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Delivered by email

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Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
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Re: Proposed Changes to National Instrument 54-101 (NI 54-101)

The Canadian Society of Corporate Secretaries (CSCS) engages with Canadian securities regulators to ensure our members' interests are represented. We participated on the NI 54-101 Advisory Committee during 2009 and 2010. We are now responding to the request for comments on the proposed revisions to NI 54-101 on behalf of our members.

We applaud the securities regulators for taking this first key step in making improvements to the way that listed issuers communicate with their shareholders. We also encourage the Canadian Securities Administrators (CSA) to look at the whole of the proxy voting process, just as the Securities and Exchange Commission is doing in the US in order to address several other important issues that notice and access does not begin to fix.

CSCS surveyed our members to get their views on key questions posed by the proposed changes to NI 54-101. This letter provides a summary and overview of the key comments and concerns of CSCS members. We also attach full anonymous results of the survey.

General Information

Although our membership is largely from issuer companies, we have a significant sector that represents various shareholder service organizations, outside consultants and legal counsel. In order to provide better understanding of the results, we are including the responses from each of the two sectors separately.

We received responses from a total of 72 members; 54 were issuers and 18 were not. Not all respondents completed the entire questionnaire.

Question 1 Survey Results

Question	Results
Are you with an issuer company (publicly traded on a stock exchange)?	Yes - 75% No - 25%

General Meetings Only or General and Special Meetings

CSCS members were asked to comment on whether the ability to use notice and access in communicating with shareholders should be restricted to general meetings only for a period of time or be open to both general and special meetings.
The difference is not significant to most issuers as the relevant meaning of a special meetings is one at which a special resolution (rather than just special business) is

presented. The issue is, however, significant for Venture Exchange Issuers who must present stock option and similar plans annually as a special resolution under the exchange rules. Those issuers, who tend to be small and mid-cap companies for whom the cost savings of using notice and access would be of particular benefit, would never be able to use notice and access if it is restricted to general meetings only.

Additionally, the CSA indicated that the reason for the restriction was to be able to assess the impact of notice and access. There is significant information already available from three years of similar legislation in the US, which shows that the key impact of the use of notice and access is a reduction in voting by retail shareholders. As long as issuers are allowed to determine which shareholders receive information through notice and access, each company will have the same opportunity to review its voting and decide how best to deploy notice and access to ensure good voting levels while also reducing costs.

Not quite three-quarters of issuers surveyed want notice and access to be allowed at general and special meetings; non-issuer numbers were almost the same. More importantly of the issuers surveyed, only 14% have not had a special meeting in the past five years – showing how limiting restricted access would be.

Accordingly, we recommend that notice and access be made available for use at both general meetings and general and special meetings from the outset.

Questions 2, 3 and 4 Issuer Results

Question	**Results**
Should notice and access be allowed for both general and special meetings?	Yes - 72% No - 28%
How many special meetings has your company had in the past five years?	None – 14% One – 12% Two – 37% Three – 16% Four – 16% Five – 5%
What restrictions, if any, should there be on when notice and access may be used?	Most support no or limited restrictions; see attached results for full comments.

Representative Issuer Comments

"We do not believe any restrictions are warranted given that under the proposed notice-and-access model, the notice mailed to shareholders will be accompanied by a proxy form or voting instruction form."

"No restrictions should be placed on when it can be used. If only for regular meetings, it won't be useful to very many issuers."

"Suggest it's more appropriate for an annual meeting with no special business. Also think it should be optional."

Question 2, 3, and 4 Non-issuer Results

Question	Results
Should notice and access be allowed for both general and special meetings?	Yes - 73% No - 27%
How many special meetings has your company had in the past five years?	None – 36% One – 9% Two – 27% Three – 9% Four – 0% Five – 18%
What restrictions, if any, should there be on when notice and access may be used?	Support no or limited restrictions only; see attached results for full comments.

Representative Non-issuer Comments

"None. Shareholders want to be increasingly active in the issuer's processes they can take responsibility to keep their information current to receive and respond to meeting material."

Simplification of the Beneficial Owner Appointment Process

The proposed rules require a simplification of the process for beneficial owners to have themselves appointed to attend and vote at a shareholder meeting. However, no specific mechanism is required and the CSA expects that the market will find its own way.

CSCS members' main concern (whether they were issuers or not) was the lack of a specific mechanism for appointing a beneficial holder to attend and vote at a meeting.

Accordingly, we recommend that a specific mechanism for beneficial owners to have themselves appointed to attend and vote at a shareholder meeting be set out in the proposed regulations.

Question 5 Issuer Results

Question	Results
What concerns, if any, do you have on the proposed amendments? For example, do you have concerns with the ability of intermediaries or your organization to carry out the requirements in the absence of a specific process?	Concerns with respect to lack of direction on specific mechanism; See attached results for full comments.

Representative Issuer Comments

> "To me, specific requirements provide a format for consistency and they establish guidelines. Without such, I would be concerned that more confusion would exist."
>
> "Beneficial shareholders should be able to appoint themselves as proxy holders by following an authentication process that permits the transfer agent to be able to confirm the identity of the beneficial holder and its ability to vote. As issuers are more and more moving towards the process of holding a ballot on most matters voted for at a meeting, it is important to be able to confirm their eligibility to vote."
>
> "I would not rely on intermediaries like brokers and the like to do anything like this. They will see this as a burden, unless of course, they can charge a fee…"

Question 5 Non-issuer Results

Question	Results
What concerns, if any, do you have on the proposed amendments? For example, do you have concerns with the ability of intermediaries or your organization to carry out the requirements in the absence of a specific process?	Concerns with respect to lack of direction on specific mechanism; See attached results for full comments.

Representative Non-issuer Comments

> "Venture issuers always have to have a special meeting due to the voting on the stock option plan. This does not help to reduce time and effort for the issuers who need it most."

Selective Use and Disclosure

The proposed rules allow issuers to use notice and access with any or all of its shareholders (which we agree is imperative to ensure that issuers can use the format to save costs while ensuring they continue to get voting levels with which they are comfortable). If only some shareholders receive information via notice and access, the issuer must disclose which shareholders were chosen and why in their proxy circular.

CSCS members, whether or not they are issuers, overwhelming support the ability of issuers to use notice and access with select shareholders. They did not have significant concerns with the disclosure requirements.

Questions 6 and 7 Issuer Results

Question	Results
Does your company support the ability of issuers to pick and choose which of its shareholders will receive annual meeting information by notice and access?	Yes – 72% No – 28%
What concerns, if any, would your company have with disclosing which shareholders are receiving notice and access and why those shareholders were chosen?	No significant concerns; see attached results for full comments.

Representative Issuer Comments

> "Issuers should be specifically protected against a claim of discrimination, otherwise selective use and disclosure may not be viable."

> "We would move to notice and access for everyone unless they request the information. We strongly believe that few retail holders actually read the material, and institutional holders get it off the website/SEDAR. It is very costly to produce paper copies of documents that just end up in the waste bin."

> "I think this decision should be transparent and there would be no problem with disclosing these reasons in the Information Circular."

Questions 6 and 7 Non-issuer Results

Question	Results
Does your company support the ability of issuers to pick and choose which of its shareholders will receive annual meeting information by notice and access?	Yes – 86% No – 14%
What concerns, if any, would your company have with disclosing which shareholders are receiving notice and access and why those shareholders were chosen?	No significant concerns; see attached results for full comments.

Representative Non-issuer Comments

"Potential complaints from shareholders that they are being treated differently."

Cost Savings and Proxy Voting System Efficiency

CSCS and its members acknowledge that the revisions to NI 54-101 will allow issuers to access significant cost savings for their meeting mailings. We do note, however, that the implementation of notice and access does not address many other significant issues with the current proxy voting system.

CSCS members overwhelming agree that further issues remain in the proxy voting system that must be addressed through revised regulation.

Our members indicate that the most significant issues with the current proxy voting system are:

- Overall complexity of the system
- Difficulty communicating directly with shareholders
- Inability to ensure that the votes that should count are the votes that do count

We recommend that the CSA, together with the bodies responsible for corporate legislation, initiate a full review of the proxy voting system with the intention of proposing new regulations aimed at improving and simplifying the processes.

Questions 8 and 9 Issuer Results

Question	Results
Do you agree that significant shortcomings remain in the proxy voting system and further legislative initiatives by the securities regulators will be needed to solve these issues?	Yes – 91% No – 9%

Which of the following areas are of most concern to your organization: (Respondents could chose one or more answers)	
• Overall complexity of the system	• 75%
• Inability to ensure that the votes that should count are the votes that do count	• 59%
• Overvoting	• 22%
• Empty voting	• 12%
• Difficulty communicating directly with shareholders	• 72%
• Other	• 25%

Issuer "Other" Descriptions

"I answered "No"" (two respondents)

"ADP role"

"Broadridge has a virtual monopoly over client lists. Lack of competition keeps costs high."

"I'm really not convinced that beneficial holders receive everything they should. There is a lot of confusion in the back offices of brokerages. For example, I have set myself up in our issuer under different types of holdings. For our last special meeting, I did not receive anything from a particular broker. When I contacted them, they said it's because I checked the box saying I don't want to receive circulars etc. I said that doesn't apply to special meetings. They had no idea what I was talking about, and then said the "back office" of the chartered bank that handles this for them is the group that deals with all this."

"Individual shareholders find the system complex and don't always receive proper support from the Intermediaries."

"Environmental and financial costs"

"Conflict of interest of proxy advisory firms"

Questions 8 and 9 Non-issuer Results

Question	Results
Do you agree that significant shortcomings remain in the proxy voting system and further legislative initiatives by the securities regulators will be needed to solve these issues?	Yes – 60% No – 40%
Which of the following areas are of most concern to your organization: (Respondents could chose one or more answers)	
• Overall complexity of the system	• 80%
• Inability to ensure that the votes that should count are the votes that do count	• 40%
• Overvoting	• 40%
• Empty voting	• 0%
• Difficulty communicating directly with shareholders	• 40%
• Other	• 0%

Information that may be included

The CSA is asking whether there should be a prescribed form and content for the notice. The current proposal allows any amount of other material to be included with the notice and proxy voting information form. This allows each issuer to determine the amount and type of information it will provide to best communicate with and engage its shareholders to vote.

The CSA noted that this may subvert the intent of current disclosure rules as shareholders may decide to vote on the basis of the information provided, which may be less than the full information available. This contradicts the current view in securities law that it is appropriate for shareholders to make investing decisions without printed copies of annual and interim reports if they choose not to receive them. In any case, full information will be accessible and the process for doing so will be set out in the materials.

CSCS members strongly agreed that issuers should be able to decide on the form and content of the notice as long as it includes any required information.

Accordingly, we recommend that the CSA specify the minimum information required and allow issuers to augment as they see fit to best communicate with their shareholders.

Questions 10 and 11 Issuer Results

Question	Results
Do you agree that issuers should be able to decide on the form and content of the notice as long as it includes any required information?	Yes – 90% No – 10%
If not, why not?	Various comments; see attached results for full comments.

Representative Issuer Comment

> "My concern, though, is that I wouldn't want to be spending a great deal of time on the notice in addition to the circular – i.e. don't want to double our work for each meeting. I would have thought the notice is very short, and simply refers readers to a link for the full circular."

Questions 10 and 11 Non-issuer Results

Question	Results
Do you agree that issuers should be able to decide on the form and content of the notice as long as it includes any required information?	Yes – 80% No – 20%
If not, why not?	Various comments; see attached results for full comments.

Other Concerns

CSCS members were asked if they had any other concerns about the proposed rules. Various responses were received as detailed below.

Question 13 Issuer Results

Question	Results
Do you have any other concerns about the proposed rules?	Various concerns; see attached results for full comments.

Representative Issuer Comments

> "My company's last mailing consumed over 90,000 kg of paper and still corresponded with minimal retail investor participation. The inference is that most of this paper was created, shipped, used, shipped, and discarded without any significant

accomplishment other than compliance with pre-personal-computing-era rules. I applaud efforts to eliminate this waste of productivity and environmental and financial capital. Canada will be better for the implementation of the proposed rules."

