navigate the proxy voting infrastructure. They also rely on intermediaries, who in turn rely on service providers such as Broadridge.

Concerns have been raised as to whether there are appropriate mechanisms in place so that service providers and others are accountable for their roles in the proxy voting infrastructure.

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[62] Or an equivalent voting control number provided by a transfer agent in the case of a direct NOBO solicitation by an issuer.

[63] *CSCS Shareholders' Panel Combined Paper*, *supra* note 53 at 10.

Questions:

1. What mechanisms are in place to support the accountability of the various service providers in proxy voting?[64] How effective are these mechanisms?

2. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework?[65] What changes would be desirable?

7. Next steps

We intend to engage in targeted consultations with stakeholders to assist us in gathering information and providing different perspectives on the issues discussed in this Consultation Paper. These external consultations may include holding a roundtable following the comment period and forming an advisory committee to serve as a forum for sharing data and discussing possible policy initiatives. Depending on the outcome of our review and consultations, we may conclude that no further regulatory action is required or, alternatively, identify specific areas for policy reform. **We stress that we have not come to any conclusions whether any specific regulatory measures are desirable.**

8. Request for Comment

Please provide your comments in writing by **November 13, 2013**. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (Windows format, Word).

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[64] Section 11.1 of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**) requires a registered firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision to ensure compliance with securities legislation and manage the risks associated with its business in accordance with prudent business practices. Additional guidance is provided in the policy statement (**Policy Statement 31-103**) with respect to the elements in an effective compliance system.

Part 11 of Policy Statement 31-103 also provides guidance on general business practices when outsourcing and states that "[r]egistered firms are responsible and accountable for all functions that they outsource to a service provider" and that "[r]egistered firms should follow prudent business practices and conduct a due diligence analysis of prospective third-party service providers". It states that firms should "conduct ongoing reviews of the quality of outsourced services", and that "[t]he regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm itself performed the activities".

[65] For example, there are existing requirements regarding the maintenance of books and records by registrants, which can be the subject of compliance reviews. See for example OSC Notice 33-724 (2004) *OSC Compliance Team, Capital Markets Branch, Annual Report*, which noted an increase in the number of deficiencies relating to proxy voting for the period April 1, 2003 to March 31, 2004 in a review of investment counsel and portfolio managers (**ICPM**). The report also noted: "…many advisers have inadequate written policies and procedures on proxy voting. Also, we noted that proxies were not always voted and there was no process to deal with contentious matters. Another common issue was the lack of disclosure of the proxy voting responsibility in the investment management agreement with clients." OSC Staff Notice 33-728 *2007 Annual Report – Compliance Team* indicated that a common deficiency among smaller ICPMs (those with assets under $250 million) was in maintenance of books and records, including regarding proxies voted or proxy logs.

Address your submission to the following Canadian securities regulatory authorities:

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

Please deliver your comments **only** to the addresses that follow. Your comments will be distributed to the other participating CSA member jurisdictions.

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and at www.lautorite.qc.ca and may be posted on the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

9. Questions

Please refer your questions to any of:

Michel Bourque
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Policy and Regulation Department
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514-395-0337, ext 4466
michel.bourque@lautorite.qc.ca

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Naizam Kanji
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Winnie Sanjoto
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Ontario Securities Commission
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Frédéric Duguay
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Acquisitions, Corporate Finance
Ontario Securities Commission
416-593-3677
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sophia.mapara@asc.ca

Appendix A
Overview of the Shareholder Meeting Process

This Appendix provides a high-level overview of the shareholder meeting process.

Directors generally are required under most corporate statutes to call an annual meeting of shareholders not later than fifteen months after holding the last preceding annual meeting and, in any case, no later than six months after the end of the issuer's preceding financial year. TSX policies require TSX-listed issuers to hold an annual meeting of shareholders within six months from the end of their fiscal year, or at such earlier time as is required by applicable legislation. TSXV policies have similar requirements. Directors also can call a special meeting at any time.

1. Notice and setting the record date

Corporate statutes and company articles or bylaws generally require that notice of a meeting be provided at least 21 days but not more than 60 days prior to the date of the shareholder meeting.[66]

In addition, the issuer must set a record date. Under some corporate statutes (e.g., the *Canada Business Corporations Act* (**CBCA**)), issuers are theoretically able to set two record dates, one for those registered shareholders who are entitled to receive notice of a meeting, and one for those shareholders entitled to vote. [67] In practice, issuers usually set a single date as both the notice record date of the meeting and the voting record date. Otherwise, two sets of meeting materials would have to be sent out, and there would have to be some mechanism in place to identify and discard any proxy votes submitted by registered shareholders as of the notice record date who were no longer registered as of the voting record date.

