

CSA PUBLISH FINAL PROXY VOTING PROTOCOLS

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On January 26, 2017, the Canadian Securities Administrators (CSA) published CSA Staff Notice 54-305 *Meeting Vote Reconciliation Protocols* which sets out voting protocols (the Protocols) aimed at improving the processes involved in the tabulation of proxy voting in Canada. The Protocols outline expectations on the roles and responsibilities of key entities that implement meeting vote reconciliation and provide guidance on the kinds of operational processes that they should implement to support accurate, reliable and accountable meeting vote reconciliation. Through the Protocols, the CSA is seeking to address long-standing concerns regarding the integrity and reliability of the Canadian proxy voting infrastructure.

Background

The Protocols result from a consultation and review process which the CSA started in 2013. Following roundtable discussions with market participants and a qualitative review of six uncontested shareholder meetings held in 2014, the CSA determined that there were two significant underlying gaps in meeting vote reconciliation: (i) meeting tabulators did not always have the accurate and complete vote entitlement information they require to properly establish the voting entitlements of intermediaries; and (ii) there were no standard communication channels between intermediaries and tabulators to facilitate the exchange and confirmation of information relating to voting entitlements.

As discussed in our [April 2016 bulletin](#), the Protocols were published in draft form for comment as part of 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* (CSAN 54-304) to address these gaps with a view to enhancing the accuracy, reliability and accountability of meeting vote reconciliation.

The Protocols

The Protocols, based mostly on the proposed protocols outlined in CSAN 54-304, address two key issues:

- [Information Gaps](#): To address information gaps, the Protocols provide guidance on: (i) vote entitlement information that intermediaries should provide to tabulators; (ii) tabulator's use of information to select

intermediaries entitlement to vote; (iii) how tabulators can match proxy votes to vote entitlement positions; and (iv) what tabulators should do if it appears that depositories or intermediaries have not provided necessary vote entitlement information.

- Communication Gaps: To address communication gaps, the protocols provide guidance on: (i) tabulators, intermediaries and Broadridge Investor Communications Corporation (Broadridge) developing appropriate mechanisms to confirm that all votes submitted by Broadridge on behalf of intermediary clients have been received by the tabulator; (ii) steps tabulators should take if the intermediary appears to be in an over-vote position; and (iii) communications amongst parties where proxy votes are rejected, uncounted or pro-rated.

The CSA made several changes to the Protocols as a result of feedback it received in response to CSAN 54-304. The following provides a high-level overview of key changes:

Intermediaries are now encouraged to establish, maintain and apply written policies and procedures regarding client account vote reconciliation.

- An additional expectation has been added that the intermediaries will also design and implement appropriate internal safeguards and controls to monitor the effectiveness of those processes to ensure that a tabulator has complete and accurate vote entitlement information for each intermediary that will solicit voting instructions from beneficial owners and submit proxy votes.
- Tabulators and Canadian Depository for Securities Limited (CDS) are now expected to provide up-to-date contact information to intermediaries and Broadridge and to assist in resolving any potential over-vote issues.
- Intermediaries must also establish appropriate notification methods for beneficial owner clients that wish to know if their intermediary has been unable to obtain verification that the situation has been resolved, such that the proxy votes submitted by the intermediary could potentially be pro-rated or rejected.
- The guidance on what constitutes a reasonable period for the tabulator to notify Broadridge of rejected or pro-rated votes now refers to a period within 10 business days of completing final tabulation, to take into account that there are currently no electronic communication methods in place for this activity.

It should be noted that the Protocols have been drafted with a specific view to meeting vote reconciliation for uncontested meetings. However, certain aspects of the Protocols are also relevant in the context of proxy contests and should be taken into account where appropriate.

Next Steps

CSA staff will monitor the voluntary implementation of the Protocols over the next two proxy seasons and assess the need for any enhanced regulatory measures. CSA staff also encourage and intend to monitor industry initiatives aiming to find solutions for paperless meeting vote reconciliation and end-to-end vote confirmation through a Technical Committee comprising of representatives from the CDS, Broadridge, intermediaries and transfer agents (who typically act as tabulators for meetings).

Conclusion

Given the importance of shareholder voting to the quality and integrity of Canadian capital markets, the Protocols are a welcome step towards addressing the inaccuracy, unreliability and lack of transparency of the proxy voting infrastructure and meeting vote reconciliation. However, as the adoption of the improvements contemplated by the Protocols remain voluntary, their success will depend entirely on the commitment of key participants (who often operate in silos) to cooperate and take responsibility for fixing a complex, opaque and fragmented system.

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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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