

Corporate Securities Law

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Public Consultation Process for Proxy Voting Infrastructure

The Canadian Securities Administrators (“CSA”) now have published their much anticipated *Review of the Proxy Voting Infrastructure* (the “**Consultation Paper**”) and are seeking comments on the perceived integrity and reliability of the existing proxy voting infrastructure and the need for, and potential direction of, any reform of that infrastructure.

The Existing System

Under Canadian corporate statutes, registered shareholders have the right to vote on matters requiring shareholder approval, such as the appointment of directors and certain fundamental corporate initiatives. Only registered shareholders (and under certain corporate statutes only registered shareholders at the record date) may vote at a shareholder meeting, either by attending in person or by appointing a proxy.

Most investors in public companies hold their shares through intermediaries - often many layers of intermediaries. As these investors are not registered shareholders, they can vote the shares that they own only by providing voting instructions to their intermediary as to how the registered shareholder should exercise the vote attached to those shares.

While the CSA have established a regime that was intended to ensure that investors that are not the registered holders of their shares would receive the information needed to instruct their intermediaries on a timely basis to effectively exercise the vote associated with those shares, the resulting proxy voting system has proved to be deficient in many significant respects.

Issues with the Existing Proxy Voting System

In the Consultation Paper, the CSA identified two issues that they suggest may be most important to address to maintain investor confidence and are seeking comment on whether these are the right priorities:

- *Is there sufficiently accurate vote reconciliation?*
Vote reconciliation is the process through which proxy votes from registered shareholders and voting instructions from non-registered shareholders are reconciled with the securities reflected in the centralized securities holding system. As a practical matter, that reconciliation is rarely accurate as a result of a number of factors, including:
 - o share lending, where there is a risk that shares that have been loaned may be voted by both the lender and the borrower, and
 - o the possibility of missing or incomplete omnibus proxy documentation, where there is a risk that validly submitted proxy votes may be discarded by the tabulator.
- *What sort of end-to-end vote confirmation should there be?*
The existing proxy voting infrastructure does not have the capability to give non-registered shareholders confirmation that their votes, through their intermediary, have been received and tabulated, which undermines investor confidence in the system.

The CSA also have identified a short list of additional issues that they believe may warrant consideration, including:

- Whether there should be circumstances in which the ability of investors that do not wish to be registered holders and do not wish to be identified as beneficial holders of securities should be overridden to permit greater accuracy of proxy voting and end-to-end vote confirmation?
- Whether the system needs to be changed to ensure that third party investment managers can vote shares in their managed account platforms?
- Whether there are appropriate mechanisms in place to ensure that service providers and others who intermediate the proxy voting system are appropriately accountable in the roles that they play?

Next Steps

The CSA have indicated that “they have not come to any conclusions whether any specific regulatory measures are desirable” and are seeking comment on whether their prioritization of the issues is appropriate, as well as comment more broadly on the proxy voting system. The CSA also have indicated that they intend to engage in “targeted consultations” with stakeholders

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and may hold a roundtable and form an advisory committee to serve as a forum for sharing data and discussing possible policy initiatives. Participation in these processes may be of particular interest to certain market participants.

A copy of the Consultation Paper, which includes specific questions the CSA are hoping stakeholders will address, can be found here:

http://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20130815_54-401_proxy-voting.pdf

The comment period ends on November 13, 2013.

For further information on the Consultation Paper, please contact any member of our Corporate Securities Group.