2. Generating the voter list

(a) Registered shareholders

Under corporate law, an issuer identifies its registered shareholders by looking at the share register maintained by its transfer agent, and prepares a list of voters based on that list. [68]

[66] Regulation 54-101, s. 2.1 requires the notice record date to be no more than 60 days and no less than 30 days before the meeting date, but all of the corporate statutes specify 21 days (with the exception of Ontario, which specifies 30 days, and the statutes of Nova Scotia, Prince Edward Island and Quebec which do not provide for record dates for notice of the meeting). In addition, Regulation 54-101 further requires that the record date be set at not less than 40 days before a meeting where notice-and-access is used as a method of sending meeting materials.

[67] CBCA, s. 134(1)(c) and (d).

[68] CBCA, s. 135(1)(a).

(b) Beneficial owners

Securities legislation effectively requires intermediaries to generate a list[69] of their beneficial owner clients as at the "**beneficial ownership determination date**"[70] who are entitled to:

- receive the management information circular, and
- have their voting instructions solicited, through receiving a voting instruction form.

At least 20 days before the record date[71], the transfer agent sends to the "proximate intermediaries" (Broadridge) a "Request for Beneficial Ownership Information".[72]

Within 3 business days of receiving the Request for Beneficial Ownership Information, the proximate intermediaries (Broadridge) are required to provide information regarding the number of sets of meeting materials required (which also reflects the number of materials required by intermediary account holders of the proximate intermediary).

3. Sending materials and soliciting voting instructions

(a) Registered shareholders

The issuer (through its transfer agent) sends to the registered shareholder the management information circular and the management form of proxy. These materials must be delivered between 21 and 60 days before the meeting date.[73] The transfer agent is required to file and post on SEDAR a certificate of mailing with respect to the registered holders.[74]

(b) Beneficial owners

The issuer will decide whether materials will be delivered either by the issuer (through its transfer agent) to NOBOs or only by the intermediaries (Broadridge) to all beneficial owners. Meeting materials must be mailed 21 days before the date of the meeting; however, if the issuer

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[69] The specific mechanics of generating this list are described in Broadridge's *2011 Canadian Intermediary Services Guide*.

[70] This date is typically the record date for both notice of meeting and voting.

[71] Regulation 54-101, s. 2.5.

[72] Form 54-101F2 *Request for Beneficial Ownership Information*. For purposes of this discussion, a proximate intermediary is a CDS participant.

[73] *Canada Business Corporations Regulations*, 2001, S.O.R./2001-512, s. 44; National Instrument 51-102 *Continuous Disclosure Obligations*, s. 9.2.

[74] Transfer agents will often also deliver to their clients an Affidavit or Declaration of Mailing, to provide them with sworn assurance that the meeting has been properly constituted.

is using notice-and-access, the materials must be sent at least 30 days before the meeting.[75] Regulation 54-101 sets out timelines for when issuers must provide proximate intermediaries (Broadridge) with appropriate sets of materials, and when intermediaries (Broadridge) must send out the materials.

4. Collecting voting instructions

(a) Registered shareholders

Registered shareholders execute and return the management form of proxy that is sent to them. Shareholders must provide these voting instructions in writing.[76] The majority of registered shareholders submit their proxy votes in paper form.

(b) Beneficial owners

Beneficial owners most commonly return their voting instructions electronically (by telephone, fax, Internet, or through the relevant electronic platform). These instructions are submitted to either the intermediary (Broadridge) or the transfer agent (as applicable). Voting is controlled in electronic systems by providing to the investor a unique control number.

5. Transmitting proxy votes/voting instructions

(a) Registered shareholders

Under many Canadian corporate statutes, an issuer can set a proxy cut-off; however, a proxy cut-off generally must be no more than 48 hours (excluding Saturdays, Sundays and holidays) preceding the commencement of the meeting in respect of which the proxy relates. Some issuers take advantage of the full 48-hour proxy cut-off; others provide for a 24-hour proxy cut-off.

Typically, the transfer agent is responsible for tabulating the proxies submitted by registered shareholders.[77]

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[75] Regulation 54-101, s. 2.9. Note that if one intermediary receives meetings materials from another intermediary, it is required to send those materials on to its investor clients within one business day of receipt. However, this step is skipped since Broadridge delivers proxy materials on behalf of virtually all of the intermediaries.

[76] See CBCA, s. 153. However, under *Policy Statement 11-201 respecting Electronic Delivery of Documents*, the "in writing" requirement for voting instructions can be satisfied by electronic delivery of a document, including telephone delivery, so long as the electronic format ensures the integrity of the information in the document and enables the recipient to maintain a permanent record of the information.

[77] The transfer agent will do the same for voting instructions received from NOBOs if the transfer agent has done the NOBO mailing on behalf of the issuer.

