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Delivered by email

**John Stevenson**

**Secretary**

Ontario Securities Commission

20 Queen Street West

19th Floor, Box 55

Toronto, Ontario M5H 3S8

Fax: 416-593-2318

Email: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

## **OSC Staff Notice 54-701 – Regulatory Developments Regarding Shareholder Democracy Issues – Request for Comments**

The Canadian Society of Corporate Secretaries (CSCS) engages with Canadian securities regulators to ensure our members' interests are represented. We participated on the Advisory Committee responsible for the drafting of proposed revisions to National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer (NI 54-101) during 2009 and 2010. We also provided extensive comments on the proposed revisions to NI 54-101 on behalf of our members.

The effectiveness of Canada's proxy voting system is an important issue for those of our members who are from listed issuers or provide services to them. CSCS and our members have been vocal advocates for simplification of the proxy voting system. We developed and published a White Paper that made recommendations to address one of the corporate law issues in regard to the proxy voting system. We also provided extensive commentary into the "Executive Summary: The Quality of the Shareholder Vote in Canada" released by Davies, Ward, Phillips and Vineberg in October 2010. We are now responding to the request for comments on OSC Staff Notice 54-701.

We thank the OSC for leading the regulators in an exploration of this critical process that is an essential component of Canada's corporate

legal system that determines shareholder rights. There is a perception that, like voting in a political election, once a shareholder fills out their ballot correctly, the votes get counted. Unfortunately, that is often not the case. The fact is that Canada's current proxy voting system is so complicated that it is not even possible to confirm whether the vote of any beneficial shareholder at any corporate annual meeting was counted or not.

## **Shareholder Democracy Summit**

This is such a fundamental issue for CSCS members that we have created a special committee to explore ways to engage all stakeholders in the ongoing evolution of shareholder democracy in Canada. To provide a venue for discussions and the development of solutions, CSCS will play host this fall at a Shareholder Democracy Summit in Toronto, Ontario.

The Summit will be a full-on exploration of the concerns with Canada's current proxy voting system. In truly Canadian and CSCS fashion, this unprecedented gathering of policymakers and stakeholders will ensure that everyone who plays a role in the system will have a voice. Representatives from corporate and securities regulators, government, stock exchanges, listed issuers, proxy voting advisors, intermediaries, proxy agents, proxy solicitation firms, industry associations (such as STAC, CSCS, CIRI), governance minded organizations (such as CCGG), institutional investors, brokers, transfer agents, directors and corporate secretaries will be invited to attend the Summit.

We will take an in depth look at how proxy voting system currently works in Canada and gather the issues and concerns of all constituents so that those views can be addressed in any proposed solutions. The Summit will equip us to explore possible answers and then bring forward recommendations for implementing workable solutions. We invite the OSC to follow the latest news on the Summit at [www.cscs.org](http://www.cscs.org) – we will be adding all of the latest information to the website as we finalize the details.

The OSC, as well as all of the Canadian Securities Administrators and the regulators responsible for related corporate legislation, are absolutely critical to the development of solutions. We are very much looking forward to seeing them at the Shareholder Democracy Summit and will be sending out formal invitations soon.

## Comments on OSC Staff Notice 54-701

In conjunction with the changes proposed to NI 54-101 in 2010, CSCS surveyed our members to get their views on proxy voting system issues. Here we provide an overview of the key comments and concerns of CSCS members.

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.

### Survey Results

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

### Proxy Voting System Efficiency

CSCS members overwhelmingly agree that there are significant issues in the Canadian 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

### 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)	<ul style="list-style-type: none"><li>• 75%</li></ul>
<ul style="list-style-type: none"><li>• Overall complexity of the system</li></ul>	

<ul style="list-style-type: none"> <li>• Inability to ensure that the votes that should count are the votes that do count</li> <li>• Overvoting</li> <li>• Empty voting</li> <li>• Difficulty communicating directly with shareholders</li> <li>• Other</li> </ul>	<ul style="list-style-type: none"> <li>• 59%</li> <li>• 22%</li> <li>• 12%</li> <li>• 72%</li> <li>• 25%</li> </ul>
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### Issuer “Other” Narrative Responses

“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.”

“ADP [Broadridge] role”

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

“Individual shareholders find the system complex and don’t always receive proper support from the Intermediaries.”

“Conflict of interest of proxy advisory firms”

### 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)	<ul style="list-style-type: none"> <li>• 80%</li> </ul>
<ul style="list-style-type: none"> <li>• Overall complexity of the system</li> <li>• Inability to ensure that the votes that should count are the votes that do count</li> <li>• Overvoting</li> </ul>	<ul style="list-style-type: none"> <li>• 40%</li> <li>• 40%</li> <li>• 0%</li> </ul>

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- |   |       |
|---|-------|
| • Empty voting  | • 40% |
| • Difficulty communicating directly with shareholders | • 0%  |
| • Other   |       |
- 

### Non-issuer Narrative Responses

“...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!”

### CSCS RECOMMENDATION

*We recommend that the OSC take an active role with the Canadian Securities Administrators and the regulators responsible for related corporate legislation to review the proxy voting system with the intention of proposing new regulations aimed at improving and simplifying the mechanisms and processes.*

### Beneficial and Registered Share Ownership

CSCS also asked our members for their views on the treatment of beneficial and registered owners. The members overwhelmingly support equal treatment of both beneficial and registered owners.

#### 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%

#### 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%

## **CSCS RECOMMENDATION**

*Accordingly, we strongly recommend that the OSC, together with 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.*

## **Thank You**

On behalf of our members, we thank the OSC for this opportunity to share our comments on shareholder democracy issues. We have deliberately chosen to address only the issue of the proxy voting system as we believe it is the most important issue to be addressed by regulators on behalf of shareholders and corporate Canada.

We also look forward to seeing the regulators at the Summit Series and feel certain that through stakeholder engagement we will come up with a uniquely Canadian solution that addresses the significant issues in the proxy voting system and resolves the imbalances between registered and beneficial shareholders and between objecting beneficial shareholders and non-objecting beneficial shareholders.

## **Contacts**

Please contact Sylvia Groves (past Chair of CSCS) at [sylvia@grovegovernance.com](mailto:sylvia@grovegovernance.com) or 403.991.2154 for additional information or to answer any questions on the survey process or responses provided.

For more information on the Summit Series, please contact either:

- David Masse, Chairman, at [david.masse@cscs.org](mailto:david.masse@cscs.org) or at 514.841.3277
- Lynn Beauregard, President, at [lynn.beauregard@cscs.org](mailto:lynn.beauregard@cscs.org) or at 416.921.5449 ext 306

Sincerely,

“Lynn Beauregard”

Lynn Beauregard  
President  
Canadian Society of Corporate Secretaries