"Important that time deadlines are not shortened -- it is hard enough to meet deadlines for printing and mailing annual reports."

Question 13 Non-issuer Results

Question	Results
Do you have any other concerns about the proposed rules?	See attached results for full comments.

Representative Non-issuer Comments

"…We are all focusing on the Wrong Issue Here. Retail shareholders are not the problem. The convoluted and out-dated and UNTRANSPARENT system of tracking, validating and logging the votes is the issue we need to focus on. If we can get the voting on-line as a first step, then perhaps the next part - tracking/validating/logging can finally receive the attention and reform it so deserves!"

Beneficial and Registered Share Ownership

CSCS released a white paper that calls attention to the need for specific reform to Canada's corporate laws to address the most significant disparities that currently exist between beneficial and registered ownership to make it easier for issuers to treat all their holders equally and fairly. A copy of the white paper is attached.

In conjunction with the survey on NI 54-101, CSCS also asked its members for its views on the treatment of beneficial and registered owners. The members overwhelmingly support equal treatment of both beneficial and registered owners.

Accordingly, we strongly recommend that the CSA and other securities and corporate regulators in Canada review existing legislation to address the current imbalances and ensure equality, fairness, simplicity and clarity for all stakeholders including shareholders, issuers, market professionals, and their agents, including transfer agents and proxy agents.

Question 12 Issuer Results

Question	Results
Should all shareholders, whether registered or beneficial, receive equal treatment as shareholders of Canadian companies?	Strongly Agree – 54% Agree – 42% Neither Agree nor Disagree – 4% Disagree – 0% Strongly Disagree – 0%

Question 12 Non-issuer Results

Question	Results
Should all shareholders, whether registered or beneficial, receive equal treatment as shareholders of Canadian companies?	Strongly Agree – 50% Agree – 50% Neither Agree nor Disagree – 0% Disagree – 0% Strongly Disagree – 0%

On behalf of our members, we thank the CSA for this opportunity to share our comments on the proposed changes to NI 54-101. We look forward to the implementation of a notice and access model as a first step to addressing proxy voting system issues.

We also look forward to further proposals from CSA and corporate regulators that will address the other significant issues in the proxy voting system and resolve the imbalances between registered and beneficial shareholders and between objecting beneficial shareholders and non-objecting beneficial shareholders.

Please contact Sylvia Groves (past Chair of CSCS) at sylvia@grovegovernance.com for additional information or to answer any questions on the survey process or responses.

Sincerely,

Lynn Beauregard
President
Canadian Society of Corporate Secretaries

CSCS 54-101 Member Survey

Question 1

Are you with an issuer company (publicly traded on a stock exchange)?

Yes (1)	54 (75%)
No (0)	18 (25%)
Total*	71

General Meetings Only or General and Special Meetings

The current proposal allows the use of notice and access only for meetings that are not special meetings until there is a better understanding of the impacts. Special meetings are defined as only those meetings at which a special resolution being brought forward. So, items such as a name change, stock split, dissolution, etc. would prevent the use of notice and access for that meeting.

This requirement may limit the number of issuers that can take part in the program.

Additionally, there is already three years of evidence from US issuers operating under similar legislation. In the US the three key impacts of the original legislation were:

- a significantly reduced level of voting by retail shareholders who received a notice and access package rather than a full information circular;
- Initial confusion for shareholders about how to vote because the original legislation did not allow a proxy or voting information form to be included in the notice and access package. Canadian rules include a proxy or voting information form (as do amendments now in effect in the US); and
- Timelines for issuers were tightened as information had to be posted and mailed earlier than if mail only was used.

Finally, issuers will be sensitive to the possible impact on voting of using notice and access, especially when there are important items of business or special resolutions at the meeting. As a result, there may be very little reason to disallow the process for any type of meeting.

Question 2

Should notice and access be allowed for all types of shareholder meetings (general and special)?

Full Results

Yes (1)	39 (74%)
No (0)	15 (28%)
Total*	54

Issuer Results

Yes (1)	31 (74%)
No (0)	12 (28%)
Total*	43

Non-Issuer Results

Yes (1)	8 (73%)
No (0)	3 (27%)
Total*	11

Question 3

How many annual meetings has your company had in the past five years that had a special resolution on the agenda?

Full Results

None (1)	10 (19%)
1 (2)	6 (11%)
2 (3)	19 (35%)
3 (4)	8 (15%)
4 (5)	7 (13%)
5 (6)	4 (7%)
Total*	54

Issuer Results

None (1)	6 (14%)
1 (2)	5 (12%)
2 (3)	16 (37%)
3 (4)	7 (16%)
4 (5)	7 (16%)
5 (6)	2 (5%)
Total*	43

Non-issuer Results

None (1)	4 (36%)
1 (2)	1 (9%)
2 (3)	3 (27%)
3 (4)	1 (9%)
4 (5)	0 (0%)
5 (6)	2 (18%)
Total*	11

Question 4

What restrictions, if any, should there be on when notice and access may be used?

Issuer results are not highlighted; non-issuer results are highlighted

none

None. Need to be careful with special meeting language as corporate statutes limit special meetings to more stringent conditions than NI 54-101 as specials for securities purposes also include share compensation arrangement approvals which do not require special resolutions.

Where there is a significant transaction for which shareholder approval is sought notice and access should not be used. However, other special business, like approving an increase to the stock option plan, could be done by notice and access.

Notice and access should only be used for general meetings. For any meeting that has special business, the rule should be that an issuer must provide the circular as usual so that the special business is more emphatically pointed out. The notice and access should be possible via electronic means (i.e. email) if the shareholder makes that election. If this is the case, the special meeting should still have electronic notice with an advisory that the circular is being mailed.

I can't think of any restrictions that would be necessary.

Suggest it's more appropriate for an annual meeting with no special business. Also, think it should be optional.

When there is a special resolution requiring 66.6% of the vote.

Notice and access should always be available for annual business and special business (note that under the CBCA, say-on-pay resolutions are deemed to be "special business"). The avoidance of the environmental and financial costs of printing and mailing information circulars far outweighs the inconvenience of having to make a request or view a document online. Availability for "special resolution" business should be a priority, as costs are highest regarding these mailings.

None. Shareholders want to be increasingly active in the issuer's processes they can take responsibility to keep their information current to receive and respond to meeting material

None

No restrictions should be placed on when it can be used. If only for regular meetings, it won't be useful to very many issuers.

There should be no limitations. The world has changed, and continues to even more rapidly change. People are using the internet more & more, and even my own "elderly" parents are tech savvy now (dad 82, mom 79). NO ONE responds to paper solicitations anymore !!!!!!

none

We believe that all shareholders have a right to attend annual meetings however, if a shareholder does not know how to conduct himself and starts yelling, screaming or not obeying the rules of the meeting, he/she should be removed to allow other shareholders to express proper opinions or ask questions.

none

None - should be at the Issuer's discretion.

We do not believe any restrictions are warranted given that under the proposed notice-and-access model, the notice mailed to shareholders will be accompanied by a proxy form or voting instruction form.

We do not believe any restrictions are warranted given that under the proposed notice-and-access model, the notice mailed to shareholders will be accompanied by a proxy form or voting instruction form. (This comment was repeated.)

Simplification of the Beneficial Owner Proxy Appointment Process

The CSA has received feedback from stakeholders that the current process for a beneficial shareholder to vote in person at a shareholder meeting is both long and confusing.

In order to solve this issue they propose amendments that would require intermediaries and issuers to:

- arrange to appoint the beneficial owner as proxy holder, if she so requests, at no expense to the beneficial owner; and
- deposit the proxy by any relevant cut-off.

Rather than imposing a specific process, the CSA proposes to allow participants in the system to determine how to best carry out these requirements, including by using the form of appointment often used in existing voting instruction forms.

Question 5

What, if any, concerns do you have on the proposed amendments? For example, do you have concerns with the ability of intermediaries or your organization to carry out the requirements in the absence of a specifically required process?

Issuer results are not highlighted; non-issuer results are highlighted

none

none

NO concerns with transfer agent but very nervous about Broadridge/ADP as their monopoly, extortionist business practices and general failure to co-operate leads me to believe that they will thwart any efforts at simplification through restricting access to the beneficial data.

I think there should be a structured process for proxy voting otherwise it can get confusing and voting could be miscalculated.

Not sure, I have a solution but leaving it up to the investment dealers will not work because they do not care.

There should be a prescribed method whereby the intermediary is required to provide beneficial holders the option of receiving the proxy personally. Despite the issuer paying for OBO and NOBO mailings, many intermediaries still do not send the meeting package to the beneficial holder so I do not trust that they will independently offer beneficial holders with the opportunity to receive the proxy directly.

I would not rely on intermediaries like brokers and the like to do anything like this. They will see this as a burden, unless of course, they can charge a fee…

There should be a process in place to allow consistency in achieving beneficial owner proxy appointments. Otherwise, it would be difficult for the issuer to advise a beneficial owner the steps required to be appointed proxy holder and it would also be challenging for the issuer at the shareholder meeting to identify and confirm proxy holders.

I don't see any concerns with my organization being able to carry out the requirements - no specific process should be required.

No

To me, specific requirements provide a format for consistency and they establish guidelines. Without such, I would be concerned that more confusion would exist.

Compliance must be low cost in the aggregate. Enabling overall simplicity should be a key criterion for these requirements.

Venture issuers always have to have a special meeting due to the voting on the stock option plan. This does not help to reduce time and effort for the issuers who need it most.

I believe issuers will be able to ensure all requirements are met and don't require a specific process to be followed.

Shoot me, but my view is that in-person meetings should be treated as what they are: a relic of the past. No company should be required to hold an in-person meeting, and indeed, these ancient formats should be eliminated entirely. Virtual meetings are the only way to go. Then, from that starting point, ask the above questions. So Beneficial owners should be able to access, on line, their ability to vote...

Somewhat

It would be difficult maybe even impossible to verify whether the VIF is legitimate. What data will the scrutineer have access to in order to verify that the VIF is valid?

Beneficial shareholders should be able to appoint themselves as proxy holders by following an authentication process that permits the transfer agent to be able to confirm the identity of the beneficial holder and its ability to vote. As issuers are more and more moving towards

the process of holding a ballot on most matters voted for at a meeting, it is important to be able to confirm their eligibility to vote.

- Cost.
- Intermediaries have the processes in place to ensure validity of beneficial holders.
- We do not have any major concerns. ADP is already using an appointee system and we have not experienced any problems with it.

Selective Use and Disclosure

The current proposal allows issuers to use notice and access with any or all of its shareholders. Those shareholders can be segmented by the issuer in any way that it sees fit, so that select groups get notice and access and others get a full meeting package.

Almost all use of notice and access in the US is segmented. This is an important component of the success of the model and is especially important for companies who have a large retail base (as retail shareholders are much less likely to vote if they receive a notice and access package).

In Canada, this segmentation and the reasons for using notice and access with select shareholders only would need to be disclosed by the issuer.

Question 6

Does your company support the ability of issuers to pick and choose which of its shareholders will receive annual meeting information by notice and access?

Full Results

Yes (1)	32 (76%)
No (0)	11 (26%)
Total*	43

Issuer Results

Yes (1)	26 (74%)
No (0)	10 (28%)
Total*	36

Non-issuer Results

Yes (1)	6 (86%)
No (0)	1 (14%)
Total*	7

Question 7

What concerns, if any, would your company have with disclosing which shareholders are receiving notice and access and why those shareholders were chosen?

Issuer results are not highlighted; non-issuer results are highlighted

none

None. Issue is as above with Broadridge/ADP involvement.

We would move to notice and access for everyone unless they request the information. We strongly believe that few retail holders actually read the material, and institutional holders get it off the website/SEDAR. It is very costly to produce paper copies of documents that just end up in the waste bin.

This appears to be selective disclosure? Every shareholder should be treated equally.

