

November 13, 2013

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial and Consumer Affairs Authority  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Financial and Consumer Services Commission  
Superintendent of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Nunavut

The Secretary  
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Dear Secretary and Me Beaudoin,

**Re: CSA Consultation Paper 54-401: Review of the Proxy Voting Infrastructure**

The Canadian Investor Relations Institute (“CIRI”), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to respond to Consultation Paper 54-401 (“the Consultation Paper”). CIRI membership

represents approximately 270 publicly listed issuers with a combined market capitalization of just over \$1.3 trillion. More information about CIRI is noted in Appendix 1.

### **General Views on the Proxy Voting Infrastructure**

CIRI's members are significant stakeholders in the proxy voting infrastructure and share the CSA's view that accurate and transparent shareholder voting is fundamental to the quality and integrity of the capital markets. Issuers put forward important proposals for shareholders to vote upon and both parties rely on the proxy voting system to ensure that those votes are counted accurately and efficiently.

There is great concern that the proxy voting system in Canada today is too complex, involving a relatively large number of players with access to and use of several different systems and databases. The complicated nature of the existing proxy voting infrastructure is prone to errors simply due to the complex and opaque nature of the system, the involvement of multiple parties and the tight timelines that can hinder accurate vote reconciliation. The inevitable introduction of inaccurate counting of votes and the effort required to find and resolve issues significantly reduces the integrity of the system, the quality of the shareholder vote and, ultimately, the integrity and efficiency of the capital markets.

The current lack of transparency within the voting infrastructure makes it difficult, if not impossible, for various intermediaries and agents to reconcile voters' intentions with shareholders' voting entitlements. CIRI takes the view that the transparency of the shareholder voting process is only as strong as the weakest link in that process. It seems inefficient to require issuers to expend significant time, resources and money to improve their level of transparency to then have to contend with an overly-complicated, burdensome and non-transparent proxy voting process that delivers unacceptable quality of shareholder voting. CIRI believes that public issuers can achieve a fair valuation in the capital markets only if significant and material information resulting in accurate vote reconciliation and confirmation can be effectively communicated in a timely manner to the correct shareholders.

We commend the CSA for their commitment to improving the proxy voting system with the introduction of notice and access and the soon to be released guidance on recommended practices and disclosure for proxy advisory firms. The Consultation Paper raises issues that CIRI feels require regulatory intervention so that all stakeholders have confidence that the proxy voting system is transparent, reliable and efficient, which in turn would garner greater confidence and integrity in the capital markets.

### **Recommendations**

In order for all stakeholders to be confident in the quality of the shareholder vote, CIRI believes there should be further regulation to govern the proxy voting infrastructure to ensure accuracy and transparency. CIRI proposes the following:

1. Institute appropriate regulation of the proxy voting infrastructure processes including vote reconciliation and end-to-end vote confirmation.

2. In cases of share lending, ensure that the voting power resides with the shareholder who has the economic interest in those shares.
3. Conduct further research into the impact the OBO-NOBO concept has on the transparency and integrity of the proxy voting infrastructure. Consideration should be given to making NOBO the default option when establishing brokerage customer accounts and that shareholders with OBO status be subject to an additional fee.

### **Proxy Voting Infrastructure Concerns**

CIRI agrees with the CSA that improving the quality of vote reconciliation and the establishment of comprehensive end-to-end vote confirmation are two key issues that need to be addressed to ensure accurate voting results. Correcting any reconciliation errors within the limited timeframes imposed upon the proxy voting process is very difficult when faced with a lack of transparency in the system itself.

In a recent survey of CIRI members, respondents ranked the issue of accurate vote reconciliation as either 'always important' (85%) or 'often important' (15%). Similarly, more than two-thirds of respondents rated end-to-end vote confirmation as either 'always important' (53%) or 'often important' (18%). Clearly, investor relations professionals in issuer companies believe these two issues are critical to the integrity of the proxy voting process.

#### **1. Vote Reconciliation**

##### **a) CIRI Members' Experience**

The issue of vote reconciliation is a key concern to CIRI's issuer members. This element of the proxy voting infrastructure is generally expressed as a concern regarding the accuracy of the shareholder vote. One-third of respondents to the member survey referenced above indicated that they have had an issue or a concern regarding the accuracy of one or more of their shareholder votes. This, of course, reflects the concerns of those issuers who actually realized that the vote was inaccurate. In many instances the complexity of the process, the lack of transparency regarding reconciliation protocols and the compressed time frame immediately preceding the vote (generally when the bulk of votes and voting instructions are submitted) leave issuers in the dark not always knowing if the vote count was accurate.

In one example provided by an issuer, a proxy for a large block of shares submitted through a broker was not counted at all. While the outcome of the director election was not affected, the issuer was required to file an amended vote count. Another issuer expressed concern with the difficulty reconciling votes between the transfer agent and Broadridge, particularly that there was a delay in getting information from Broadridge. Another issuer also noted instances of over-voting on brokerage positions.

These are just some examples of known shareholder voting issues cited by our members. The primary concerns are that this could happen again and that voting irregularities are occurring more frequently but going undetected.

#### **b) Impact of Share Lending**

In talking to CIRI members and to other voting infrastructure participants such as proxy solicitors and share transfer agents, it is clear that share lending and determining who has the right to vote in these situations has become a key issue in establishing accurate shareholder lists and in reconciling the votes. While the intermediary community has obviously made some efforts to instill a degree of consistency in share lending transactions, the determination of who is the beneficial owner entitled to vote the shares seems to be inconsistent.

There is also concern about the lack of transparency at the intermediary level. The impact of share-lending has become problematic due to the significant increase in such activity by investors who see this as an increasingly important source of revenue, given that market returns have declined in recent years due to poor economic conditions.

