



Securities Transfer Association of Canada

William J. Speirs
President

July 15, 2016

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

To the attention of:

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Dear Sirs / Madames:

Re: CSA Multilateral Staff Notice 54-304 – *Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols (“Staff Notice 54-304”)*

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The Securities Transfer Association of Canada (“STAC”) welcomes the opportunity to comment on Canadian Securities Administrator (“CSA”) Staff Notice 54-304 and the future of the Canadian Proxy Voting Infrastructure.

STAC is a not-for-profit association of Canadian transfer agents that amongst others has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.

STAC members act as agents for securities issuers with respect to the maintenance and administration of a company’s security register. As Transfer Agent, we facilitate transfers of ownership, distribute entitlements such as dividend and interest payments, distribute securityholder communications such as financial statements and securityholder meeting material, tabulate proxies, and provide scrutineering services at securityholder meetings. Transfer Agents are also typically appointed for the Registrar function, which is responsible for accounting for and maintaining control of the number of securities issued and outstanding. This includes the issuance and cancellation of treasury shares, conversions from one class to another, stock splits or dividends, redemptions and secondary offerings.

STAC would like to express our appreciation for the leadership role that the CSA has taken in connection with the reviews of the proxy voting infrastructure, as well as the opportunity to be actively involved in the process and meetings. The conversations that were held with the members of both the Protocol Working Group (“PWG”) and Protocol Working Sub-Group (“PWG Sub-Group”) were open and frank, and resulted in many valuable insights about challenges and realities experienced by other parties involved in the proxy voting infrastructure. We are optimistic that the members also gained some additional understanding of experiences from the tabulators’ world.

STAC is also appreciative of the work that the CSA and PWG Sub-Group have completed to date in terms of the development of the draft protocols set out in Staff Notice 54-304 (the “Draft Protocols”), and also the opportunity to contribute to the drafting. Although we agree that the Draft Protocols will assist with the standardization of the vote reconciliation process, we are of the belief that there is still a great deal of work to be completed to achieve vote integrity in a system that is efficient, accurate, reliable and accountable, including the following:

- As STAC has previously stated, on numerous occasions, we are of the opinion that full reconciliation of record date mailing files by intermediaries to balance the voting entitlement with the number of shares held (“pre-reconciliation”) along with providing missing or incomplete omnibus proxy documentation prior to tabulation commencing, is critical to address current problems with the proxy infrastructure. We strongly believe that the reconciliation of the voting entitlement records prior to the material distribution and voting process will ensure integrity of the voting files and alleviate many of the problems

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that currently exist. The Draft Protocols focus on the processes toward the end of a long and complicated process. We believe there needs to be additional focus on addressing issues at the beginning of the process in order to reduce or eliminate the current challenges that are experienced at the end of the process where time and resources available to remediate are limited.

- STAC supports the elimination of the NOBO / OBO concept. The more transparency there is to complete security holder records, the fewer discrepancies will occur, and those that do occur can be rectified efficiently. It would also enable issuers to contact beneficial owners directly rather than being required to channel requests through various layers of intermediaries against tight deadlines. If there are beneficial owners who wish to remain anonymous, that objective can be achieved a number of different ways, including the use of nominee or segregated accounts, or by creating a confidential voting processes, whereby only the tabulator will have access to voting results. Transparency will also enable the facilitation of true end-to-end vote confirmation for all investors, as well as technological advancements, such as virtual and hybrid securityholder meetings.
- STAC supports the concept of moving toward a system that is not reliant on paper however this cannot be achieved without amendments being implemented to corporate law. It is necessary for there to be co-ordination with regulatory bodies to have these updates made consistently across the various jurisdictions. In addition, changes of this nature will require system developments, which will be accompanied by costs and the necessary timeframes for testing and implementation.
- STAC believes that there must be improved integration with the proxy system in the United States. Many of the vote discrepancies experienced by Canadian issuers result from securities that are held in the United States or by residents of the United States, and missing paperwork from entities outside of Canada. In addition, the movement toward a system in Canada that is not reliant on paper will result in a solution of limited value if similar actions are not undertaken in the United States. Without modernizations occurring in proxy systems throughout North America, tabulators will continue to be required to manually manage inefficient processes. Although STAC recognizes that the CSA does not have jurisdiction in the United States, we believe that there is the opportunity to initiate meaningful dialogue with US regulators.
- The Draft Protocols and reviews to date have focused on the processes when Broadridge is acting as mailing and tabulation agent for the financial intermediary. It is important to note that there are situations where this is not the case, and although we recognize that the majority of financial intermediaries do use Broadridge as agent, we believe that the process should be equitable for all parties in the process, and not solely focused on Broadridge.
- Clarity is required around information received in connection with intermediary voting instructions received after proxy cut-off. STAC members have requested information from Broadridge regarding the intent of these intermediary votes that are received after proxy

cut-off showing a negative vote, with no indication that the vote is a revocation. As we cannot clearly determine the intent of these negative votes, tabulators cannot develop a standard process for handling them, raising the risk that the intent of the beneficial securityholder is not being accurately reflected.

