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

Attention:
The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Me. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

Re: **Request for Comments – Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure***

We are writing in response to the Canadian Securities Administrators (CSA) request for comments on Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure*.[1] NEI Investments commends the CSA for continuing efforts to enhance corporate governance in Canada, for taking on a convening role in efforts to address problems in the proxy voting system, and for seeking stakeholder input.

[1] **Canadian Securities Administrators.** Consultation Paper 54-401 Review of the Proxy Voting Infrastructure. [Online] 2013. http://www.osc.gov.on.ca/en/NewsEvents_nr_20130815_csa-proxy-voting.htm

NEI INVESTMENTS

T: 416.594.6633 F: 416.594.3370
NEIinvestments.com Toll Free: 1.888.809.3333
400 - 155 University Avenue Toronto, Ontario M5H 3B7

With approximately $5.5 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. We participate in this consultation as an investment institution undertaking engaged proxy voting. At NEI Investments, wherever we are legally permitted to do so, we vote every one of our proxies according to a detailed set of proxy voting guidelines that are updated regularly and are publicly available.[2] While we use a proxy advisory firm to facilitate research and voting, in-house staff members are responsible for analyzing and executing every vote.

In the following pages we set out our comments and recommendations on the issues raised in Consultation Paper 54-401. Many of the consultation questions relate to technical aspects of the infrastructure into which only issuers or proxy voting intermediaries are likely to have insight, so we provide general comments on several matters raised in the paper as well as specific feedback on our experience as end-users of the proxy voting system, linking this input to the questions posed by the CSA as far as possible.

A 2010 discussion paper cited by CSA, *The Quality of the Shareholder Vote in Canada,*[3] highlighted several challenges and gaps in the current proxy voting system. We agree with the authors that in an effective proxy voting system, investors would be enabled to make informed voting decisions; votes would be exercised only by investors who have the right to do so; votes would be executed and counted correctly; results would be reported promptly; and the system would be transparent enough to inspire confidence in stakeholders. The current system certainly lacks transparency from our perspective, and recent experiences have led us to believe that it is not wholly reliable.

Comments

Section 5.1.1 Impact of share lending on generating the voter lists
Q6. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?
Q7. Which party (the lender or the borrower) should have the right to vote in a share lending transaction? Should securities regulators specifically address which party to a share lending transaction should have the right to vote?

Share lending, over-voting and empty voting

We encourage the CSA to consider solutions to the problems of over-voting and empty voting, both of which undermine the integrity of the proxy voting system. We believe reforming lending practices could contribute.

NEI Investments has a policy prohibiting securities lending, as this can affect our ability to vote on important issues on behalf of our unit holders, as well as diminishing the value of our holdings by the very short selling that we would be enabling through share lending. While a market-wide ban on securities lending may be problematic because of broader liquidity concerns, we believe regulators should consider restricting the process of recalling shares by the lender after the record date, unless it is for trading purposes only, to ensure that voting rights are retained by the possessing entity (either the

[2] **NEI Investments.** Proxy Voting Guidelines. [Online] 2012. https://www.neiinvestments.com/Documents/ProxyVoting/2012%20Proxy%20Voting%20Guidelines%20English%20final%20version.pdf

lender or borrower) at record date to avoid over-voting. One alternative solution may be to move the record date closer to the meeting date, which is already the case in some jurisdictions. As this would reduce the volume of such recalls, it may nullify most concerns over trading liquidity and reduce over-voting and empty voting, although it would be important to ensure that proxy advisors are still able to provide end-users with research in a timely manner.

To encourage a transition to improved transparency, which may minimize over-voting related to share lending, the CSA should consider requiring issuers to disclose in post-meeting voting results the level of over-voting that occurred and the methodology used to determine the final vote tally. If this transparency were provided to investors, confidence in the system would increase as over-voting rates fell over time, eventually eliminating the need to disclose such information.

Section 5.2 End-to-end vote confirmation
Q2. What functionality should be part of an end-to-end vote confirmation system? For example, should voter anonymity be built into the functionality, or is disclosure of voter identities necessary for an effective system? At what point in the proxy voting process should investors receive confirmation as to whether their vote will be accepted, and at what level, e.g. at an intermediary level or at an investor account level?

End-to-end vote confirmation

We strongly support calls for reliable end-to-end vote confirmation. From our perspective, there is no value in voter anonymity being built into the system. We would most value receiving confirmation through the platform of our proxy advisor. On the platforms with which we have experience, we already receive a form of vote confirmation, but at present we lack confidence in the reliability of that confirmation.

Section 6.1 Impact of the OBO-NOBO concept on voting integrity
Q2. Would temporarily allowing issuers and official tabulators access to the identity of OBOs for purposes of tabulation improve the reliability and accuracy of proxy voting? Would it make the reconciliation process more effective? Would this prejudice investors?