Our sole shareholder is CDS. We do not have access to our retail investors. Consequently, even if we wanted to, we cannot pick and choose. The rules need to be changed re: NOBOS and OBOS.

I think this decision should be transparent and there would be no problem with disclosing these reasons in the Information Circular.

None

Issuers should be specifically protected against a claim of discrimination, otherwise selective use and disclosure may not be viable.

Potential complaints from shareholders that they are being treated differently.

No problem at all.

There should be no segmentation. The future has arrived, and people are much more willing to embrace it than regulators seem to think. All it takes is clear communication, on numerous levels, and we can make the "big shift" to the on-line world, which is quicker, more efficient, more reliable, and of course, "greener." Regulators and companies are more nervous than they need to be, and discount the intelligence and adaptability of the general retail shareholder population. This is a key area where our proxy advisory firms can step in to aid, assist, educate, and bring into the present all of our retail shareholders...why delay any further!!

Companies have to carefully consider the impact of the message when disclosing which shareholders they have mailed to and those which have been given notice and access. We believe in equitable treatment of all shareholders.

The issuer should explain its decision. If a beneficial shareholder wants a full package and only has notice and access, then they should be entitled to request a package at no cost and little inconvenience to them i.e., calling a toll free number.

None, if that option was chosen.

- Public relations concerns.
- We do not have concerns with disclosing this information.

Cost Savings and Proxy Voting System Efficiency

Through CSCS involvement on the 54-101 Advisory Committee and CSCS member consultations with the Securities Commissions, it was communicated that there are significant shortcomings with the current proxy voting system.

Cost and ease of navigation were both significant issues that are addressed (cost more than navigation) by the proposed notice and access rules.

Several additional concerns were identified that are not addressed by the current proposed rules:

- the overall complexity of the system;
- the inability to ensure that the votes that should count are the votes that do count;
- overvoting (more votes than are available are submitted and some have to be thrown out or prorated, without knowing which votes should count);
- empty voting (voting by a holder of the shares that has no economic investment in the company - for example, a borrower of shares); and
- difficulty communicating directly with shareholders.

The implementation of notice and access is a good first step in proxy voting reform and we want to send a clear message that more remains to be done.

The US is already ahead of Canada on this issue, with the Securities and Exchange

Commission releasing a concept paper this year to begin exploring solutions to these same issues in the US.

Question 8

Do you agree that significant shortcomings remain in the proxy voting system and further legislative initiatives by the regulators will be needed to solve those issues?

Full Results

Yes (1)	32 (86%)
No (0)	5 (14%)
Total*	37

Issuer Results

Yes (1)	29 (91%)
No (0)	3 (9%)
Total*	32

Non-issuer Results

Yes (1)	3 (60%)
No (0)	2 (40%)
Total*	5

Question 9

If you answered yes, what are your three biggest concerns with the current proxy voting system?

Full Results

Overall complexity of the system (1)	28 (76%)
Inability to ensure that the votes that should count are the votes that do count (2)	21 (57%)
Over voting (3)	9 (24%)
Empty voting (4)	4 (11%)
Difficulty communicating directly with shareholders (5)	25 (68%)
Other, please specify: (6)	8 (22%)
Total*	37

Issuer Results

Overall complexity of the system (1)	24 (75%)
Inability to ensure that the votes that should count are the votes that do count (2)	19 (59%)
Over voting (3)	7 (22%)

Empty voting (4)	4 (12%)
Difficulty communicating directly with shareholders (5)	23 (72%)
Other, please specify: (6)	8 (25%)
Total*	31

Issuer "Other" Descriptions

"I answered "No"" (two respondents)

"ADP role"

"Broadridge has a virtual monopoly over client lists. Lack of competition keeps costs high."

"I'm really not convinced that beneficial holders receive everything they should. There is a lot of confusion in the back offices of brokerages. For example, I have set myself up in our issuer under different types of holdings. For our last special meeting, I did not receive anything from a particular broker. When I contacted them, they said it's because I checked the box saying I don't want to receive circulars etc. I said that doesn't apply to special meetings. They had no idea what I was talking about, and then said the "back office" of the chartered bank that handles this for them is the group that deals with all this."

"Individual shareholders find the system complex and don't always receive proper support from the Intermediaries."

"Environmental and financial costs"

"Conflict of interest of proxy advisory firms"

Non-issuer Results

Overall complexity of the system (1)	4 (80%)
Inability to ensure that the votes that should count are the votes that do count (2)	2 (40%)
Overvoting (3)	2 (40%)
Empty voting (4)	0 (0%)

Difficulty communicating directly with shareholders (5)	2 (40%)
Other, please specify: (6)	0 (0%)
Total*	5

Information that may be Included

The CSA is asking whether there should be a prescribed form and content for the notice. The current proposal allows any amount of other material to be included with the notice and proxy or voting information form. This provides issuers with complete flexibility and an opportunity to reduce the requests for full hard copy information circulars by providing (if it chooses to do so) key information about the company and the items of business on the agenda. Similar to how some companies choose to send a highlight report to shareholders who opt out of receiving an annual report.

This was one of the biggest areas of confusion for US issuers and shareholders (until recent amendments), because the information and format of the notice were strictly prescribed, meaning issuers couldn't communicate with their shareholders in whatever way they felt would be best.

The concern noted by the CSA is that this may subvert the intent of current disclosure rules, as shareholders may decide to vote on the basis of the information provided rather than looking at the complete information available online. This seems to contradict the current view in securities law that it is appropriate for shareholders to make investing decisions without printed copies of annual and interim reports if they choose not to receive them in the mail.

Question 10

Do you agree that issuers should be able to decide on the form and content of the notice as long as it includes any required information?

Full Results

Yes (1)	32 (89%)
No (0)	4 (11%)
Total*	36

Issuer Results

Yes (1)	28 (90%)
No (0)	3 (10%)
Total*	31

Non-issuer Results

Yes (1)	4 (80%)
No (0)	1 (20%)
Total*	5

Question 11

If not, why not?

Issuer results are not highlighted; non-issuer results are highlighted

Difficult to determine what is "material" to go in notice. If there is an issue, lawyers will sue. Prescribe minimum content and put full disclosure online if they want to read it.

My concern, though, is that I wouldn't want to be spending a great deal of time on the notice in addition to the circular; i.e., I don't want to double our work for each meeting. I would have thought the notice is very short, and simply refers readers to a link for the full circular.

If the goal is to ensure that RETAIL investors are not confused (as opposed to sophisticated INSTITUTIONAL investors) - which indeed, I do believe is the actual goal -- then a certain prescribed level of uniform form and content disclosure is greatly desirable to reduce confusion. Let's remember that all these proposed rules are really designed to address the retail, beneficial holder - not the sophisticated institutional holder who has the resources to parse through different issuers/disclosure formats, etc. We can actually look to the past and see that when people become educated to the "new way of doing things," they get on board pretty quickly, especially if it is an "across the board" new way of doing things. If left to individual issuers to change/modify/alter the most basic of formatting/disclosure, then we go right back to where we were in the 1920 pre-first stock market crash in history !!!!!

Standardization of the format makes for easier comparison and familiarity for shareholders. Company logo should be mandatory on form without additional costs.

Beneficial and Registered Share Ownership

CSCS released a white paper that calls attention to the need for specific reform to Canada's corporate laws to address the most significant disparities that currently exist between beneficial and registered ownership to make it easier for issuers to treat all their holders equally and fairly. Please go to the CSCS website if you would like more information on the white paper.

Question 12

Should all shareholders, whether registered or beneficial, receive equal treatment as shareholders of Canadian companies?

Full Results	
Strongly agree (1)	16 (53%)
Agree (2)	13 (43%)
Neither agree nor disagree (3)	1 (3%)
Disagree (4)	0 (0%)
Strongly disagree (5)	0 (0%)
Total*	30
Mean	1.52

Issuer Results	
Strongly agree (1)	14 (54%)
Agree (2)	11 (42%)
Neither agree nor disagree (3)	1 (4%)
Disagree (4)	0 (0%)
Strongly disagree (5)	0 (0%)
Total*	26
Mean	1.50

Non-issuer Results	
Strongly agree (1)	2 (50%)
Agree (2)	2 (50%)
Neither agree nor disagree (3)	0 (0%)
Disagree (4)	0 (0%)
Strongly disagree (5)	0 (0%)
Total*	4
Mean	1.50

Question 13

Do you have any other concerns about the proposed rules?

Issuer results are not highlighted; non-issuer results are highlighted

Just get in place and do what is needed to break ADP monopoly and obstruction.

Important that time deadlines are not shortened -- it is hard enough to meet deadlines for printing and mailing annual reports.

My company's last mailing consumed over 90,000 kg of paper and still corresponded with minimal retail investor participation. The inference is that most of this paper was created, shipped, used, shipped, and discarded without any significant accomplishment other than compliance with pre-personal-computing-era rules. I applaud efforts to eliminate this waste of productivity and environmental and financial capital. Canada will be better for the implementation

of the proposed rules.

My comments may sound extreme to you, but having served as the Corporate Secretary of 1 of the largest (by market value) and most widely held (i.e., meaning 1 of the largest retail shareholder base) companies in Canada, I know first-hand that our system, and the U.S. system, needs a complete overhaul. This is an area that no longer needs "baby-steps" - the future is here, and we, in our "tall towers" really have lost touch with our retail shareholders. They are much more tech-savvy than we realize, and much more tech-savvy than our regulators/governments realize! Give the retail shareholders some credit -- they are smart, and can learn quickly to participate in a new, simpler system (at least simpler from their perspective). The REAL ISSUE is the BEHIND-THE-SCENES system of how votes are tracked and counted -- THAT IS THE AREA THAT BEGS - NO SCREAMS - FOR REFORM!! We are all focusing on the Wrong Issue Here. Retail shareholders are not the problem. The convoluted and out-dated and UNTRANSPARENT system of tracking, validating and logging the votes is the issue we need to focus on. If we can get the voting on-line as a first step, then perhaps the next part - tracking/validating/logging can finally receive the attention and reform it so deserves!

Timing of the implementation. 2011 Proxy Season too soon, should be 2012 or later.

Our company is submitting a comment letter with respect to expanding notice-and-access to special meetings as well as certain technical aspects of the proposed rules.

CANADIAN SOCIETY OF CORPORATE SECRETARIES

WWW.CSCS.ORG

WHITE PAPER ON SHAREHOLDER COMMUNICATION

Effective reform proposals that ensure equality, fairness, simplicity and clarity for all shareholders of Canadian companies

LINKS TO THIS WHITE PAPER AND ADDITIONAL MATERIALS RELATING TO COMMUNICATIONS WITH BENEFICIAL SHAREHOLDERS MAY BE FOUND ON THE HOME PAGE OF THE SOCIETY'S WEB SITE AT WWW.CSCS.ORG

COMMENTS

Comments concerning this White Paper may be addressed to the *Canadian Society of Corporate Secretaries* as follows:

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SUMMARY

There has been a growing trend in Canada and the United States for shareholders to hold their shares in street name rather than in traditional registered ownership. This trend has been caused in large measure by the constant and remarkable acceleration of the pace of transactions in the capital markets and the growth in derivative and structured offerings, all of which are in turn driven by constant improvements in information processing and data communications.

Whereas the dominant form of ownership was once registered ownership, beneficial ownership of shares is now, and by far, the most usual form of ownership.

Notwithstanding this sea change in the capital markets, registered ownership remains the only mode of ownership universally recognized under corporation statutes in Canada. In this sense, Canada's corporation statutes have not kept pace with the rapid evolution of our capital markets and still reflect a Victorian paradigm in which all shareholders' names are required to be recorded in ledgers.

The regulatory approach to this growing challenge has thus far largely been limited to one regulatory sector (securities regulation) and has been partial to non-existent in other cases (for example in the case of corporate law). Even in the case of the regulatory initiatives of the *Canadian Securities Administrators*, the existing rules do not address all of the challenges that beneficial ownership presents.

