

Corporate Securities Law

January 30, 2015

CSA Publish Progress Report on Review of the Proxy Voting Infrastructure

The Canadian Securities Administrators (**CSA**) published CSA Staff Notice 54-303 which reports on the progress made in their review of the proxy voting infrastructure and outlines their next steps in this initiative. The Staff Notice concludes that the current proxy voting infrastructure is antiquated and fragmented and needs improvement.

Background

On August 15, 2013 the CSA published for comment CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure* (the **Consultation Paper**) outlining a proposed approach to address concerns regarding the integrity and reliability of the proxy voting infrastructure. For more information on the Consultation Paper see our August 20, 2013 update, *Public Consultation Process for Proxy Voting Infrastructure*.

Comments and Subsequent Review

The Consultation Paper elicited 32 comment letters. The CSA also sought feedback through roundtables held by various securities commissions across Canada between January and March 2014. The comment letters contained the following key themes:

- securities regulators need to take a leadership role in reviewing the accuracy of vote reconciliation as no single market participant or set of market participants can access the information used for vote reconciliation;
- over-voting is occurring, indicating that vote reconciliation is not always occurring accurately; and

- there is no consensus among market participants about the causes or solutions to the problem of over-voting.

To properly evaluate vote reconciliation, the CSA also: (a) conducted a qualitative review of six uncontested, uncontentious shareholder meetings held in 2014 and (b) formed a technical working group of the key parties in the proxy voting infrastructure to share information about the operations processes, identify potential gaps in the meeting vote reconciliation process and discuss possible solutions.

Next Steps

The CSA indicated that its review to date has demonstrated the need for the following five improvements:

- modernizing how meeting tabulators receive omnibus proxies;
- ensuring the accuracy and completeness of vote entitlement information in omnibus proxies;
- enabling intermediaries to find out their official vote entitlement for a meeting;
- increasing consistency in how tabulators reconcile proxy votes to official vote entitlements; and
- establishing communication between meeting tabulators and intermediaries about whether proxy votes are accepted, rejected or pro-rated.

The CSA intend to continue their review in 2015 and explore whether factors such as higher volumes of proxy votes, revocations of previous proxy votes, and the use of a dissident form of proxy pose specific challenges to accurate meeting vote reconciliation. For the 2016 proxy season, the CSA will direct the key entities that engage in vote reconciliation to work collectively to develop appropriate industry protocols for meeting vote reconciliation.

Please contact any member of our Corporate Securities Group to discuss the implications of this review.