(b) Beneficial owners

Broadridge compiles voting instructions into a tabulation report aggregated by intermediary and then electronically delivers the tabulation report to the official tabulator. [78]

Broadridge recommends voting instructions to be received by it at least one business day before the proxy cut-off date (to enable the preparation of the tabulation report prior to the proxy cut-off time).

If the issuer has sent meeting materials to, and solicited voting instructions directly from NOBOs, the NOBOs will return their voting instructions directly to the transfer agent.

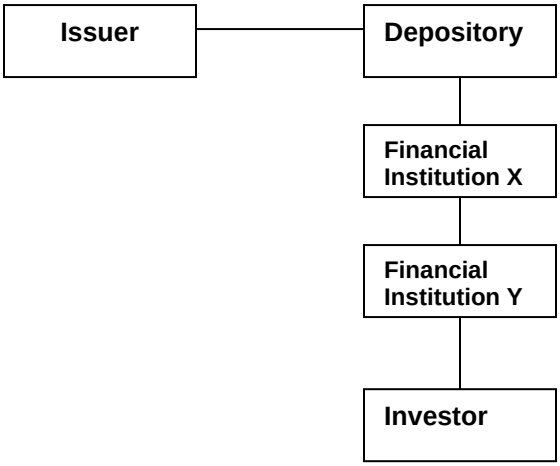
[78] Broadridge issues tabulation reports on behalf of its intermediaries based on the schedule below:

- 15-day Vote Report - if material is mailed 25 or more calendar days prior to the meeting, the first vote report will be issued 15 calendar days prior to the meeting.
- 10-day Vote Report - if material is mailed 15 to 25 calendar days prior to the meeting, the first vote report will be issued 10 calendar days prior to the meeting.
- Daily Vote Reports - beginning on the 9th calendar day prior to the meeting, daily reports will be issued up to and including the meeting day.
- Day before Meeting - a vote report will be generated about 7:00 p.m. (Eastern Time) the evening prior to the meeting.
- Day of Meeting - a vote report will be generated the morning of the meeting.

The first vote report Broadridge issues will be cumulative. It will show all the votes returned up to that time. Any supplemental vote reports will show only newly-returned votes, which must be added to the first votes reported. See Broadridge *Canadian Intermediary Services Guide 2011*, *supra* note 45 at 13.

Appendix B[79]

Differing Legal Frameworks Applicable to Intermediated Holding Systems



Model	Security Entitlement Model (Canada and U.S.)	Trust Model (England and Wales, Ireland, Australia)	Undivided Property Model (France)	Pooled Property Model (Germany, Austria, Japan)
Depository	CDS nominee is registered holder and legal owner	CREST (U.K.) or CHESS (Australia) assumes role of company register under corporate law and has no legal interest	Euroclear acts as a register and has no legal interest in the securities.	Clearstream (Germany) and other equivalents maintain a pool of securities and have no legal interest in the securities.
Financial Institution X	CDS participant holds security entitlement in respect of CDS	CREST participant is the legal owner of the securities they hold in CREST, whether for their own or clients' account.	Has no legal interest in the securities	No legal interest other than a residual interest comparable to possession or *de facto* control.
Financial Institution Y	Holds securities entitlement in respect of FI X	Equitable owner of securities in account with FI X	Has no legal interest in the securities	No legal interest other than a residual interest comparable to possession or *de facto* control.
Investor	Holds security entitlement in respect of FI Y	Equitable owner of securities in account with FI Y	Full property over the securities in account with FI Y; however, the investor can only access his securities through FI Y and not through any other intermediary at a higher level	Shared interest in the pool of securities located at the level of the depository; however, the investor can only access his securities through FI Y and not through any other intermediary at a higher level

[79] The information in this Appendix is derived from *Paech, supra* note 17.

Some jurisdictions (the Nordic countries, Greece and Poland, China and Brazil) have "transparent systems" in which investors hold accounts directly with the depository, and financial institutions merely "operate" the accounts; however, this system does not work for cross-jurisdictional holdings, because foreign intermediaries are not part of the special legal and operational framework necessary to be an account operator. In that case, a custodian will hold an account with the depository, and the ownership framework is similar to the pooled property model.

Note that this chart does not address other important differences in legal structure that affect the voting and property rights of issuers and investors in these jurisdictions, e.g., corporate laws, insolvency laws, property rules and securities and/or financial market regulations. This chart therefore should not be read as suggesting that a particular legal framework for an intermediated holding system is superior to another.

Appendix C

Reviews of Proxy Voting in the U.S., U.K., Australia and France

Institutional investors, custodians and regulators in other jurisdictions have also engaged in reviews of the proxy voting infrastructure and the accuracy of proxy votes. Below is a non-exhaustive list of these initiatives.