OBO-NOBO status

In many cases institutional investors are choosing OBO status to facilitate electronic voting and avoid receiving unnecessary paper documentation, rather than because they seek anonymity. It is hard to see how OBO anonymity contributes to the transparency that should be a key feature of a well-functioning proxy voting system, nor to investors exercising their full rights and responsibilities as stakeholders in public companies. In jurisdictions other than the U.S. and Canada, issuers are permitted to communicate directly with all their shareholders. We believe that removal of OBO status would promote improved reconciliation of ownership by issuers. At the very least, OBO status could be removed after the record date to facilitate reconciliation. At the same time, provision should be made to ensure that those who prefer to vote electronically are still able to do so.

From a corporate engagement perspective, we would prefer increased transparency for issuers seeking to ascertain if we hold a position in the company. Because NEI Investments has OBO status to facilitate electronic voting, on numerous occasions issuers have told us that they cannot verify our holdings at their end of the system, which can be an obstacle to dialogue.

Section 6.3 Accountability of service providers
Q1. What mechanisms are in place to support the accountability of the various service providers in proxy voting? How effective are these mechanisms?
Q2. Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable?

Failed registration to attend AGM in non-voting capacity

NEI Investments votes electronically using the platform of our proxy voting service provider, and therefore does not receive the physical proxy documentation that provides admission to the annual general meeting (AGM). We occasionally submit shareholder proposals for inclusion in management information circulars to be voted on at annual shareholder meetings. If the proposal goes to a vote, we attend the AGM and speak to the proposal. On other occasions we may simply wish to attend the meeting and be recognized by the Chair in order to make a comment or ask a question. It is our understanding that to gain admission and recognition at a meeting where we have already voted electronically, technically a non-voting proxy is required.

At one meeting where NEI Investments had a shareholder proposal on the ballot, we requested the right to attend the AGM in person in a non-voting capacity to present the proposal, as we wished to vote our shares electronically in advance of the meeting, as usual. When our proxy voting provider attempted to comply with our request, it was told by other intermediaries that admission to the AGM would not be possible unless our representative voted at the meeting. We accepted this arrangement and did not vote electronically. However, our representative was initially unable to enter the AGM because of a failure in the meeting attendance registration process. While the representative was ultimately able to enter the meeting, and was able to present the proposal, no ballots had been prepared for NEI Investments to vote at the meeting. Because our representative was unsure if the blank ballots completed at the meeting would be recognized, we attempted to submit electronic voting instructions at the last moment. We could not obtain clear confirmation as to which, if any, of the votes we submitted were tabulated and counted: the paper ballots, the electronic votes, both, or neither.

An investigation by our proxy voting provider pulled in several layers of intermediaries, and revealed that our request to attend the meeting was not input into the tabulator's system because of errors in the handling of the appointee form. Our conclusions from this experience were that the complexity of the process and the number of intermediaries involved increased the probability of human error; and that staff at intermediaries may lack adequate training, as many are temporary hires during proxy voting season.

Ideally the system should allow for a simple, reliable process by which an institution that has already voted electronically can ensure that a representative can attend and speak at the meeting in a non-voting capacity.

Proxy voting disclosure

As a further contribution to the transparency of the system, and in the interests of fairness, we encourage regulators to expand proxy voting disclosure requirements. As a mutual fund manufacturer, NEI Investments is required under the provisions of National Instrument 81-106[4] to disclose its proxy voting activity. We strongly support these provisions: indeed,

[4] **Canadian Securities Administrators.** National Instrument 81-106 and Companion Policy 81-106CP - Investment Fund Continuous Disclosure, and Form 81-106F1. [Online] 2010. http://www.osc.gov.on.ca/en/13058.htm

we began to provide proxy voting disclosure for our Ethical Funds family long before it was compulsory to do so, in the belief that our unit holders had the right to know how we were voting on their behalf, and why. Currently our voting decisions and rationale are uploaded to a publicly-accessible website on a daily basis. While recognizing that this matter may not fall under the jurisdiction of securities regulators, we continue to question why other institutional shareholders, such as pension funds, endowments and foundations, are not subject to the same proxy voting disclosure requirements as mutual funds.

Conclusion

We commend the CSA for opening this consultation for review of the proxy voting infrastructure. Among other measures to enhance the system, we recommend that:

- the OBO/NOBO distinction should be removed (at least after the record date) in a way that does not interfere with electronic voting;
- share lending rules should be clarified to minimize over-voting and empty voting;
- issuers should be required to disclose over-voting levels within voting results disclosure, explaining the methodology that was applied in dealing with the over-vote;
- the system should ensure access to the AGM in a non-voting capacity for representatives of institutions that prefer to vote electronically;
- proxy voting disclosure requirements should be extended beyond mutual funds.

Should you have any questions with regard to this submission, please do not hesitate to contact Michelle de Cordova, Director, Corporate Engagement & Public Policy (mdecordova@NEIinvestments.com, 604-742-8319).

Sincerely,

NEI Investments

Robert Walker
Vice President, ESG Services & NEI Ethical Funds

CC:
Ms. Michelle de Cordova, Director, Corporate Engagement & Public Policy, NEI Investments
Mr. Randy Evans, Senior ESG Analyst, NEI Investments