The CSCS objective is to promote effective improvements to the existing rules that will ensure **equality, fairness, simplicity and clarity** for all stakeholders including shareholders, issuers, market professionals, and their agents, including transfer agents and proxy agents.

This White Paper explores the more important challenges that beneficial ownership of securities presents in the Canadian market. It also proposes specific reforms to the current rules including proposals to amend the existing corporation statutes and the securities rules relating to shareholder communications.

These proposals, when they are adopted, will eliminate the most significant disparities that currently exist between beneficial and registered ownership as well as the challenges that issuers regularly face in their attempts to treat all their holders with an even and fair hand.

TABLE OF CONTENTS

CANADIAN SOCIETY OF CORPORATE SECRETARIES

PROPOSAL TO REFORM THE LAWS, REGULATIONS, POLICIES AND RULES GOVERNING SHAREHOLDER COMMUNICATION IN CANADA

Scope of review

The narrative portion of this White Paper that explores the challenges presented by beneficial ownership of public company shares limits the analysis to the *Canada Business Corporations Act*[1] ("CBCA"). The reasons for limiting the scope of the narrative in this way may be succinctly stated in the following way:

- The CBCA is the governing statute for more Canadian public companies than any other statute. Of the 350 largest Canadian public companies[2], 109 are incorporated under the CBCA representing 31%.[3]
- When income trusts and other non-corporate entities are taken out the equation,[4] CBCA corporations represent 44% of Canada's 350 largest public companies.
- The corporate law provisions of the *Bank Act* that governs Canada's chartered banks and of the federal *Insurance Companies Act* are patterned closely on the CBCA. When banks and federal insurance companies are taken into account, 48% of public companies that are bodies corporate are governed by the CBCA or rules closely patterned on the CBCA.
- The federal government has consistently undertaken consultation and subsequent reform to ensure that the CBCA meets the needs of all whose interests are affected by the Act. It is also the corporate legislation in Canada that first began to address the challenges presented by beneficial ownership.
- Finally, the corporation statutes of Ontario, Alberta and British Columbia are similar in terms of their general frameworks to the CBCA.

The fresh approaches to shareholder recognition rules that the CSCS proposes apply in the same general way under all of Canada's corporation statutes, subject only to the normal adjustments to reflect differences in each statute and differences in the local justice systems.

The proposed amendments to the principal Canadian corporation statutes consistent with the recommendations explored in the narrative may be found in the Appendices to this White Paper:

Regulatory Context and Market Dynamics

There has been a growing trend in Canada and the United States for shareholders to hold their shares in street name rather than in traditional registered ownership. The new approach to ownership likely began when stock exchanges first opened for business. This trend has been fuelled in large measure by the constant acceleration in the pace of capital markets transactions.

[1] Canada Business Corporations Act, R.S. 1985, c. C-44.
[2] By public company, we mean listed reporting issuers.
[3] Ranked by 2006 annual revenues, as reported by the Financial Post. Information on governing laws based on public company filings on SEDAR.com.
[4] For fiscal 2006, of the 350 largest Canadian public companies 99 are constituted as income trusts.

The last 20 years have seen astonishing acceleration in the pace of transactions, the growth in derivative and structured offerings, and the globalization of trading. All of these phenomena are driven by the unending quest for greater and greater economic efficiency in the capital markets which is, in turn, fuelled by constant improvements in information processing technology and data communications.

Whereas the dominant form of ownership was once registered ownership, beneficial ownership of shares, supported by increasingly efficient book-based systems, is now, and by far, the most usual form of ownership.

Notwithstanding this sea change in the capital markets, registered ownership remains the only mode of ownership universally recognized under corporation statutes in Canada. In this sense, Canada's corporation statutes have not kept pace with the rapid evolution of our capital markets and still, for the most part, reflect a dated paradigm in which all shareholders' names are required to be recorded in ledgers.

The regulatory approach to this growing challenge has thus far largely been confined to the securities law sector and has been partial to non-existent in the case of corporate law. Even in the case of the regulatory initiatives of the *Canadian Securities Administrators*,[5] the existing rules do not completely and comprehensively address the challenges that beneficial ownership of shares presents.

This White Paper explores some of the more important challenges of beneficial ownership of securities in the Canadian market. It also proposes specific reforms to the current rules including proposals to amend the existing corporation statutes, as well as more encompassing regulation of shareholder communications in the capital markets.

The CSCS objective is to promote effective improvements to the existing shareholder communication rules. The proposals set forth in this White Paper ensure **equality, fairness, simplicity and clarity** for all stakeholders including shareholders, issuers, market professionals, and their agents including transfer agents and proxy agents in matters related to shareholder communication and the exercise by shareholders of their voting rights.

These proposals, once adopted, will eliminate the most significant disparities that currently exist between beneficial and registered ownership in terms of the right to receive notice of meetings, to exercise voting rights, to attend at, and participate effectively in, shareholder meetings, as well as the challenges that issuers regularly face in their attempts to treat all their holders with an even and fair hand.

The Principal Challenges in the Current Regulatory Environment

Corporate Law Concerns

Registered shareholders

The CBCA governs the respective rights and obligations of corporations incorporated under the CBCA and their shareholders.

For the purposes of the CBCA, a "shareholder" is a person who holds shares[6] in the corporation and whose name, and the shares the person holds, are recorded in the register of shareholders

[5] The *Canadian Securities Administrators* is a forum for the 13 securities regulators of Canada's provinces and territories that serves to coordinate and harmonize regulation of the Canadian capital markets. See http://www.csa-acvm.ca.
[6] CBCA, s. 24

that the corporation is required by law to maintain.[7] Shareholders whose ownership is recorded in this way are referred to in this White Paper simply as "registered shareholders."

Registered shareholders are entitled to exercise the rights that usually are attached to shares such as the right to receive distributions and the right to attend and to vote at shareholder meetings, as well as additional rights granted to them under the CBCA.[8]

The proposals for reform presented in this White Paper focus solely on the right of holders of voting securities of public companies (usually holders of common shares) to attend at meetings of the corporation's shareholders and to vote the shares they hold, whether in person, or by proxy.

Beneficial shareholders

All persons who have an ownership interest in a corporation's shares that is not directly recorded in the corporation's records are referred to in this White Paper simply as "beneficial shareholders."

Beneficial ownership has been recognized in the CBCA, and is defined as follows:

> "beneficial ownership" includes ownership through any trustee, legal representative, agent or other intermediary;[9]

The simplest form of beneficial ownership is where a securities broker acting for a prospective shareholder acquires shares of the issuer on the stock market and holds the shares as a registered shareholder for the account of its client. This example is likely no longer reflected in any current market reality.

At the present time, the *CDS Clearing and Depository Services Inc.* (referred to in this White Paper as "CDS") acts as the registered shareholder on behalf of Canadian securities brokers. The brokers use the clearing facilities of CDS to settle their trades.

Since 1970 CDS has operated a book-based system in which each securities dealer has accounts both for the shares held by CDS on their behalf and for the proceeds of transactions. At the end of each trading day, the transfers of shares and funds required to give effect to the transactions initiated on the floor of the stock exchange[10] are netted amongst the brokers participating in CDS.

The settlement and clearing facilities operated by CDS are therefore a key ingredient in the efficient operation of Canada's capital markets.

Similar depositories with clearing facilities exist in other countries and as the pace and volume of cross-border securities transactions grows, depositories are cooperating to support the increasing globalisation of securities markets.

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[7] The CBCA does not contain a definition of "shareholder". Section 24 of the CBCA provides that all shares must be in registered form; s.50 requires that all security holders' particulars be kept in a central register; and s.51 provides that the registered holder may be treated for all purposes as the owner of the shares shown in her name in the register.

[8] For instance the right of dissent under ss.189 and 190 of the CBCA, the right to exercise oppression remedies and apply to the courts for relief under ss. 214, 229 and 238 and following, 243, and 244, the right to submit shareholder proposals under ss.137 and 175, the right to call or requisition a meeting of shareholders under ss.111 and 143, the right to elect and remove directors and auditors under ss.107, 109, 162 and 165, the right to access corporate records under ss. 21 and 120, the right to appoint proxies under s.148, the right to restrict the powers of the directors through shareholders' agreements and declarations of sole shareholder under s. 146, the right to receive and examine financial statements under ss. 157 and 159, and the right to vote on fundamental changes including amalgamations, sale of assets, continuances, amendments to the articles and liquidation and dissolution under ss. 183, 188, 189, 193, 194, 210, 211.

[9] CBCA, s. 2.

[10] Or through the facilities of other organized markets.

The CBCA reforms adopted in 2001 included significant changes designed to accommodate beneficial ownership including extending the right to submit proposals to beneficial shareholders,[11] preventing intermediaries from voting shares they do not beneficially own unless voting instructions are first obtained from the beneficial owner[12] and ensuring that beneficial owners are entitled to obtain a proxy allowing them to attend and participate in shareholder meetings.[13]

As far back as 1995 Industry Canada had recognized the growing challenges presented by beneficial ownership and had explored a number of possible reforms that ranged from unilaterally imposing disclosure of all beneficially held shares to harmonizing the shareholder communications provisions of the CBCA with those of what was then National Policy 41 (now National Instrument 54-101).[14]

Of the various steps considered by Industry Canada, one of the few steps actually taken was to allow CBCA corporations to set record dates for voting which was adopted as part of the reforms introduced in 2001. This issue will be discussed in more detail below since it is a key ingredient in enfranchising beneficial shareholders.

More work remains to be done to accommodate beneficial owners more effectively.

Current difficulties with shareholder voting

Issuers are not entitled to treat beneficial shareholders in the same way as registered shareholders.

Section 51 of the CBCA limits full recognition to registered shareholders and to a very limited subset of shareholders whose interests are represented by third parties. The only exceptions at present are for heirs, representatives of minors and incompetents, liquidators and trustees in bankruptcy. Those exceptions apply only to closely-held corporations and not to public companies.

Although the CBCA now prevents intermediaries from voting shares in which they don't have a beneficial interest unless steps are taken to receive voting instructions from the beneficial shareholder,[15] nothing in the Act requires that beneficial shareholders be enfranchised, and the issuer is not entitled to recognize the beneficial shareholder directly.

This leaves the proxy as the only legal path that beneficial shareholders can take to fully exercise their right to attend and vote at shareholder meetings.[16] While in theory beneficial shareholders have the right to demand to be appointed as a proxy holder in respect of the shares in which they hold a beneficial interest,[17] in practice the process for obtaining the legal proxy (as opposed to the voting instruction form) is not well understood, is hard to follow, and it may therefore be very difficult or impossible in most cases for a beneficial shareholder to obtain a proxy in sufficient time for it to be of any real use at a meeting.[18]

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[11] CBCA ss. 137 and 175.
[12] CBCA s. 153.
[13] CBCA s. 153(5).
[14] Industry Canada Discussion Paper entitled *Shareholder Communications and Proxy Solicitation Rules*, August 1995.
[15] CBCA s. 153.
[16] CBCA s. 152(2).
[17] CBCA s. 153(5); National Instrument 54-101, ss. 2.18 (in the case of a NOBO mailing by the issuer), 4.5 (in the case of an indirect mailing to NOBOs by an intermediary), and 8.2.
[18] The process for obtaining a legal proxy under National Instrument 54-101 is at best a four-step mailing process: i) the voting instruction form is mailed to the holder; ii) the holder mails the voting instruction form to the proxy agent; iii) the proxy agent mails the legal proxy form to the holder; and iv) the holder mails the legal proxy to the transfer agent. Given the short time potentially available between the mailing of meeting materials to beneficial shareholders and the proxy cut-off date that is typically 24 to 48 hours prior to the meeting, it is unlikely that a beneficial shareholder will actually be

At the retail level, the result for issuers and their shareholders is that registered shareholders, who in some cases make up a small minority of an issuer's shareholders, are fully enfranchised, whereas the overwhelming majority, who are beneficial shareholders, have their rights only partially recognized.

This is particularly evident at annual shareholder meetings where the average beneficial shareholder in attendance is legally precluded from voting, participating and even attending the meeting. Beneficial shareholders who do not hold a legal proxy (which is the usual and most frequent case) have no legal standing at the company meeting.