Background

In the Background section of Staff Notice 54-304, it is noted that issuers and investors have expressed concerns about the proxy voting infrastructure. STAC members have also been actively communicating our concerns about the integrity of the proxy voting infrastructure, and the occurrences of over-voting for several years now, including as early as 2011 at the Shareholder Democracy Summit held by the Canadian Society of Corporate Secretaries¹ and the RBC Dexia Shareholder Voting Symposium². Proxy Protocol has contained guidelines for tabulators to manage over-vote situations since the initial version published on March 31, 1991. The reality is that these guidelines would not have been developed and implemented if there were no occurrences of over-voting. We have also provided specific statistics on the incidents of overvoting in response to CSA Consultation Paper 54-401 – *Review of the Proxy Voting Infrastructure*.³

Also noted in this section, are the two significant underlying gaps that were identified in meeting vote reconciliation through the in-depth, detailed review that was conducted on six securityholder meetings: information gaps and communication gaps. STAC agrees that there are information gaps as identified, however we would like to clarify that in situations where over-votes occur, when a STAC member is tabulator, the methodology for addressing over-vote situations is determined by the issuer or chair of the securityholder meeting. Each STAC member does have a standard default protocol from the various options set out in Proxy Protocol; however the issuer or meeting chair has the ultimate responsibility to determine the validity of any proxy⁴. We would also like to clarify that there is no situation where the tabulator would “accept” over-votes without an appropriate position to vote them against.

STAC would also like to note that in connection with the second significant underlying gap identified, specifically the communication gaps, prior to financial intermediaries outsourcing their back office proxy mailing and tabulation processes to Broadridge, transfer agents did communicate directly with the financial intermediaries. In fact, financial intermediaries requested material quantities directly from the transfer agent as a result of the search process, and limited proxies were mailed to beneficial securityholders, which were typically then returned to the transfer agent for tabulation against the relevant financial intermediary position on the omnibus proxies received. As the processes have developed, the insertion of additional parties into the process flow has complicated matters, resulting in barriers between parties which previously communicated freely. At the time, the need for

¹ <http://www.cscs.org/Resources/Documents/summit/Summit%20Repor.pdf>

²

http://www.cscs.org/Resources/Documents/summit/Resources/RBC%20Dexia%20Shareholder_voting_report%20FIN AL.pdf

³ http://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20131113_54-401_staofcan.pdf

⁴ Nathan's Company Meetings Including Rules of Order – Seventh Edition; Section 229 *Validity of Proxies*

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communication between the transfer agent and the financial intermediary was not contemplated. We look forward to re-engaging with the financial intermediary community and supporting a more open communication process.

Next Steps:

STAC strongly supports the CSA's intended next steps of establishing a technical committee to continue sharing information and discussing solutions, as well as the intention to hold at least one roundtable in the fall of 2016. The need for ongoing communication and collaboration cannot be overstated. STAC has recently been communicating with representatives of the Investment Industry Association of Canada ("IIAC"), and we are pleased to advise that we intend to meet independently with IIAC and representatives of certain Financial Intermediaries to share information about the 2016 proxy season, and to initiate conversations about continuing improvements.

STAC agrees with the general opinion that the system needs to eliminate paper and move to electronic transmission of vote entitlement and proxy vote information. We do, however, believe that there are various potential roadblocks that need to be managed, including:

- Developing standards to ensure there is proper tracking in any data feeds so there is confidence in the integrity of the information.
- Updating corporate law requirements regarding the requirement for a physical signature on a proxy.
- Ensuring that systems are developed to allow for data to flow in both directions.

In connection with end-to-end vote confirmation, we note that:

- The current intermediated system prevents the development of a system that is streamlined and efficient.
- The current proposed process that has been piloted in the United States is very manual and labour intensive.
- The current proposed process contemplates sending of confirmation after a meeting is terminated, leaving the holder with no opportunity to remediate an issue with their vote. Without pre-reconciliation of record date files, confirmation of vote acceptance prior to the voting cut-off is not feasible or reliable.

