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Re: Proposed Changes to National Instrument 54-101 (NI 54-101)

As past Chair of the Canadian Society of Corporate Secretaries (CSCS) I participated on the NI 54-101 Advisory Committee during 2009 and 2010 and brought forward the concerns of issuer companies. I was formerly with a large Canadian issuer and have first-hand knowledge of the significant shortcomings of our current proxy voting system. In addition, I continue to advise issuer clients and share my experiences with other Canadian issuers. It is from this perspective that GG Consulting is responding to the request for comments on the proposed revisions to NI 54-101.

I thank the securities regulators for taking this first key step in making improvements to the way that listed issuers communicate with their shareholders in Canada. In addition, I encourage the Canadian Securities Administrators (CSA) to look at the whole of the proxy voting process in Canada, just as the Securities and Exchange Commission is doing in the US, to address the other significant issues that go far beyond the scope of the notice and access proposal.

Current Proposal

I have three comments on the current proposal to implement a notice and access model in Canada.

Make it available for all meetings

First, the model needs to allow for the use of notice and access at all meetings, not just general meetings. This is imperative for issuers who are listed on the Venture Exchange. They must submit stock option and similar plans annually as a special resolution under the exchange rules. Accordingly, although notice and access might be more important for small and mid-cap issuers, no venture issuer can use notice and access as it is currently set out in the proposed regulations.

One of the reasons that the CSA cited for this restriction was to assess the impact of notice and access. There is already significant information available from three years of similar legislation in the US that shows the key impact to be a reduction in retail shareholder voting. Each company will have to decide for itself how to best deploy notice and access to ensure good voting levels while also reducing costs.

Allow selective use and disclosure

Second, the notice and access model needs to be flexible. That is, each company must be able to decide which, if any, of its shareholders will receive their information via notice and access. This feature has proven indispensible in the US model and ensures that each company can review its voting results and determine which segments of its shareholders to apply the notice and access format to – balancing both voting levels and cost savings.

Let issuers decide what additional information to include

Third, additional information provided to shareholders under notice and access should be determined by the issuer. There needs to be some minimum requirements set and then issuer

companies should have the ability to determine the amount and type of additional information they will include so they can best communicate with and engage their shareholders. Each company will know best what its own voting patterns and results are and what additional information will encourage its shareholders to vote. In addition, full information will be available to all shareholders both online and by request for hard copies.

Proxy Voting System Efficiency and Effectiveness

While revisions to NI 54-101 will allow issuers to access significant cost savings for their meeting mailings, the implementation of notice and access does not address any of the other issues with our existing proxy voting system. Currently, the most significant shortcomings 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
- Over voting
- Empty voting
- Different regimes and treatments of registered and beneficial shareholders and also between objecting and non-objecting beneficial shareholders

These issues impact all participants in the Canadian capital markets – from retail shareholders to institutional investors, issuers, transfer agents, proxy solicitors, proxy agents, intermediaries, brokers and exchanges – whether they know it or not.

It is just a matter of time (if it hasn't already happened without us knowing) until a significant proxy contest is declared lost, when it was really won. Unfortunately, under the existing regime there is no way to show that the shareholders who voted were those entitled to vote, and the rightful shareholders may be stuck with a decision they did not support.

It is absurd that a system that regularly and easily ensures the correct payment of dividends to shareholders cannot regularly and easily ensure that the shareholders who are entitled to vote at a meeting are those whose votes are actually counted.

Accordingly, I strongly recommend that the CSA, together with other corporate and securities regulators in Canada, begin a full review of our proxy voting system with the intent of proposing new regulations to improve and simplify the processes and to address all of these concerns.

I thank the CSA for this opportunity to share my comments on the proposed changes to NI 54-101. I look forward to the implementation of a notice and access model in Canada as a great first step.

I also look forward to further proposals from CSA and corporate regulators that will address the other significant issues in our proxy voting system.

Please contact me by email at sylvia@grovegovernance.com or by phone at 403.991.2154 if you would like any further information.

Best regards,

GG Consulting

"Sylvia L. Groves"

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