

EXEMPTION FOR CBCA REPORTING ISSUERS FROM UNCONTESTED DIRECTOR ELECTION PROXY FORM REQUIREMENTS

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On January 31, 2023, the Canadian Securities Administrators published an exemption for reporting issuers incorporated under the *Canada Business Corporations Act* (the “**CBCA**”) from the form of proxy requirement for uncontested election of directors. This relief has been implemented through local blanket orders that are substantively harmonized across Canada (the “**Blanket Orders**”).

National Instrument 51-102 – *Continuous Disclosure Obligations* (“**NI 51-102**”) requires that a form of proxy sent to shareholders of a reporting issuer, in respect of the uncontested election of directors, must provide an option for shareholders to specify that the securities registered in their name must be voted or withheld from voting (the “**NI 51-102 Voting Option Requirements**”).

Recent amendments to the CBCA and associated regulations, effective August 31, 2022, generally require “majority voting” for each candidate nominated for director in uncontested elections of CBCA-incorporated issuers (the “**Majority Voting Amendments**”). The Majority Voting Amendments require CBCA-incorporated reporting issuers to send a form of proxy that provides shareholders with the option to specify whether their vote is to be cast “for” or “against” each candidate nominated for director, rather than voted or withheld from voting as required by NI 51-102.

In response to concerns over the discrepancy in voting option requirements between the Majority Voting Amendments and NI 51-102 Voting Option Requirements, the Blanket Orders relieve CBCA-incorporated reporting issuers that comply with the Majority Voting Amendments from needing to comply with the NI 51-102 Voting Option Requirements. In Ontario only, the respective Blanket Order will remain in effect until the earlier of (i) July 31, 2024, unless extended, and (ii) the effective date of an amendment to NI 51-102 that addresses substantially the same subject matter as the Blanket Order.

Further, we note that for issuers listed on the TSX in which each director must be elected by a majority of the votes cast with respect to his or her election other than at contested meetings (the “**TSX Majority Voting Requirement**”), when counting the total votes cast in respect of the election of a director, “withheld” votes are

considered “against” votes and must be counted in the total. TSX-listed issuers are required to adopt a majority voting policy unless they otherwise satisfy the TSX Majority Voting Requirement by applicable statutes, articles, by-laws or other similar instruments. With the Majority Voting Amendments now in effect and expected to satisfy the TSX Majority Voting Requirement, TSX-listed issuers incorporated under the CBCA are likely not expected to have a majority voting policy in place.

by [Grant Y. Wong](#) and [Adam Jones](#)

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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