The end result is that, in the current context, *National Instrument* 54-101[19] adopted by the *Canadian Securities Administrators* is the most effective means that enfranchises beneficial shareholders.

Securities Law Concerns

National Instrument 54-101 remains the most comprehensive regulatory initiative to address the challenges posed by the beneficial ownership of securities.

Where the instrument falls short of the goal of providing a fulsome solution to the challenge of beneficial ownership is in terms of its scope. In the first place, by its very nature as a securities regulation measure, the instrument lacks the jurisdictional scope to fully integrate the beneficial shareholder into corporate governance. That objective is really only within scope for Canada's corporation statutes.

Secondly, the instrument does not provide a complete framework to address the issues that do fall within its regulatory scope. The instrument does not address the role of the proxy agent in a direct way. Instead, the instrument focuses its attention on the intermediaries.

The current reality is that the intermediaries have delegated to Broadridge Inc. (hereafter referred to as the "Proxy Agent") the role of aggregating and disseminating information about beneficial ownership, and aggregating meeting materials and disseminating them to beneficial shareholders, that remains in large measure a daunting logistics role. The promise that advances in information technology would eventually alleviate the need for physical delivery of proxy materials has thus far not really been borne out.[20]

The Proxy Agent plays just as vital and central a role as does the depository as one of the key conduits for the essential information that serves to enfranchise beneficial shareholders. In this way the Proxy Agent acts as the primary interface with the issuer's transfer agent in bridging the information divide between the registered and beneficial sides of the shareholder communications equation. While the intermediaries own the web of relationships where the data resides, they are too diffuse and amorphous a group to be treated as an entity able to act efficiently and to play a central role in the shareholder communication process.

Given the way in which the Canadian capital markets operate, this practical arrangement with the Proxy Agent playing a central role should now be considered an essential ingredient in enfranchising beneficial shareholders.

The economic reality, at least for the time being, and likely for the foreseeable future, is that the Proxy Agent has an effective monopoly on the services it provides. This is not necessarily a bad

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able to obtain a legal proxy in time for the meeting. The challenge is even more pronounced if the normal administrative delays at each node of the process are taken into account.

[19] National Instrument 54-101 is available in the web site of the Ontario Securities Commission among the documents related to ongoing compliance requirements at
http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/rrn_part5_index.jsp

[20] Elimination of the delivery of the Annual Report and financial statements is where technology has made the most significant inroads.

thing for the various stakeholders, it is simply a fact that needs to be taken into account in any meaningful attempt to design an effective shareholder communications policy.

As a result of the economic nature of the Proxy Agent's role, market forces that normally could be expected to regulate service levels and costs of service naturally, are essentially absent.

This has led to complaints from issuers and their transfer agents that the pricing of the Proxy Agent's services is arbitrary and perhaps too high, and that service levels in some cases are inadequate, with meeting materials not being delivered in a timely manner to beneficial shareholders.

Another trend that has been observed is that more and more retail beneficial shareholders are opting for objecting beneficial owner status as opposed to non-objecting beneficial owner status.[21] At the same time, a U.S. survey of retail shareholders disclosed that, when the differences between OBO and NOBO status are explained to them, most shareholders express a preference for NOBO status.[22]

This apparently contradictory situation further distances the beneficial shareholder from the issuer. It is likely that the current complexity the retail shareholder faces, and that is inherent in National Instrument 54-101 as presently in force, militates against the retail beneficial shareholder's ability to make the choice that seems most in their interest on the issue of NOBO versus OBO status.

The path forward

The celebrated economist John Maynard Keynes observed that "all prediction is difficult, predicting the future is particularly difficult."

It is reasonable however to assume that the observed trends of increasing complexity, and increasing volume and pace of capital markets transactions are not likely to abate. In fact these trends will most likely accelerate as national economies increasingly yield to global pressures. It is therefore reasonably certain that beneficial ownership of shares is here to stay.

At least one observer claims that 90% of all shares are now beneficially owned. That estimate may well overstate the incidence of beneficial ownership but, by any measure or estimate, it is clear that the time has come to address the challenges of beneficial ownership in a more direct and effective way.

It is worth noting that the current stresses observed in the dichotomy between registered and beneficial share ownership are similar to earlier economic challenges that pitted "legal" ownership against "beneficial" ownership. The history of the common law of mortgages and trusts, going back to the middle ages, gives us some of the most striking examples of how the law, and particularly the Common Law and the rules of equity, demonstrated remarkable resilience and efficiency in reconciling the interests and rights of legal and beneficial owners.

That all shareholders are said in common parlance to hold "equity" in the companies in which they invest, testifies to this.

The time has now come to take further steps along this path and to adjust the paradigm so that all shareholders are treated alike in the Canadian market place.

[21] Presentation by Broadridge Inc. to the CSCS breakout session on National Instrument 54-101 at the National Conference held on September 10, 2007.
[22] Investor attitudes study conducted by Opinion Research Corporation on behalf of NYSE Group.

Reform objectives

Equality

Registered shareholders and beneficial shareholders ought to receive equal treatment to the greatest degree possible. The CSCS believes that the reforms proposed in this White Paper achieve that standard.

Fairness

The rules that govern effective shareholder communication should be fair to all stakeholders including registered and beneficial shareholders, issuers, transfer agents, proxy agents, depositories and intermediaries, and should respect their reasonable expectations and economic interests. The CSCS believes that the reforms proposed in this White Paper are fair to all participants in keeping with their respective economic interests.

Simplicity

While the underlying subject matter may be quite complex and is likely to remain so, the rules that govern effective shareholder involvement should be simple in the sense that the reasonable expectations of ordinary retail shareholders are seen to be met without imposing undue burdens or hardships on those shareholders or on other stakeholders. The CSCS believes that the reforms proposed in this White Paper meet that test.

Clarity

The legislative and regulatory amendments needed to level the playing field between registered and beneficial shareholders should in each case be minimal adjustments to the existing law that fit naturally within the existing legislative frameworks so that the amendments and their impact are easily understood and may be rapidly implemented in all Canadian jurisdictions. The CSCS believes that the reforms proposed in this White Paper achieve that objective,

Proposals for reform

Amendments to the CBCA and other corporation statutes

The reforms that the CSCS proposes be adopted for the CBCA and other corporation statutes are straightforward and may be simply stated as follows:

- Allow the directors of the corporation whose shares are publicly held to set a record date for voting at shareholders' meetings and not simply for receipt of notice. This change has already been adopted in the CBCA as part of the 2001 reform. British Columbia has also recently amended its statute to allow record dates to be set for voting.
- Allow issuers that have set a record date for both receipt of notice of meeting and voting to treat beneficial and registered shareholders equally to the extent that they are reasonably able to identify their beneficial shareholders.

Setting record dates for voting

Giving issuers the option to set a record date for voting purposes at meetings is a vital first step that must be taken on the path to enfranchising beneficial shareholders.

The Industry Canada consultation paper that focused on the issue of beneficial ownership considered the potential for overvoting that widespread beneficial ownership naturally afforded and for that reason suggested that the CBCA be amended to allow public companies to set record dates for voting:

> "[62] It has been argued that the absence of a fixed record date for voting promotes shareholder democracy. Shareholders have the right to attend and vote at the meeting if they establish ownership of the shares and demand the right to vote ten days, or less if the corporation's by-laws so provide, before the meeting.13 The 1975 Briefing Book on the CBCA, detailing the amendments for Parliamentarians, explained that: "The provision is designed to prevent the disenfranchisement of shareholders."
>
> [63] According to the Dickerson Report, after fixing a record date for a notice of meeting the directors must prepare a list of the shareholders to whom the notice is sent. Each such shareholder is deemed entitled to vote his shares as shown on the register, unless he transfers the shares and the transferee notifies the corporation accordingly. Thus the corporation has no duty to seek out the transferee, but the transferee has the right to have his name added to the shareholders list (voter's list) at any time before the meeting.[emphasis added]14
>
> [64] On the other hand, the prohibition on setting a fixed record date for voting has the potential to cause problems for publicly-traded corporations by creating a potential for overvoting.
>
> [65] In contrast to 1975, when the CBCA was adopted, the majority of shares for most issuers are now held in the name of a registrant, usually the CDS, and owned beneficially through a chain of intermediaries. When a new shareholder purchases shares after the record date for notice of meeting, the previous owner may have already received and voted the proxies.
>
> [66] With so many securities now held in non-registered form, the opportunity for over-voting is more likely to occur if both the non-registered holder, as of the record date, and the nonregistered holder, post record date, vote. The corporation does not know which proxies, if any, should be cancelled. Should there be over-voting, the results of the vote may have to be cancelled or some other remedy implemented. In such a case, shareholder democracy would not be served."[23]

Industry Canada remarked in its Discussion Paper that securities lending had the potential to contribute to overvoting:

> "[75] The lending of securities generates potential problems in that it creates an illusion that there are more shares in a particular company's capital stock that are owned beneficially than are actually registered. The reality is that more than one proxy can be issued for the same shares when two or more shareholders feel that they have the right to vote them. This, in turn, can cause the number of proxies delivered by an intermediary to exceed the number of shares registered in the name of that intermediary. This may lead to adjustments to proxy tabulated votes that would affect a voting decision."[24]

The agility that the capital markets afford to seasoned participants along with the prevalence of securities lending programs allows participants to take large positions in an issuer's stock for a moment in time, with very little at stake financially, in a way that may allow the participant to exercise the votes associated with the position and then to exit the stock. This phenomenon has been referred to "empty voting".[25] While the growing popularity of securities lending and its overall impact on voting at public company annual meetings, and hence on corporate governance generally, is beyond the scope of this White Paper, nevertheless, in the context of measures that are designed to further enfranchise beneficial shareholders, it is important to consider the impact that securities lending can have if only on the sheer number of beneficial votes eligible to be cast at meetings.

It is as a result of these considerations that the CBCA was amended in 2001 to permit companies to set record dates for voting.

Setting a record date for voting serves to narrow the window considerably for this type of market behaviour since it sets a single day as the reference point for determining shares eligible to be voted, thereby creating a potentially effective tool for reconciling the beneficial voting position

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[23] Industry Canada, Discussion Paper, *Shareholder Communications and Proxy Solicitation Rules*, at paragraphs 62 and following, http://dsp-psd.pwgsc.gc.ca/Collection/C2-280-2-1995E.pdf.

[24] Industry Canada, Discussion Paper, *Shareholder Communications and Proxy Solicitation Rules*, at paragraph 75, http://dsp-psd.pwgsc.gc.ca/Collection/C2-280-2-1995E.pdf.

[25] Kara Scannell, *How Borrowed Shares Swing Company Votes — SEC and Others Fear Hedge-Fund Strategy May Subvert Elections,* The Wall Street Journal, Jan. 26, 2007, p. A1; response of January 30, 2007 from Richard Steele, Chairman of the *International Securities Lending Association* available at www.isla.co.uk; Henry T.C. Hu and Bernard Black, *Empty Voting and Hidden (Morphable) Ownership: Taxonomy, Implications and Reforms*, The Business Lawyer, Vol 61, May 2006.

against the registered voting position and in so doing contributes to creating a more stable environment in which to enfranchise the beneficial shareholder.

Recognizing beneficial shareholders

A variety of reliable processes and systems currently exist that have the potential to allow issuers to identify their beneficial shareholders.

The most prominent and ubiquitous is the National Instrument 54-101 process and the related processes managed by Broadridge Inc. in its capacity as a Proxy Agent acting on behalf of intermediaries, issuers and beneficial shareholders.

There are other less prominent processes that are no less efficient in permitting issuers to identify beneficial shareholders, such as the information on beneficial ownership collected and administered on behalf of issuers and beneficial shareholders under employee savings and benefit plans or other equity-based plans in which shares are held on behalf of beneficial shareholders.

At the present time, while information on beneficial ownership may be more or less readily available, issuers are precluded from leveraging it to enfranchise their beneficial shareholders because the corporation statutes that govern their existence do not permit the information to be used in that way.