While we understand that, technically, the lender has no entitlement to vote the shares on loan, lenders who wish to vote can instruct their agent (or the borrower directly) to recall the loaned securities by the pre-determined time (i.e. record date) in order to vote. This right to recall appears to be a standard feature of many securities lending contracts in most jurisdictions, but we believe there is no consistent practice nor is there a regulatory requirement for recall.

A study conducted by Robert Thompson and Paul Edelman was cited for the proposition that "[a] decision making system that relies on votes to determine the decision of the group necessarily requires that the voters' interest be aligned with the collective interest."<sup>1</sup>

CIRI believes that there must be alignment between share voting and the economic interest in the shares. We would support the implementation of guidelines or regulations stipulating that the voting rights in share lending arrangements reside with the shareholder holding the economic interest, the lender.

#### **c) Over-reporting and Over-voting**

It is clear that over-voting and over-reporting occur on a fairly regular basis, although CIRI recognizes that the extent of this problem has not been well quantified. In a survey of members, one quarter of respondents indicated that they have in the past had an issue with over-voting/over-reporting where an intermediary has returned more votes than those reflected in the intermediary's CDA participant account.

Discussions with members and other stakeholders indicate that such problems may largely be a result of share lending, as discussed above, and of the pooling of loaned shares by

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<sup>1</sup> Robert Thompson & Paul Edelman, "Corporate Voting", (2009)

intermediaries and lending agents, particularly in discretionary margin accounts where the ultimate beneficial owner of the shares is unaware that shares have been loaned and that the beneficial owner may no longer be entitled to vote all or a portion of the shares they originally purchased.

Unfortunately, issuers have little or no exposure to the details of such situations so cannot accurately comment on the problem other than to indicate they have been made aware of an over-voting problem and the means used to resolve it, such as through pro-rationing of the votes or application of the STAC Proxy Protocol<sup>2</sup>.

Given that not all shareholders vote at any given meeting, it stands to reason that there are likely more instances where over-voting is an issue but goes undetected or unresolved in time for the meeting.

#### **d) OBO-NOBO**

CIRI, as an organization of investor relations professionals, is dedicated to quality communication with issuers' stakeholders, particularly shareholders. As such, CIRI believes the lack of ownership transparency inherent in OBO status impedes good, effective communication. Half of respondents to the CIRI survey felt that the OBO-NOBO concept reduces the reliability of proxy votes due to the lack of transparency.

CIRI encourages regulators to further explore the impacts of the OBO-NOBO concept on Canadian capital markets in the context that a significant percentage of shares in the Canadian marketplace are owned by investors that are now deemed to be, or have chosen to be, OBOs and this situation does have a significant and negative impact on transparency.

Issuer-shareholder communication, a key element of the proxy voting process, is seriously impeded, given that a significant percentage and perhaps even a majority of the shares in some issuers are held by shareholders who elect to hide behind OBO status. Consideration should be given to making NOBO status the default option when establishing brokerage customer accounts (as was the rule under the previous National Policy 41).

While privacy concerns (re: ownership, trading patterns, market strategies, etc.) are often cited as a reason for choosing OBO status, CIRI's position is that market efficiency is better served through the improved ownership transparency that would result from limiting the adoption of OBO status among non-registered shareholders.

An option for consideration is an annual fee or some type of annual charge to be applied against those seeking OBO status; this as a way of covering the expenses associated with additional communication requirements and as a means to discourage uninformed selection as an OBO. In addition, existing OBOs should be subject to a deadline for choosing to retain OBO status, otherwise NOBO status will be assumed.

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<sup>2</sup> STAC Proxy Protocol (March 2012)

## 2. End-to-End Vote Confirmation

As noted previously, CIRI agrees with the CSA that end-to-end vote confirmation is a serious issue that needs to be addressed, with over two-thirds of member survey respondents ranking this issue as 'always' or 'often' important with regard to voting accuracy. This is consistent with views expressed in discussions CIRI has conducted with other stakeholders and would appear to be recognized by many capital market participants.

CIRI realizes that efforts to establish end-to-end confirmation will require significant resources (technological, human and financial) and when we asked our members who should bear the brunt of such costs, responses were widespread and included 'transfer agent', 'Broadridge', 'intermediary' and 'security industry as a whole'.

CIRI believes that ALL the participants in the proxy voting infrastructure should come together and make a real commitment to improving the infrastructure to establish full confirmation and reconciliation.

CIRI is aware that a broadly-based working group of interested participants, including brokers, transfer agents and other service providers in the U.S. proxy infrastructure has initiated a pilot project with the goal of achieving full vote reconciliation and end-to-end confirmation. CIRI suggests that Canadian regulators and/or infrastructure participants either monitor or actively engage with this working group as a means to accelerate the implementation of an improved system in the Canadian marketplace.

It seems clear to CIRI that appropriate, targeted regulation of the proxy voting infrastructure would improve the transparency and accuracy of the shareholder vote, resulting in greater confidence and integrity in the Canadian capital markets.

CIRI would like to thank the CSA for the opportunity to comment on this topic and would be pleased to answer any questions on the above.

Yours truly,



Yvette Lokker  
President & CEO  
Canadian Investor Relations Institute

## **Appendix A – Canadian Investor Relations Institute**

### **The Canadian Investor Relations Institute**

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

### **Investor Relations Defined**

*Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to enable fair and efficient capital markets.*

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include, but are not limited to: Nominating; Audit; Membership; Issues; Editorial Board; Resource and Education; Certification.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 600 professionals serving as corporate investor relations officers in approximately 300 reporting issuer companies, consultants to issuers or service providers to the investor relations profession. CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of investors and shareholders in capital markets outside of North America. The President and CEO of CIRI also sits as a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.