

Corporate Securities Law

January 30, 2017

Canadian Securities Administrators Publish Final Proxy Voting Protocols

The Canadian Securities Administrators (CSA) published Staff Notice 54-305, which sets out the final version of the new operational protocols that are intended to enhance the accuracy, reliability and accountability of the proxy voting system in Canada. The protocols contain a number of non-binding recommendations to various participants in the proxy voting process for improving existing systems and processes.

CSA Review of Proxy Voting System

The CSA have been examining Canada's proxy voting system since 2013 and the new protocols are the culmination of years of industry consultation and work by a technical committee comprised of representatives from key participants in the proxy voting process. Further information about this process is contained in our previous Updates, including our April 6, 2016 Update, *CSA Release Proposed Proxy Voting Protocols*, our January 30, 2015 Update, *CSA Publish Progress Report on Review of the Proxy Voting Infrastructure* and our August 20, 2013 Update, *Public Consultation Process for Proxy Voting Infrastructure*.

The Proxy Voting Protocols

The new proxy voting protocols contain CSA staff expectations with respect to the roles and responsibilities of a number of the key participants in the proxy voting process – including CDS, intermediaries, Broadridge and transfer agents (in their capacities as vote tabulators) – and provide guidance on

the kinds of operational processes those participants should implement to support accurate, reliable and accountable vote reconciliation.

The protocols are voluntary and are aimed at ensuring:

- vote tabulators receive information they require to accurately establish the voting entitlements of intermediaries such as custodians and investment dealers; and
- vote tabulators and intermediaries establish standard communication channels to facilitate the exchange and confirmation of information relating to voting entitlements and any potential problems relating to proxies submitted to the tabulator.

The protocols are technical and detailed, and address matters such as generating and sending vote entitlement information, setting up vote entitlement accounts, sending proxy vote information and tabulating and recording proxy votes, and informing beneficial owners of any rejected or pro-rated votes.

The CSA have indicated they will monitor implementation of the recommended protocols during the next two proxy seasons to determine whether any enhanced regulatory measures are required, and will continue to monitor paperless meeting vote reconciliation and end-to-end vote confirmation.

The protocols represent one of many initiatives regulators and market participants have proposed in an effort to modernize and simplify the proxy voting process. Along with the protocols, the recent push to enhance shareholder rights on issues ranging from proxy access to universal proxies and to majority voting, highlight the dynamic nature of the shareholder voting process and a view that all elements of the current system need to be analyzed and considered. While many of the protocols seem entirely sensible

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and uncontroversial, in and of themselves their impact may be limited; they are not currently mandatory and require the cooperation of a number of market participants having different perspectives on their utility. More importantly, the protocols are limited to addressing perceived operational problems within the existing infrastructure and do not address some of the larger structural issues, such as the multiple layers of separation between beneficial shareholders and issuers, that give rise to many of the concerns the CSA are aiming to address. Nevertheless, the CSA's focus on trying to enhance the shareholder voting process is encouraging and represents a positive development for those who for years have been demanding more clarity and transparency in the voting system.

Please contact any member of our Corporate Securities Group to discuss these latest developments.