CSCS proposes quite simply to amend the statutes to allow issuers who have access to reasonably reliable information on the identity of their beneficial shareholders to use that information to treat beneficial shareholders in the same way as registered shareholders for the purposes of voting the shares they own at meetings.

Because of the potential complexity of the indirect way beneficial shareholders hold their shares, the increasing popularity of securities lending on the part of institutional holders, the pace of transactions, and because the information on beneficial ownership is distributed broadly in the market place, there is a strong likelihood that the number of beneficial votes collected will be greater than the underlying registered position.

As mentioned earlier, allowing issuers to set a record date for voting is an important step that provides a reasonably robust means to reconcile the registered and beneficial positions and eliminate overvoting. The CSCS proposal therefore requires that issuers set a record date for voting if they wish to recognize their beneficial shareholders.

In order to ensure that there is an effective means to avoid unintended consequences in enfranchising beneficial shareholders, the CSCS proposal also provides for an effective recourse to the courts so that any unexpected and unintended inequity that in fact results from enfranchising beneficial shareholders in this way can be effectively addressed and corrected in a timely manner.

Finally, as initially put forward, the proposal allows, but does not require, issuers to treat their beneficial shareholders as registered shareholders. The voluntary nature of the reform allows issuers to experiment with enfranchising beneficial shareholders at their own pace. If over time the mechanism is seen to work effectively, further steps could be considered to make the process mandatory.

The proposed amendments to the principal Canadian corporation statutes consistent with the recommendations explored in this narrative may be found below in the Appendices to this White Paper:

Amendments to National Instrument 54-101

The reforms that the CSCS proposes for National Instrument 54-101 may be simply stated as follows:

- Recognizing and formalizing the role of the proxy agent by:
    - Specifying the role and responsibilities of proxy agents, particularly in terms of measurable objectives and service levels;
    - Regulating the fees that proxy agents are entitled to charge issuers and others for their services, ensuring that the economics of the role are fair to all stakeholders;
- Reconsidering the selection process for OBO/NOBO status in order to simplify it so that beneficial shareholders are better able to understand their rights and make the choices that are most in their interest;
- Bolstering the controls around record dates for voting and the reconciliation of the beneficial position against the registered position in order to eliminate overvoting.

Formalizing the role of the proxy agent

CSCS recommends that a new Part be added to National Instrument 54-101 dealing with the role of proxy agents including provisions:

- Setting out the role of proxy agents;
- Establishing service levels for the fulfilment of their obligations;
- Setting out the role of proxy agents and transfer agents in reconciling beneficial votes to the underlying registered share positions in order to eliminate overvoting;
- Improving access by reporting issuers and transfer agents to non-objecting beneficial ownership information in a way that supports and is consistent with the proposed corporate law amendments that allow issuers to recognize beneficial shareholders and treat them as if their shares were registered;
- Providing a mechanism for regulatory oversight and approval of the fees that proxy agents charge for the services they provide to issuers;

CSCS recommends that National Instrument 54-101 be amended by replacing certain of the references to intermediaries by references to proxy agents in keeping with the role of the proxy agent;

Revisiting the Selection Process for OBO/NOBO Status

CSCS recommends that the following provisions of National Instrument 54-101 be amended:

- Amend the definition of non-objecting beneficial owner to reflect an opt-out instead of an opt-in formula so that, failing a positive choice made by the beneficial owner they will be deemed to be non-objecting beneficial owners;
- Amend the entire process under Part 3 to simplify it and to reflect an opt-out instead of an opt-in formula so that, failing a positive choice made by the beneficial owner they will be deemed to be non-objecting beneficial owners;
- Simplify Form 54-101F1 to reflect the opt-out formula and to remove the aspects of the explanation to clients that presently appear to militate strongly in favour of objecting beneficial owner status;
- Amend Forms 54-101F6 and 54-101F7 to allow issuers that are entitled to treat beneficial owners equally to disclose that fact in their request for voting instructions;

Bolstering Record Date Controls

CSCS recommends that National Instrument 54-101 be amended:

- To consolidate the rules governing record dates in one place in the instrument;
- To clarify that when an issuer fixes a record date for voting, intermediaries and their proxy agents must take steps to ensure that only beneficial shareholders holding shares on the record date are eligible to submit voting instructions and obtain legal proxies;
- To provide rules for tabulating, executing voting instructions and reconciling the beneficial voting position against the underlying registered shares;

Other amendments

- Amend section 2.18 of National Instrument 54-101 to exempt reporting issuers from the obligation to provide a legal proxy if the reporting issuer is entitled under its governing statute and corporate charter to treat the beneficial shareholder in question in the same way as a registered shareholder;

GLOSSARY OF TERMS

Term	Meaning	Reference
Beneficial ownership	Means true ownership of a security when a third party is entered on the register as the owner, but in fact acts as nominee for the true owner.	CBCA, s.2 NI 54-101, s. 1.1
Canadian Securities Administrators	A forum for the 13 securities regulators of Canada's provinces and territories that serves to coordinate and harmonize regulation of the Canadian capital markets.	www.csa-acvm.ca
CDS	Clearing and Depository Services Inc.	www.cds.ca
CSA	See Canadian Securities Administrators	www.csa-acvm.ca
NOBO	Non-objecting beneficial owner	NI 54-101, s.1.1
OBO	Objecting beneficial owner	NI 54-101, s.1.1
Record date	A reference date that serves to determine security holders entitled to exercise certain rights, including the right to receive notices of meeting and to vote at meetings.	CBCA, s.134 NI 54-101, s.1.1
Registered owner	The shareholder whose ownership is recorded in the registers that the issuer is required by law to maintain	See the discussion above at p. 2, under the heading *Registered shareholders*

SPECIFIC AMENDING PROVISIONS

Canada Business Corporations Act

Dealings with registered holder

51. (1) A corporation or a trustee defined in subsection 82(1) may, subject to sections 134, 135 and 138, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of an owner of the security.

Constructive registered holder

(2) Notwithstanding subsection (1), a corporation whose articles restrict the right to transfer its securities shall, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder that the person represents, if the person furnishes the corporation with evidence as described in subsection 77(4) that the person is

(a) the heir of a deceased security holder, or the personal representative of the heirs, or the personal representative of the estate of a deceased security holder;

(b) a personal representative of a registered security holder who is an infant, an incompetent person or a missing person; or

(c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

Permissible registered holder

(3) If a person on whom the ownership of a security devolves by operation of law, other than a person described in subsection (2), furnishes proof of the person's authority to exercise rights or privileges in respect of a security of the corporation that is not registered in the person's name, the corporation shall treat the person as entitled to exercise those rights or privileges.

Dealing with beneficial holders

(3.1) Notwithstanding subsections (1) and (2), a distributing corporation, or a trustee defined in subsection 82(1) may, subject to sections 134, 135 and 138 treat a beneficial holder of the distributing corporation's shares as the person entitled to receive notices of meetings of shareholders and to exercise the voting rights attached to the shares beneficially owned if

(a) the distributing corporation has set a record date in accordance with subsections 134(1)(c) and (d); and

(b) the beneficial holder held the beneficial interest in the distributing corporation's shares as of the record date referred to in subsection (a); and

(c) the distributing corporation is, either directly, or indirectly through its transfer agent, an intermediary or an agent acting on behalf of one or more intermediaries, able to identify with reasonable certainty the beneficial holders of its shares as of the record date referred to in subsection (a).

(3.2) In the event, for any reason, that the number of votes cast by beneficial shareholders in accordance with subsection 3.1 exceeds the number votes associated with the shares entered on the register maintained by or on behalf of the distributing corporation in accordance with section 50 in respect of the beneficially held shares, the number of votes cast by the beneficial shareholders shall be proportionately reduced so that it is equal to the number of votes associated with such shares shown on the register.

(3.3) A distributing corporation, a beneficial holder of a distributing corporation's securities, or a registered owner of securities of a distributing corporation, may, at any time prior to a meeting of the holders of the shares in question, and no later than • days thereafter, apply to a court for an order respecting the exercise of the right to receive notice or to vote shares of the distributing corporation in which a beneficial interest is claimed. On the application, the court may make any order it thinks fit and, without limiting the generality of the foregoing, it may

(a) determine the beneficial or registered owners entitled to receive notice or vote the shares in question, and in that regard, allocate the voting rights as between the respective claimants;

(b) cancel, or re-allocate the votes already cast in respect of the shares as between the respective claimants;

(c) direct the distributing corporation or its transfer agent or the person or persons appointed to act as scrutineers at a meeting of holders of the distributing corporation's securities to record the vote in respect of the shares in accordance with the court's findings.

Immunity of corporation

(4) A corporation is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this section, as the beneficial owner or registered holder thereof.

Persons less than eighteen years of age

(5) If a person who is less than eighteen years of age exercises any rights of ownership in the securities of a corporation, no subsequent repudiation or avoidance is effective against the corporation.

Joint holders

(6) A corporation may treat as owner of a security the survivors of persons to whom the security was issued as joint holders, if it receives proof satisfactory to it of the death of any such joint holder.

Transmission of securities

(7) Subject to any applicable law relating to the collection of taxes, a person referred to in paragraph (2)(a) is entitled to become a registered holder, or to designate a registered holder, if the person deposits with the corporation or its transfer agent

(a) the original grant of probate or of letters of administration, or a copy thereof certified to be a true copy by

(i) the court that granted the probate or letters of administration,

(ii) a trust company incorporated under the laws of Canada or a province, or

(iii) a lawyer or notary acting on behalf of the person referred to in paragraph (2)(a), or

(b) in the case of transmission by notarial will in the Province of Quebec, a copy thereof authenticated pursuant to the laws of that Province,

together with

(c) an affidavit or declaration of transmission made by a person referred to in paragraph (2)(a), stating the particulars of the transmission, and

(d) the security certificate that was owned by the deceased holder

(i) in case of a transfer to a person referred to in paragraph (2)(a), with or without the endorsement of that person, and

(ii) in case of a transfer to any other person, endorsed in accordance with section 65,

and accompanied by any assurance the corporation may require under section 77.

Excepted transmissions

(8) Despite subsection (7), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a personal representative of the deceased holder is entitled, subject to any applicable law relating to the collection of taxes, to become a registered holder or to designate a registered holder, if the personal representative deposits with the corporation or its transfer agent

(a) the security certificate that was owned by the deceased holder; and

(b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the personal representative or the person designated by the personal representative to become the registered holder.

Right of corporation

(9) Deposit of the documents required by subsection (7) or (8) empowers a corporation or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in paragraph (2)(a) or to such person as the person referred to in that paragraph may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of those securities.

R.S., 1985, c. C-44, s. 51; 2001, c. 14, ss. 31, 135(E).

Ontario Business Corporations Act

Effect of registration

67. (1) An issuer or a trustee defined in subsection 46 (1) may, subject to sections 95, 96 and 100, treat the registered holder of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of a holder of the security. R.S.O. 1990, c. B.16, s. 67 (1).

Representatives, etc., may exercise rights of security holder

(2) A corporation whose articles or unanimous shareholder agreement restrict the right to transfer its securities shall, and any other corporation may, treat a person referred to in clause (a), (b) or (c) as a registered security holder entitled to exercise all the rights of the security holder that the person represents, if that person furnishes evidence as described in section 87 of the *Securities Transfer Act, 2006* to the corporation that the person is,

(a) the executor, administrator, estate trustee, heir or legal representative of the heirs, of the estate of a deceased security holder;

(b) a guardian, attorney under a continuing power of attorney with authority, guardian of property, committee, trustee, curator or tutor representing a registered security holder who is a minor, a person who is incapable of managing his or her property or a missing person; or

(c) a liquidator of, or a trustee in bankruptcy for, a registered security holder. R.S.O. 1990, c. B.16, s. 67 (2); 2006, c. 8, s. 117 (1); 2006, c. 34, Sched. B, s. 13.

