

CSA PUBLISHES FINAL REPORT ON PROXY VOTING INFRASTRUCTURE AND PROPOSES VOTING PROTOCOLS

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CSA Publishes Final Report on Proxy Voting Infrastructure and Proposes Voting Protocols

The Canadian Securities Administrators (CSA) have published a final report on their review of the Canadian proxy voting infrastructure and are seeking comments on proposed voting protocols for improving the processes involved in the tabulation of proxy voting in Canada. Staff Notice 54-304 *Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols* (the Notice) proposes protocols that are intended to enhance the accuracy, reliability and accountability of proxy voting by setting out clear roles and responsibilities for key participants at each stage of meeting vote reconciliation and to outline the operational processes that each key participant should implement.

Background

The protocols stem from the CSA's desire to address long-standing concerns respecting the integrity and reliability of the Canadian proxy voting infrastructure and result from a consultation and review process which the CSA commenced in 2013. Issuers and investors had expressed concerns to the CSA that the proxy voting infrastructure was inaccurate, unreliable and non-transparent, which was evidenced by the high incidence of over-voting (where an intermediary submits proxy votes for a number that exceeds the number of voting entitlements calculated by the tabulator) and missing votes (where investors identified voting results that suggest that their proxy votes were not included in the tabulation).

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 do not always have the accurate and complete vote entitlement information they require to properly establish the voting entitlements of intermediaries; and (ii) there are no standard communication channels between intermediaries and tabulators to facilitate the exchange and confirmation of information relating to voting entitlements and any problems relating to proxies submitted to the tabulator. The CSA set out to develop protocols to address these gaps with a view to

enhancing the accuracy, reliability and accountability of meeting vote reconciliation.

The Proposed Protocols

With the assistance of a working group comprised of key proxy voting representatives (including issuers, investors, Broadridge, intermediaries, transfer agents and CDS), the CSA have now published for comment detailed operational protocols to set out its expectations on the roles and responsibilities of the key entities that engage in vote reconciliation and to provide guidance on the kinds of operational processes that such entities should implement. The protocols are aimed at satisfying the following characteristics of what the CSA believe constitute an accurate, reliable and accountable meeting vote reconciliation:

- i) generating and sending accurate and complete vote entitlement information for each intermediary that will solicit voting instructions from beneficial owners and submit proxy votes;
- (ii) setting up vote entitlement accounts in a consistent manner;
- (iii) sending accurate and complete proxy vote information and tabulating and recording proxy votes in a consistent manner; and
- (iv) informing beneficial owners of rejected or pro-rated votes.

The CSA believe that the protocols also lay the foundation for the key entities to work collectively to eliminate paper and move to electronic transmission of vote entitlement and proxy vote information and develop end-to-end vote confirmation capability that would allow beneficial owners to receive confirmation that their voting instructions have been received and accepted by their intermediary and the tabulator.

Next Steps

The CSA have requested written comments on the proposed protocols by July 15, 2016 with a view to holding roundtable discussions with market participants in Fall 2016 before publishing the final protocols at the end of 2016. The CSA intend to monitor the extent of voluntary implementation of the final protocols in 2017 and plan to establish a technical committee to support the implementation of improvements and to act as a forum for the key entities to continue sharing information and discussing solutions. The CSA have also advised that they are still considering what additional rules and policies may be required.

Conclusion

Given the importance of shareholder voting to the quality and integrity of Canadian capital markets, we welcome any steps towards addressing the inaccuracy, unreliability and lack of transparency of the proxy voting infrastructure and meeting vote reconciliation. However, we note that the adoption of the

improvements contemplated by the protocols remain voluntary and their success will depend entirely on the commitment of key participants, which often operate in silos, to cooperate and take responsibility for fixing a complex, opaque and fragmented system.

by Arman Farahani and Mark Neighbor

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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