STAC is concerned with the presumption that the elimination of paper and development of end-to-end vote confirmation can be resolved by key entities, when there is such general disagreement about the underlying issues, as evidenced by the requirement for the CSA to continue their involvement with the development of the Draft Protocols.

STAC does not believe that the timeline for implementation of the final protocols is realistic, specifically that they will be published at the end of 2016, in time for the 2017 proxy season, at which point there will be monitoring of the voluntary implementation. There are certain requirements in the Draft

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Protocols that may require system developments for certain members. Until such time as the final protocols are published, it is uncertain the extent of the developments required, and we therefore cannot confirm that all members will be able to implement all protocols for the 2017 proxy season until such time as that the reviews can be undertaken.

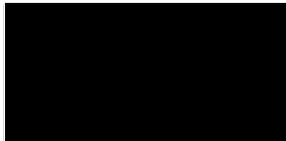
Please find attached our specific comments on the following:

- CSA Questions
- Annex A – “Proposed Meeting Vote Reconciliation Protocols”
- Appendix A – “Meeting Vote Reconciliation Flow Chart”.

STAC would like to again thank the CSA for their continued focus on the proxy system, and the opportunity to participate in past and future reviews and working groups. We are very pleased to see the inclusion of “Improve Canadian Proxy Voting Infrastructure” in the recently published *CSA Business Plan – 2016 – 2019* under the section titled “Enhanced Investor Protection”. It is an important reminder that investors should be a main impetus for developing and implementing improvements to the Proxy Voting Infrastructure; they should have confidence both in the system and that their voice is being heard through their vote, no matter how many securities they own.

We would be pleased to discuss these comments and provide any future feedback as the CSA continues with their efforts to review and improve the existing proxy voting infrastructure.

Yours truly,



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CSA QUESTIONS:

Following are STACs comments on the specific questions posed in Staff Notice 54-304:

Question 1 – The Protocols contain detailed guidance on operational process to support accurate, reliable and accountable proxy voting. Does the guidance achieve this objective? If not, what specific areas can be improved, or what alternative guidance could be provided?

As previously stated, although we agree that the Draft Protocols will assist with the standardization of the vote reconciliation process, we do not believe that they achieve the end goal of a system that is fully accurate, reliable and accountable. We do not believe that the Draft Protocols alleviate the degree of accountability to resolve unreconciled vote submissions which continues to rest with the tabulator, who is at the end of a long, complicated process over which they have no control.

Question 2 – What are the cost and resource impacts on key stakeholders of implementing the information and communication improvements contemplated in the Protocols? In particular, what issues do intermediaries such as investment dealers anticipate in implementing the Protocols, and to what extent would any additional costs associated with implementing the Protocols be passed on to issuers or investors?

The implementation of the protocols will potentially result in some development requirements for certain STAC members. The extent or impact of the costs associated with any development is not yet known. It is also expected that there will be additional staffing requirements in order to support the communication with individual financial intermediaries.

Question 3 – What is a reasonable timeframe for implementing the information and communication improvements contemplated in the Protocols?

Although certain of the protocols may be easily implemented in time for the 2017 proxy season, STAC is concerned that if the final protocols are published at the end of 2016, there may not be sufficient time for all members to properly implement all aspects of the protocols. We believe that a phased in approach should be considered, including implementation for 2017 being “best efforts”.

Question 4 – Which aspects of the Protocols (if any) should be codified as securities legislation, and which as CSA policy or CSA staff guidance?

STAC believes that the protocols should be implemented as CSA staff guidance. Given the current stage of development and review, we believe that considering codification of any aspect of the Draft Protocols at this point is premature.

Question 5 – Not all the entities that engage in meeting vote reconciliations are “market participants” or subject to compliance review provisions (where the “market participant” concept does not exist) under securities legislation. Do you think that all entities that play a key role in meeting vote reconciliation should be “market participants” or subject to compliance review provisions, including proxy voting agents and meeting tabulators?

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STAC believes that all members of the proxy voting infrastructure should be held accountable for the stages in the process for which they have responsibility. As the CSA has stated, securityholder voting is one of the most important ways for a securityholder to have their voice heard by the company they have invested in, and issuers rely on accurate vote returns to direct them in corporate matters. Securityholder voting is a fundamental part of the Canadian capital markets.

