

## **CSA CONDUCTS REVIEW OF PROXY VOTING INFRASTRUCTURE**

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## Categories: Insights, Publications

The Canadian Securities Administrators (CSA) have issued CSA Consultation Paper 54-401 (the Consultation Paper) to seek input from stakeholders on Canadian proxy voting infrastructure. In particular, the CSA has identified two issues for further examination:

(1) whether accurate vote reconciliation is occurring within the proxy voting infrastructure, and

(2) determining the type of end-to-end vote confirmation system that should be added to the proxy voting infrastructure.

The Consultation Paper provides a comprehensive overview of the network of organizations, systems, legal rules and market practices that support the solicitation, collection, submission and tabulation of proxy votes for shareholder meetings which comprise the current Canadian proxy voting infrastructure. The Consultation Paper also describes a number of concerns that have been identified with the current system and notes that issuers and investors have expressed a lack of confidence in the reliability of the proxy voting infrastructure.

While the CSA acknowledges that other areas of concern have been raised by market participants, it has identified that the following factors contribute to the complexity of proxy voting and to the creation of reconciliation challenges:

(1) the multiple layers of rights to securities associated with the intermediated system of holding securities;

(2) the practice of securities lending;

(3) the use of voting agents by investors, typically in connection with accounts managed by professional investment advisors; and

(4) the right of objecting beneficial owners,[1] which make up an increasing number and already more than half of beneficial owner accounts in Canada, not to disclose their identities to issuers and others.

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The CSA notes that accurate proxy voting "is integral to the legitimacy of shareholder voting and fosters confidence in our capital markets". While the CSA emphasizes that it is has not come to a conclusion as to whether any further securities regulation is warranted in these areas, stakeholders will be interested in the issues which the CSA has raised in its Consultation Paper and what regulatory response, if any, the CSA is likely to put forward to address these issues. While no reforms have been proposed at this time, the CSA has noted that it considers that more active regulatory oversight of the proxy voting infrastructure would be appropriate.

Over the last several years, publicly traded companies in Canada have been faced with a historic number of proxy fights, many of which were high profile. Accordingly, boards of directors and management of publicly traded companies in Canada have not only become more inclined to listen to advisers in seeking appropriate defences to shareholder activism but also to ensure that every proxy vote is properly accounted for. We do not expect that the trend of increased shareholder activism and proxy fights will abate in the ensuing years and for that reason the rules governing the proxy voting process will become increasingly important to market participants.

For the above reasons we believe that the CSA's review of the proxy voting infrastructure is timely and we welcome the review process. We encourage interested market participants to review the Consultation Paper and contact the CSA with comments on the proxy voting infrastructure.

The comment period for the Consultation Paper is open until November 13, 2013.

<sup>1</sup> An objecting beneficial owner is a beneficial owner of shares in the intermediated holding system who objects to the intermediary disclosing his/her/its name, contact information and securities holdings.

## A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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