



# Securities Transfer Association of Canada

**William J. Speirs**  
President

March 31, 2011

John Stevenson  
Secretary  
Ontario Securities Commission  
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Dear Sir

The Securities Transfer Association of Canada ("STAC") welcomes the opportunity to comment upon the regulatory developments regarding shareholder democracy issues (OSC Staff Notice 54-701). STAC is a non-profit association of Canadian transfer agents that among others has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.

STAC members act as mailing agent, proxy tabulator and scrutineer at the substantial majority of shareholder meetings held each year in Canada. As a result, we have a unique vantage point from which to observe and comment upon the effectiveness of the proxy system and any potential proposed solutions. On behalf of our members we will focus our comments solely on this topic out of the three posed in Staff Notice 54-701.

Prior to delving into specific issues with the proxy system, STAC would like to endorse the excellent work done last year by the team at Davies Ward Phillips and Vineberg ("Davies Ward") led by Carol Hansell in drafting their discussion paper, The Quality of the Shareholder Vote in Canada. We feel that this was a comprehensive, well-informed and objective review of the proxy system in Canada. It highlights the aspects of the system that are flawed and puts forth some practical recommendations to address them.

Also, as a significant number of Canadian reporting issuers are inter-listed in the U.S., STAC respectfully suggests that the OSC closely monitor the discussions associated with the SEC's 2010 proxy concept release document as it continues to review the "proxy plumbing" issues and the beneficial shareholder voting process. We note that many of the issues discussed there have similar parallels in Canada. There are many efficiencies inherent in coordinating policy with a regulatory regime in a country where so many Canadian issuers are inter-listed.

## Reconciliation of Vote Entitlements

STAC feels that any discussion of improvement in the effectiveness of the proxy system must start with more accountability for reconciliation of all voting rights prior to the submission of files for mailing. The transfer agent is charged with ensuring that the shareholder register is in balance with the issuer's issued and outstanding capital. The transfer agent balances the depository position on the register daily with the depositories to ensure that those

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positions equal the depository's ledger position. Unless each intermediary's ledger positions are reconciled to the beneficial ownership data prior to mailing files being created, the integrity of any issuer vote is brought into question.

Unless the language of NI 54-101 is strengthened to make intermediaries more accountable for fulfilling their obligations, there is no way to ensure that each beneficial owner receives their proper voting entitlement and that their vote will be fully reflected in the final tabulation. Intermediaries must be held accountable for:

- a. reconciling the files of beneficial ownership data with their registered, depository and nominee positions
- b. giving clear direction to the tabulator through which depository, nominee or intermediary securities being voted are held, and
- c. ensuring that any omnibus proxy required from an intermediary or depository through whom they hold shares is being filed.

We also suggest each financial intermediary subject to NI 54-101 (including proximate intermediaries) should file an annual certification indicating compliance with the instrument. This would draw attention to mitigating some of the reconciliation problems issuers and their transfer agents now encounter.

#### Omnibus Legal Proxy

Under the current proxy voting system, registered shareholders are sent forms of proxy to vote at the issuer's meeting. These holders can elect to either return their proxy to the tabulator to register their vote or attend the meeting and vote in person without further action required on their part.

Beneficial owners, on the other hand, must be sent voting instruction forms (VIF) under NI 54-101. These VIFs must be returned to the intermediary who will execute a proxy based on these instructions and forward it to the proxy tabulator. The beneficial owner who wishes to attend the meeting in person must request a proxy from their intermediary appointing them as proxyholder. The time required to complete these extra steps can disenfranchise the beneficial owner and, thus, treat them as a second-class shareholder. It is clearly neither the most efficient or effective approach.

In section 27.6.6 of the Davies Ward discussion paper, it was noted that it would "be simpler to provide proxies all the way down the chain." The paper refers to an Omnibus Legal Proxy concept that STAC developed to permit issuers doing the NOBO mailing directly to appoint all NOBOs as proxyholders for their positions on the NOBO file. Davies Ward suggested that while this approach is not contemplated in NI 54-101 and has been criticized by intermediary groups, it "would streamline rather than complicate the documentation associated with NOBO voting."

STAC recommends that the OSC give consideration to expressly contemplating the Omnibus Legal Proxy concept as a way to streamline the voting process for beneficial owners. In the alternative, NI 54-101 should be modified to make it clear that participants in the process should not be limited to the specific documents mentioned in it. As a matter of practice transfer agents are dealing with forms and processes that are not contemplated by NI 54-101 (e.g. so-called mini-omnibus proxies from intermediaries who need to delegate votes to other intermediaries holding through them) and also other forms which are not consistent with the prescribed forms, (notably the CDS omnibus proxy). [NTD –double check this] However the forms have been established by practice over the years and are accommodated to give effect to the principle that beneficial owners should be able to vote their shares.

Section 1.3 of NI54-101 contemplates participants in the process substituting other forms and using an omnibus proxy for beneficial owners allows them to receive an issuer's proxy which arguably is a form that contains exactly the information they should receive as opposed to a generic voting instruction form.

#### Elimination of the NOBO / OBO Concept

We also note that while the distinction between the OBO and NOBO has been a long standing feature of Canadian shareholder communication, the concept is inconsistent with the transparency that is becoming sought by many issuers. This is identified as an issue in the 2010 SEC 'concept release on the U.S. proxy system'. The paper contemplates eliminating the distinction between NOBOs and OBOs. It is also a key recommendation of the Shareholder Communications Coalition in the U.S. – an advocacy organization dedicated to improving the ability of individual investors to vote their shares and communicate with publicly-traded companies in which they invest.

When proxy votes received by the tabulator exceed the shares in the position, the fact that all or part of that position is comprised of OBO positions precludes the tabulator from accurately determining which votes to count and which votes to invalidate. Such decisions are brought to the meeting chairman for resolution.

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The chairman faces the same dilemma as the tabulator and must make an arbitrary decision. This can lead to valid votes being rejected or prorated while invalid votes get counted. Even without votes exceeding a position, with the lack of transparency in the current system, it is possible for a beneficial shareholder to have voted twice without the tabulator or chairman even being aware of it. Without the OBO concept, the tabulator would be able to see all positions and reconcile the votes submitted to the applicable positions, increasing the integrity of the vote.

STAC thanks the staff of the OSC for all their efforts to improve the proxy voting system in Canada.

We would be glad to discuss these comments and provide additional feedback as the OSC continues its efforts in the evolution of the proxy voting system.

Yours truly,

A handwritten signature in black ink, appearing to be 'W. Speirs', with a stylized, cursive script.

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