Annex A – Proposed Meeting Vote Reconciliation Protocols

In connection with the Draft Protocols, STAC respectfully submits the following:

General comments:

- There are many areas for opportunity in respect of standardization of information. STAC members will undertake to work with the relevant parties in order to develop these standards, specifically in connection with Draft Protocols C.1.6(b), C.2.6, C.4.1, and D.1.1.
- As previously stated, the implementation of the protocols will potentially result in some development requirements for certain STAC members. The extent or impact of these requirements and their costs is not yet known.

Specific comments:

Protocol A.2 – As the Depository Trust Company (“DTC”) is ultimately responsible for producing the DTC Omnibus Proxy, we believe that they should be included as a “Responsible Entity”. Although the tabulator can assist the issuer, assistance will be limited as the DTC process must be completed by the issuer. Although we recognize that the CSA does not have jurisdiction over DTC, the ability of the tabulator to receive the DTC Omnibus directly and in electronic form would be the ideal scenario.

Protocol A.3 – Further to our comment in connection with Draft Protocols A.4.3 and B.3.1, we believe that a financial intermediary, or their agent, should be required to have a process that achieves the same outcome as the tabulator’s responsibility under Draft Protocol B.3 when the issuer elects to mail meeting material directly to Non-Objecting Beneficial Owners (“NOBOs”). If the tabulator is required to set up a vote entitlement account for each NOBO identified on the list received, and also ensure that the securities represented by the NOBO records do not exceed the positions available to the related financial intermediary there should be comparable processes for any mailing completed, including the OBO mailing when the NOBO mailing is completed by the issuer. We submit that requiring pre-reconciliation only where there is a level of beneficial securityholder transparency to the issuer is an unbalanced approach that does not advance the CSA’s objective of enhanced vote reconciliation. We also note that the pre-reconciliation completed by the tabulator in this regard is completed using records that they do not own or have any form of control over, whereas any work completed by the financial intermediary would be a reconciliation of their own records.

Protocol A.3.9 – We note that there will continue to be issues experienced when share entitlements are allocated to an entity that is not a Broadridge client. There is often insufficient information provided in these scenarios, and without the proper allocation of voting rights, votes received cannot be tabulated. We understand that Broadridge passes along the information that they receive, however we believe that the financial intermediary should be responsible for providing information that is complete.

Protocol A.4.3 – Further to our previous comments in connection with Draft Protocols A.3 and B.3.1 we believe that each financial intermediary should be responsible for balancing NOBO and OBO positions to the relevant financial intermediary positions on the omnibus proxies.

Protocol B.3.1 – We would like to clarify that the NOBO list received by the tabulator when mailing material directly, contains all holders, specifically those coded as A, for all material; S, for special meeting material only; and D, for decline all material, as required under National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*. Although certain NOBOs will not receive material, that does not invalidate their right to vote, or allow their voting position to be used by another party, which would compromise the integrity of the vote. The tabulator therefore ensures that all NOBOs are accounted for, and subtracts the entire number of vote entitlements from the position available on the omnibus proxies. This ensures that in the event a holder that did not receive material contacts us directly, we can produce a Voting Instruction Form and provide them with their right to vote. STAC believes that any entity who takes on the responsibility of mailing voting information to securityholders should also be required pre-reconcile positions by setting up entitlement accounts for each individual beneficial securityholder appearing on the register on record date. These records should be reconciled to the positions available to the relevant financial intermediary, and balanced prior to material being distributed.

Protocol C.1.6(a) – STAC members believe that there should be specific guidelines created in connection with the required updates of the association table, such as a minimum of every six months.

Protocols C.2.2 and C.2.3 – In situations where a restricted proxy is submitted by an intermediary, the tabulator is still required to identify the voting entitlement position that must be drawn down on in order to tabulate that specific proxy. In that regard, we would like to note that although the tabulator can provide a confirmation within a reasonable time period, if requested to do so, there is the possibility that the voting entitlement position will continue to have votes cast against it, and it could potentially end up in an over-vote position prior to the voting cut-off. If this occurs, there is no process contemplated by which a revised confirmation would be provided until after the meeting, as per Draft Protocol C.2.8. We believe that any confirmation provided under Draft Protocol C.2.3 should clearly state that it is only a confirmation of receipt, and not a confirmation that the vote has been accepted.

Protocol C.2.8 – As the request must initially be submitted to the issuer, the timeline stated in C.2.8(b) should state “2 business days of the issuer instruction being provided to the tabulator.” This change is intended to ensure that the tabulator still has sufficient time to complete the request in the event that the issuer does not provide the request to the tabulator in a timely manner.