Rights where ownership devolves by operation of law

(3) If a person upon whom the ownership of a security devolves by operation of law, other than a person referred to in subsection (2), furnishes proof of the person's authority to exercise rights or privileges in respect of a security of the corporation that is not registered in the person's name, the corporation shall treat the person as entitled to exercise those rights or privileges. R.S.O. 1990, c. B.16, s. 67 (3); 2006, c. 8, s. 117 (2).

Dealing with beneficial holders

(3.1) An offering corporation, or a trustee defined in subsection 46 (1) may, subject to sections 95, 96 and 100, treat a beneficial owner of the distributing corporation's shares that are entitled to be voted at a meeting of shareholders as the person entitled to receive notices of meetings of shareholders and to exercise the voting rights attached to the shares beneficially owned if

(a) the offering corporation has set a date for determining shareholders in accordance with subsections 95(2)(a) and (b); and

(b) the beneficial owner held the beneficial interest in the offering corporation's shares as of the determination date referred to in subsection (a); and

(c) the offering corporation is, either directly, or indirectly through its transfer agent, an intermediary or an agent acting on behalf of one or more intermediaries, able to identify with reasonable certainty the beneficial holders of its shares as of the record date referred to in subsection (a).

(3.2) In the event, for any reason, that the number of votes cast by beneficial owners in accordance with subsection 3.1 exceeds the number of votes associated with the shares entered on the register maintained by or on behalf of the offering corporation in accordance with section • in respect of the beneficially held shares, the number of votes cast by the beneficial owners shall be proportionately reduced so that it is equal to the number of votes associated with such shares shown on the register.

(3.3) an offering corporation, a beneficial owner of an offering corporation's securities, or a registered owner of securities of an offering corporation, may, at any time prior to a meeting of the holders of the shares in question, and no later than • days thereafter, apply to a court for an order respecting the exercise of the right to receive notice or to vote shares of the offering corporation in which a beneficial interest is claimed. On the application, the court may make any order it thinks fit and, without limiting the generality of the foregoing, it may

(a) determine the beneficial owners or registered owners entitled to receive notice or vote the shares in question, and in that regard, allocate the voting rights as between the respective claimants;

(b) cancel, or re-allocate the votes already cast in respect of the shares as between the respective claimants;

(c) direct the offering corporation or its transfer agent or the person or persons appointed to act as scrutineers at a meeting of holders of the offering corporation's securities to record the vote in respect of the shares in accordance with the court's findings.

Corporation has no duty to enforce performance

(4) A corporation is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this section, as the owner or registered holder thereof. R.S.O. 1990, c. B.16, s. 67 (4); 2006, c. 8, s. 117 (3).

Repudiation by minor

(5) If a minor exercises any rights of ownership in the securities of a corporation, no subsequent repudiation or avoidance is effective against the corporation. 2006, c. 8, s. 117 (4).

Joint holders

(6) Where a security is issued to several persons as joint holders, upon satisfactory proof of the death of one joint holder, the corporation may treat the surviving joint holders as owner of the security. R.S.O. 1990, c. B.16, s. 67 (6); 2006, c. 8, s. 117 (5).

Registration of executor, etc.

(7) Subject to any applicable law of Canada or a province of Canada relating to the collection of taxes, a person referred to in clause (2) (a) is entitled to become a registered holder or to designate a registered holder, if the person deposits with the corporation or its transfer agent,

(a) the original grant of probate or of letters of administration, or a copy thereof certified to be a true copy by,

(i) the court that granted the probate or letters of administration,

(ii) a trust corporation incorporated under the laws of Canada or a province, or

(iii) a lawyer or notary acting on behalf of the person; or

(b) in the case of transmission by notarial will in the Province of Quebec, a copy thereof authenticated under the laws of that Province, together with,

(c) an affidavit or declaration of transmission made by the person stating the particulars of the transmission;

(d) the security certificate that was owned by the deceased holder,

(i) in case of a transfer to the person, with or without the endorsement of that person, and

(ii) in case of a transfer to any other person, endorsed in accordance with section 29 of the *Securities Transfer Act, 2006*; and

(e) any assurance the issuer may require under section 87 of the *Securities Transfer Act, 2006*. R.S.O. 1990, c. B.16 s. 67 (7); 2006, c. 8, s. 117 (6-8).

Idem

(8) Despite subsection (7), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled, subject to any applicable law of Canada or a province of Canada relating to the collection of taxes, to become a registered holder or to designate a registered holder, if the legal representative deposits with the corporation or its transfer agent,

(a) any security certificate that was owned by the deceased holder; and

(b) reasonable proof of the governing laws, the deceased holder's interest in the security and the right of the legal representative or the person the legal representative designates to become the registered holder. R.S.O. 1990, c. B.16, s. 67 (8); 2006, c. 8, s. 117 (9, 10).

Recording in security register

(9) Deposit of the documents required by subsection (7) or (8) empowers a corporation or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in clause (2) (a) or to such person as that person may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of those securities. R.S.O. 1990, c. B.16, s. 67 (9); 2006, c. 8, s. 117 (11).

Date for determining shareholders

95. (1) For the purpose of determining shareholders,

(a) entitled to receive payment of a dividend;

(b) entitled to participate in a liquidation or distribution; or

(c) for any other purpose except the right to receive notice of or to vote at a meeting, the directors may fix in advance a date as the record date for such determination of shareholders, but the record date shall not precede by more than fifty days the particular action to be taken. R.S.O. 1990, c. B.16, s. 95 (1).

Same

(2) ~~For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, t~~The directors may fix in advance a date as the record date for ~~such~~ the determination of shareholders,

(a) entitled to receive notice of a meeting of shareholders,

(b) entitled to vote at a meeting of shareholders,

but the record date shall not precede by more than 60 days or by less than 30 days the date on which the meeting is to be held. 2006, c. 9, Sched. A, s. 1.

Idem

(3) Where no record date is fixed, (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders and to vote at the meeting shall be,

(i) at the close of business on the day immediately preceding the day on which the notice is given, or

(ii) if no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote shall be at the close of business on the day on which the directors pass the resolution relating thereto. R.S.O. 1990, c. B.16, s. 95 (3).

Notice of date

(4) If a record date is fixed, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register at the close of business on the day the directors fix the record date, notice thereof shall be given, not less than seven days before the date so fixed,

(a) by advertisement in a newspaper published or distributed in the place where the corporation has its registered office and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded; and

(b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading. R.S.O. 1990, c. B.16, s. 95 (4).

Alberta Business Corporations Act

50(1) A corporation or a trustee as defined in section 81(1) may, subject to sections 133, 134 and 137 and the *Civil Enforcement Act*, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of an owner of the security.

(2) Notwithstanding subsection (1), but subject to a unanimous shareholder agreement, a corporation whose articles restrict the right to transfer its securities shall, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder the person represents if that person furnishes evidence as described in section 87(3) of the *Securities Transfer Act* to the corporation that the person is

(a) the executor, administrator, heir or legal representative of the heirs of the estate of a deceased security holder,

(b) a guardian, committee, trustee, curator or tutor representing a registered security holder who is an infant, an incompetent person or a missing person, or

(c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

(3) If a person on whom the ownership of a security devolves by operation of law, other than a person described in subsection (2), furnishes proof of the person's authority to exercise rights or privileges in respect of a security of the corporation that is not registered in the person's name, the corporation shall treat that person as entitled to exercise those rights or privileges.

Dealing with beneficial holders

(3.1) Notwithstanding subsections (1) and (2), a distributing corporation, or a trustee defined in subsection 81(1) may, subject to sections 133, 134 and 137 and the *Civil Enforcement Act*, treat a beneficial holder of the distributing corporation's shares as the person entitled to receive notices of meetings of shareholders and to exercise the voting rights attached to the shares beneficially owned if

(a) the distributing corporation has set a record date in accordance with subsections 133(2)(a) and (b); and

(b) the beneficial holder held the beneficial interest in the distributing corporation's shares as of the record date referred to in subsection (a); and

(c) the distributing corporation is, either directly, or indirectly through its transfer agent, an intermediary or an agent acting on behalf of one or more intermediaries, able to identify with reasonable certainty the beneficial holders of its shares as of the record date referred to in subsection (a).

(3.2) In the event, for any reason, that the number of votes cast by beneficial shareholders in accordance with subsection 3.1 exceeds the number of votes associated

with the shares entered on the register maintained by or on behalf of the distributing corporation in accordance with section 49 in respect of the beneficially held shares, the number of votes cast by the beneficial shareholders shall be proportionately reduced so that it is equal to the number of votes associated with such shares shown on the register.

(3.3) A distributing corporation, a beneficial holder of a distributing corporation's securities, or a registered owner of securities of a distributing corporation, may, at any time prior to a meeting of the holders of the shares in question, and no later than • days thereafter, apply to the Court for an order respecting the exercise of the right to receive notice or to vote shares of the distributing corporation in which a beneficial interest is claimed. On the application, the court may make any order it thinks fit and, without limiting the generality of the foregoing, it may

(a) determine the beneficial or registered owners entitled to receive notice or vote the shares in question, and in that regard, allocate the voting rights as between the respective claimants;

(b) cancel, or re-allocate the votes already cast in respect of the shares as between the respective claimants;

(c) direct the distributing corporation or its transfer agent or the person or persons appointed to act as scrutineers at a meeting of holders of the distributing corporation's securities to record the vote in respect of the shares in accordance with the court's findings.

(4) A corporation is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this section, as the owner or registered holder of the securities.

(5) If an infant exercises any rights of ownership in the securities of a corporation, no subsequent repudiation or avoidance is effective against the corporation.

(6) A corporation shall treat as owner of a security the survivors of persons to whom the security was issued if

(a) it receives proof satisfactory to it of the death of any joint holder of the security, and

(b) the security provides that the persons to whom the security was issued are joint holders with right of survivorship.

(7) Subject to any applicable law relating to the collection of taxes, a person referred to in subsection (2)(a) is entitled to become a registered holder or to designate a registered holder, if the person deposits with the corporation or its transfer agent

(a) the original grant of probate or of letters of administration, or a copy of it certified to be a true copy by

(i) the court that granted the probate or letters of administration,

(ii) a trust company incorporated under the laws of Canada or a province or territory, or

(iii) a lawyer or notary acting on behalf of the person referred to in subsection (2)(a), or

(b) in the case of transmission by notarial will in the Province of Quebec, a copy of the will authenticated pursuant to the laws of that province, together with

(c) an affidavit, statutory declaration or declaration of transmission made by a person referred to in subsection (2)(a), stating the particulars of the transmission, and

(d) the security certificate that was owned by the deceased holder

(i) in the case of a transfer to a person referred to in subsection (2)(a), with or without the endorsement of that person, and

(ii) in the case of a transfer to any other person, endorsed in accordance with section 29 of the *Securities Transfer Act*, and accompanied with any assurance the corporation may require under section 87 of the *Securities Transfer Act*.

(8) Notwithstanding subsection (7), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled, subject to any applicable law relating to the collection of taxes, to become a registered holder or to designate a registered holder, if the legal representative deposits with the corporation or its transfer agent

(a) the security certificate that was owned by the deceased holder, and

(b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the legal representative or the person the legal representative designates to become the registered holder.

(9) Deposit of the documents required by subsection (7) or (8) empowers a corporation or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in subsection (2)(a) or to any person that the person referred to in subsection (2)(a) may designate and, subsequently, to treat the person who thus becomes a registered holder as the owner of the security.

RSA 2000 cB-9 s50;2006 cS-4.5 s106.

Record dates

133(1) For the purpose of determining shareholders

(a) entitled to receive payment of a dividend,

(b) entitled to participate in a liquidation distribution, or

(c) for any other purpose except the right to receive notice of or to vote at a meeting,the directors may fix in advance a date as the record date for that determination of shareholders, but that record date shall not precede by more than 50 days the particular action to be taken.

(2) ~~For the purpose of determining shareholders entitled to receive notice of or to vote at a meeting of shareholders,~~ The directors may fix in advance a date as the record date for ~~that~~ the determination of shareholders,

(a) entitled to receive notice of a meeting of shareholders,

(b) entitled to vote at a meeting of shareholders,

but that record date shall not precede by more than 50 days or by less than 21 days the date on which the meeting is to be held.