- **United States.** The Securities and Exchange Commission published a concept release on July 14, 2010 (the **SEC Concept Release**) seeking public comment on a wide range of topics related to the U.S. proxy system. The SEC Concept Release sought input on three general areas: (1) ensuring the accuracy, transparency, and efficiency of the voting process, (2) enhancing shareholder communication and participation, and (3) addressing the relationship between voting power and economic interest. The SEC Concept Release described the concerns related to these three areas that have been expressed by market participants and presented several possible regulatory responses to such concerns.[80] The SEC received nearly 250 comment letters in response and, as of this time, has not engaged in any rulemaking with respect to the topics addressed by the SEC Concept Release.

- **United Kingdom.** Institutional shareholders, custodians and regulators formed a Shareholder Voting Working Group in 1999 to review impediments to voting shares in U.K. companies and prepared a series of reports between 2001 and 2007. The 2007 report noted the continued problem of "lost" votes and the difficulties in tracing the vote from the investor to the issuer/registrar. The report described a vote tracing exercise conducted by Georgeson Shareholder Ltd. which found that of the votes cast by 25 institutional investors at an annual meeting, 4.97% were "lost", with the most common reason (49.6%) being that too many votes were submitted on the record date, resulting in the votes being rejected. The 2007 report recommend that the participants involved in the voting process should undertake steps to make the process more efficient and transparent, establish a clear audit trail and urged more companies to undertake tracing exercises to determine whether any votes have been lost.[81] On April 26, 2012, the Institute of Chartered Secretaries and Administrators Registrars Group published a guidance note on the practical issues around voting at general meetings; which among other things, sets out views and guidance on how certain reconciliation issues should be addressed.[82]

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[80] U.S., *Concept Release on the U.S. Proxy System*, U.S. Securities and Exchange Commission, Release No. 34-62495, (July 14, 2010) at 7, online: <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

[81] Paul Myners, "Review of the Impediments to Voting UK Shares: Report by Paul Myners to the Shareholder Voting Working Group – An Update on Progress Three Years On" July 2007 at 1-2, online: <http://www.investmentfunds.org.uk/press-centre/2007/20070730/>.

[82] Institute of Company Secretaries and Administrators Registrars Group, Practical issues around voting at general meetings (April 2012), online: <https://www.icsaglobal.com/assets/files/pdfs/guidance/Guidance%20notes%202012/ICSA%20Registrars%20Group%20Best%20Practice%20Note%20-%20Practical%20issues%20around%20voting%20at%20general%20meetings%20-%20April%202012.pdf>.

- **Australia.** In September 2007, the Investment and Financial Services Association (now the Financial Services Council) made submissions to a Parliamentary Joint Committee on Corporations and Financial Services inquiry into shareholder engagement and participation. The submissions noted concerns regarding the integrity of the proxy voting system and recommended legislative and industry based reforms to improve the system. The Parliamentary Joint Committee on Corporations and Financial Services issued its final report on shareholder engagement and participation in June 2008, which included high-level recommendations aimed at improving the integrity of the proxy voting system.[83] The Australian government is continuing to consider the recommendations in this report. In September 2011, the Australian Institute of Company Directors published a report that noted continued concern over "lost", miscounted and discarded votes, and the lack of an audit trail to establish that investor votes have been voted as instructed.[84]

- **France.** AMF France established in 2001 a working group on improving the exercise of shareholder voting rights at general meetings, and in 2012 presented a report for public consultation. The working group noted that non-resident institutional investors faced a risk of not having their votes counted at meetings due to the complexity of the long chain of service providers used by these investors and their custodians. The working group also noted that a number of improvements had been made to the voting system in France; however, shareholders who wished to receive relevant meeting information and have their votes counted should consider being registered directly on the issuer's books or hold shares in bearer form with a French custodian.[85]

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[83] Parliamentary Joint Committee on Corporations and Financial Services, Better Shareholders – Better Company: Shareholder engagement and participation in Australia (June 2008), online: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/completed_inquiries/2008-10/sharehold/report/index.htm>.

[84] Australian Institute of Company Directors, Institutional Share Voting and Engagement: Exploring the Links Between Directors, Institutional Shareholders and Proxy Advisers (September 2011) at 8, online: <http://www.companydirectors.com.au/Director-Resource-Centre/Research-reports/~/media/Resources/Director%20Resource%20Centre/Research/AICD%20%20ISVotingWeb_FINAL.ashx>.

[85] Olivier Poupart Lafarge, "Final Report of the Working Group on General Meetings of Shareholders of Listed Companies", (July 2, 2012) at 23 and 27, online: <http://www.amf-france.org/en_US/Publications/Rapports-des-groupes-de-travail/Archives.html?docId=workspace%3A%2F%2FSpacesStore%2Fa985cfe0-4354-4fca-aba4-234cdf408d74>.