Protocol C.3.1 – STAC members will undertake to work with Broadridge in order to meet this Draft Protocol, however our preference is that the confirmation process be automated through the use of an electronic solution, such as sequencing and trailer records, as opposed to a requirement to confirm intermediary name and votes cast. Currently, this proposed process would require the tabulator to manually confirm back to Broadridge the information received from Broadridge, who would then be required to audit it back to their own system. In the event Broadridge determines that there is a discrepancy, in addition to providing the missing votes, they will also need to provide the tabulator with evidence that the original vote was submitted to the tabulator prior to proxy cut-off. Given this process

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cannot be initiated until after proxy-cut off, which is typically 48 hours prior to the start of the meeting, and all steps would need to be completed at least a few hours prior to the commencement of the meeting, we are concerned with the additional work that will be required within a relatively short time-frame. This will be especially relevant in situations where there are multiple meetings occurring on a single day, which is very common.

We would also like to note that votes from financial intermediaries are also received directly, such as in the form of restricted proxies. As the tabulator creates a single position for each financial intermediary, using the omnibus and supplemental omnibus proxies received, and validates all proxies received against that single position, we would need to ensure that any confirmation sent back to Broadridge would exclude votes received from other sources, thereby complicating this process. For this reason we again stress that sequencing and trailer records are a more efficient way to achieve this Draft Protocol.

Protocol C.4.1(b) – As a tabulator may not necessarily be aware of documentation that they did not receive, we request that this Draft Protocol be updated to state “any missing CDS or DTC Omnibus Proxy that the tabulator is aware of.”

Protocol C.4.1(d) – There are situations where the meeting chair may rule certain proxies from registered securityholders as included or excluded. We therefore request that this Draft Protocol be updated to state “the number of For/Against/Abstain proxy votes included or excluded as a result of a chair’s ruling, broken down by specific motion, and, where appropriate, broken down by intermediary.”

Protocol D.1.1 – STAC will undertake to work with Broadridge in order to meet these requirements. This process, however, cannot commence until the final protocols are published, and we therefore would not expect that this process could be implemented in time for the 2017 proxy season.

We are also requesting that the timeline be expanded to 10 business days after completion of the final tabulation. Further to our comments on C.3.1, votes can be received from sources other than Broadridge, and the tabulator must have sufficient time to complete accurate reports.

Protocol D.1.5 – As previously stated, STAC is concerned about the presumption that this solution can be industry driven, and would not require more extensive changes to the current proxy voting infrastructure. The request for “real time” end-to-end vote confirmation is most concerning. Within the current processes, the implementation of “real time” end-to-end vote confirmation could potentially require multiple communications to the beneficial securityholder if their vote is cast early, and the subsequent votes received and tabulated result in the financial intermediary’s position being over-voted. Without pre-reconciliation of beneficial securityholder records, and creation of separate vote entitlement accounts for each NOBO and OBO identified on the record date securityholder list, the process will be confusing, inaccurate, and time-consuming. STAC is willing to commit to participating in this development however we do not believe that this is a solution that can be created in a meaningful way within the current infrastructure.

APPENDIX A - Meeting Vote Reconciliation Flow Chart

STAC notes that the process as depicted is not representative of the existing process. As the protocols are voluntary, and there are certain proposed protocols that will require development, which potentially will not be available for implementation for the 2017 proxy season, we believe that the title should include the indication that it is “proposed”, or “best practices”, and also reference that it is only in relation to the portion of the process that involves Broadridge.

The following steps are not part of the current process:

- “Information re rejected / pro-rated votes” passed from Meeting Tabulator to Broadridge
- “Information re rejected / pro-rated votes” passed from Broadridge to Intermediaries
- “Information re rejected / pro-rated votes” passed from Intermediaries to Beneficial Owners

The following steps currently in the existing process should also be included:

- From Depositories (CDS or DTC) to Broadridge - There is a data feed of intermediary share positions. Our understanding is that this data is not the same data that is fed from CDS to the Meeting Tabulator in the form of an Omnibus Proxy. We submit that the data should be identical, and that this is a discrepancy that should be reviewed and rectified.
- From Broadridge to the Meeting Tabulator – NOBO data is fed through when the Issuer is undertaking the NOBO mailing.
- From Intermediaries to Broadridge – OBO data is fed through in addition to Omnibus and NOBO account data.
- From Intermediaries to Broadridge – Voting Instructions are provided for certain types of accounts where the intermediary votes on behalf of underlying securityholders.