(3) If no record date is fixed,

(a) the record date for the determination of shareholders entitled to receive notice of or to vote at a meeting of shareholders shall be

(i) at the close of business on the last business day preceding the day on which the notice is sent, or,

(ii) if no notice is sent, the day on which the meeting is held, and

(b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of or to vote at a meeting, is to be at the close of business on the day on which the directors pass the resolution relating to that purpose.

(4) If the directors of a distributing corporation fix a record date then, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register at the close of business on the day the directors fixed the record date, notice of the record date shall be given not less than 7 days before the date so fixed

(a) by advertisement in a newspaper published or distributed in the place where the corporation has its registered office and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded, and

(b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading.

RSA 2000 cB-9 s133;2005 c8 s29

Loi sur les Compagnies (Québec)

Fiduciaires.

42. Celui qui est porteur d'actions de la compagnie en qualité de liquidateur de succession, administrateur, tuteur, curateur, gardien ou fiduciaire de ou pour une personne mentionnée dans les livres de la compagnie comme étant ainsi représentée par lui, n'est personnellement sujet à aucune responsabilité comme actionnaire; mais les biens et deniers en sa possession sont responsables de la même manière et au même degré que le serait le testateur ou l'intestat, le mineur ou le majeur en tutelle ou en curatelle, ou l'intéressé à la fiducie, s'il était vivant et capable d'agir, ou possédait les actions en son propre nom; et nulle personne possédant des actions à titre de garantie additionnelle n'est personnellement sujette à aucune telle responsabilité; mais celle qui a engagé ces actions en est réputée le porteur, et par conséquent est responsable comme actionnaire.

S. R. 1964, c. 271, a. 39; 1989, c. 54, a. 161; 1999, c. 40, a. 70.

Droit de vote.

43. Tout tel liquidateur de succession, administrateur, tuteur, curateur, gardien ou fiduciaire en possession d'actions, les représente aux assemblées de la compagnie où il peut voter comme un actionnaire; et toute personne qui a engagé ses actions peut les représenter aux assemblées, et, bien qu'elles soient engagées, voter comme actionnaire.

S. R. 1964, c. 271, a. 40; 1999, c. 40, a. 70.

Relations avec le propriétaire véritable

43.1. 1. Dans le présent article, dans tout acte constitutif et dans les règlements faits par le gouvernement ou une compagnie, à moins que le contexte n'indique un sens différent:

«Agent des transferts»

5° L’expression «agent des transferts» signifie une personne ou société qui accomplit les activités d’un agent des transferts;

«Émetteur assujetti»

5° L’expression «émetteur assujetti» a le sens donné à l’article 5 de la Loi sur les valeurs mobilières (Chapitre V-1.1);

«Intermédiaire»

1° Le mot «intermédiaire,» signifie une personne ou une société qui détient une action dans le cadre de ses activités pour le compte d’une autre personne ou société et qui n’est

a) ni une personne ni une société qui détient le titre seulement comme gardien, n'en est pas le porteur inscrit ni le détient en qualité d'adhérent d'un dépositaire;

b) ni dépositaire;

c) ni propriétaire véritable du titre;

«Propriétaire véritable»

3° L'expression «propriétaire véritable» signifie le propriétaire de valeurs mobilières inscrites au nom d'un intermédiaire, notamment d'un fiduciaire ou d'un mandataire;

«Propriété véritable»

4° L'expression «propriété véritable» signifie signifie le droit de propriété exercé par le propriétaire véritable dont les titres sont inscrits au nom d'un intermédiaire;

2. Nonobstant les dispositions des articles 43 et 102, une compagnie qui est un émetteur assujetti, ou un fiduciaire visé par l'article 42 peut traiter le propriétaire véritable des actions de l'émetteur assujetti comme étant la personne en droit de recevoir les avis de convocation pour les assemblées des actionnaires et d'exercer le droit de vote afférents aux actions détenues en propriété véritable dans la mesure où :

a) l'émetteur assujetti a établi une date de référence conformément aux articles 43.1(5)(a) et (b); et

b) le propriétaire véritable détenait la propriété véritable dans les actions de l'émetteur assujetti à la date de référence établie selon l'alinéa a) du présent article; et

c) l'émetteur assujetti peut avec une assurance raisonnable identifier les propriétaires véritables détenant ses actions à la date de référence établie selon l'alinéa a) du présent article soit directement, soit indirectement par l'entremise de son agent des transferts, d'un intermédiaire, ou d'un mandataire agissant pour le compte d'un ou de plusieurs intermédiaires.

3. Si le nombre d'actions votées par un propriétaire véritable conformément au présent article excède le nombre d'actions inscrites au registre maintenu par l'émetteur assujetti conformément à l'article 104 par rapport à ces actions détenues en propriété véritable, le nombre de voix exprimées est réduit proportionnellement de façon à être égal aux voix reliées aux actions incrites sur le registre.

4. Une compagnie qui est un émetteur assujetti, un propriétaire véritable des actions d'un émetteur assujetti, ou un propriétaire inscrit des actions d'un émetteur assujetti, peut, en tout temps avant une assemblée des actionnaires des titres en question, et au plus, dans les • jours suivant cette assemblée, peut produire à la Cour supérieure dans et pour le district où est situé son siège, une requête par écrit, adressée à cette cour ou à un de ses juges, pour l'obtention

d'une ordonnance visant l'exercice du droit de recevoir l'avis de convocation ou de voter les actions de l'émetteur assujetti, à l'égard desquelles une personne réclame la propriété véritable. La cour ou le juge peut rendre l'ordonnance qu'il juge appropriée, et sans limiter la portée de ce précède, le tribunal peut :

a) déterminer les propriétaires véritables ou inscrits en droit de recevoir l'avis de convocation ou de voter les actions dont il s'agit, et, à cet égard, allouer les droits de votes entre les personnes qui les réclament;

b) annuler ou réallouer les voix exprimées à l'égard des actions entre les personnes qui les réclament;

c) ordonner à l'émetteur assujetti ou à son agent des transferts ou la ou les personnes nommées comme scrutateurs à l'égard d'une assemblée des actionnaires d'enregistrer les voix par rapport à l'assemblée selon l'ordonnance du tribunal.

Date de référence

5. Les administrateurs peuvent choisir d'avance, dans le délai réglementaire, la date ultime d'inscription, ci-après appelée « date de référence », pour déterminer les actionnaires habiles:

a) soit à recevoir avis d'une assemblée;

b) soit à voter lors d'une assemblée;

c) soit à toute autre fin.

Absence de fixation de date de référence

6. À défaut de fixation, constitue la date de référence pour déterminer les actionnaires:

a) habiles à recevoir avis d'une assemblée:

(i) le jour précédant celui où cet avis est donné, à l'heure de fermeture des bureaux,

(ii) en l'absence d'avis, le jour de l'assemblée;

b) ayant qualité à toute fin sauf en ce qui concerne le droit d'être avisé d'une assemblée ou le droit de vote, la date d'adoption de la résolution à ce sujet, par les administrateurs, à l'heure de fermeture des bureaux.

Cas où la date de référence est choisie

7. La date de référence étant fixée, avis doit en être donné, dans le délai réglementaire, sauf si chacun des détenteurs d'actions de la catégorie ou série en cause dont le nom figure au registre des valeurs mobilières, à l'heure de la fermeture des bureaux le jour de fixation de la date par les administrateurs, a renoncé par écrit à cet avis:

a) d’une part, par insertion dans un journal publié ou diffusé au lieu du siège social de la société et en chaque lieu où elle a un agent de transfert ou où il est possible d’inscrire tout transfert de ses actions;

b) d’autre part, par écrit, à chaque bourse de valeurs où les actions de la société sont cotées.

Companies Act (British Columbia)

Powers of personal representative

115 (1) Despite the memorandum or articles of a company, the personal or other legal representative or trustee in bankruptcy of a shareholder, although not registered as a shareholder, has the rights, privileges and obligations that attach to the shares held by the shareholder, if the appropriate evidence of appointment or incumbency within the meaning of section 87 of the *Securities Transfer Act* is provided to the company.

(2) Subsection (1) of this section does not apply on the death of a shareholder for shares registered in the shareholder's name and the name of another person in joint tenancy.

Repealed 116–117 [Repealed 2007-10-109.]

Documents for transmission

118 The personal or other legal representative, or trustee in bankruptcy, of a shareholder of a company is entitled to become or to designate another person to become a registered shareholder of the company if the person provides to the company or its transfer agent

(a) a declaration of transmission made by the personal or other legal representative or trustee in bankruptcy stating the particulars of the transmission,

(b) the share certificate, if any, and any assurances referred to in section 87 of the *Securities Transfer Act* that are required by the company,

(c) in the case of a death,

(i) the original grant of probate or letters of administration or a court certified copy of them, or

(ii) the original or a court certified or authenticated copy of the grant of representation, will, order or other instrument or other evidence of the death under which title to the shares or securities is claimed to vest,

(d) in the case of bankruptcy, a copy of the court order or of the assignment in bankruptcy and a copy of the instrument appointing the trustee in bankruptcy, and

(e) in any other case,

(i) if the person making the declaration of transmission referred to in paragraph (a) was appointed by a court, appropriate evidence of appointment or incumbency within the meaning of paragraph (a) of the definition of "appropriate evidence of appointment or incumbency" in section 87 (3) of the *Securities Transfer Act*, and

(ii) if that person was not appointed by a court, appropriate evidence of appointment or incumbency within the meaning of paragraph (b) of the definition of "appropriate evidence of appointment or incumbency" in section 87 (3) of the *Securities Transfer Act*.

Effect of documents provided

119 If a personal or other legal representative, or a trustee in bankruptcy, of a shareholder of a company applies to the company or its transfer agent under section 118 to become or to designate another person to become a registered shareholder of the company, provision to the company or transfer agent of the records required under that section for the application is, despite the memorandum or articles, sufficient authority to enable the company or transfer agent to register the applicant or the person designated by the applicant, as the case may be, as a registered shareholder of the company.

Beneficial owners

119.1 Despite the memorandum or articles of a company, subject to sections [134, 135 and 138] a beneficial owner of a public company's shares, although not registered as a shareholder, is entitled to receive notices of meetings of shareholders and to exercise the voting rights attached to the shares beneficially owned if

(a) the public company has set a record date in accordance with subsections 171(1)(c) and (d); and

(b) the beneficial holder held the beneficial interest in the public company's shares as of the record date referred to in subsection (a); and

(c) the public company is, either directly, or indirectly through its transfer agent, an intermediary or an agent acting on behalf of one or more intermediaries, able to identify with reasonable certainty the beneficial owners of its shares as of the record date referred to in subsection (a).

119.2 In the event, for any reason, that the number of votes cast by beneficial shareholders in accordance with section 191.1 exceeds the number of votes associated with the shares entered on the register maintained by or on behalf of the distributing corporation in accordance with section 50 in respect of the beneficially held shares, the number of votes cast by the beneficial shareholders shall be proportionately reduced so that it is equal to the number of votes associated with such shares shown on the register.

(3.3) A public company, a beneficial holder of a public company's securities, or a registered owner of securities of a distributing corporation, may, at any time prior to a meeting of the holders of the shares in question, and no later than • days thereafter, apply to a court for an order respecting the exercise of the right to receive notice or to vote shares of the distributing corporation in which they claim to own an interest. On the application, the court may make any order it thinks fit and, without limiting the generality of the foregoing, it may

(a) determine the beneficial or registered owners entitled to receive notice or vote the shares in question, and in that regard, allocate the voting rights as between the respective claimants;

(b) cancel, or re-allocate the votes already cast in respect of the shares as between the respective claimants;

(c) direct the distributing corporation or its transfer agent or the person or persons appointed to act as scrutineers at a meeting of holders of the distributing corporation's securities to record the vote in respect of the shares in accordance with the court's findings.
