Securities Transfer Association of Canada

William J. Speirs
President

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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial and Consumer Affairs Authority
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
New Brunswick Financial and Consumer Services Commission
Superintendant 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

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Dear Sir / Madam

The Securities Transfer Association of Canada ("STAC") welcomes the opportunity to comment on the CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure* "54-401". 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.

On behalf of our members, we are providing responses to specific questions posed by the Canadian Securities Administrators ("CSA").

In developing its comments, STAC continues to endeavour to keep in mind the principal goals of National Instrument 54-101 ("NI 54-101"):

- Equitable treatment of all shareholders
- Practical and flexible ways to allow beneficial owners of securities to vote their securities and attending the meeting in person, if they want;
- Efficiency in the process;
- Explicit definition of the obligations of all stakeholders in the communication process;
- Ensuring that there is a balance between maintaining a shareholder's expected right of privacy and the Issuers' right to know who its shareholders are.

STAC thanks the members of the CSA for their continued focus on the proxy system.

We would be glad to discuss these comments and provide additional feedback as the CSA continues its efforts to review and improve the existing Proxy Voting structure.

Yours truly,

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We are providing responses to those questions in **Part 5 – Proposed issues for further review**, and **Part 6 - Other issues** that relate specifically to Transfer Agents. We have provided statistics where they are available. Please note that STAC members have agreed to undertake the tracking of any statistics that are not currently available, and intend to have additional statistical insight which will be provided to the CSA at a future date.

Section 5.1.2 – Omnibus proxies and restricted proxies

Question 1 – How often are tabulation issues caused as a result of missing or incomplete omnibus proxy documentation? How could this be remedied?

Of the STAC members who have tracked these statistics, tabulation issues were caused as a result of missing or incomplete omnibus proxy documentation at approximately 22% of the meetings held in 2013. Additional research by at least one large transfer agent has shown that 89% of such cases of incomplete or missing proxy documents occurred due to US intermediaries holding shares through a custodian at The Canadian Depository for Securities ("CDS"), rather than with the Depository Trust & Clearing Corporation ("DTCC"), and lodging votes directly without a supplemental omnibus proxy document. The supplemental omnibus proxy should be provided by the Canadian custodian to delegate the voting right from the Canadian custodian to the US intermediary. Without this supplemental omnibus proxy, the issuer's tabulator is unable to validate the votes lodged by the US intermediary. Such votes are often lodged close to the proxy cut-off date, leaving limited or insufficient time for resolution. The tabulator is not able to ascertain which Canadian custodian is acting for the US intermediary, in order to try to validate the vote. The entire vote for that US intermediary must be rejected because the entitlement to vote cannot be established.

We understand that this situation is currently being exacerbated by DTCC having to push out ineligible issues which they had previously accepted; these positions are being moved to CDS through Canadian intermediaries.

As an aside it should be noted that not creating a supplemental omnibus proxy leaves the Canadian intermediary with more shares in their voting position than there should be which might result in overvoting in other positions going undetected.

STAC is of the opinion that full reconciliation of record date mailing files by intermediaries to balance entitlement to vote with the number of shares held (so-called 'pre-reconciliation') along with providing missing or incomplete omnibus proxy documentation, prior to tabulation commencing, is critical to correct current problems with the proxy system. We strongly believe that starting the material distribution and voting process with correct and balanced records and full documentation will alleviate many of the problems that currently occur.

It is especially important that the voting entitlement on lent shares be properly addressed. In particular we find it hard to reconcile IIAC's report[1] that their members' practice of allowing securities lenders to vote their shares with the fact that the lent shares are usually being delivered to a purchaser who bought the right to vote. The notion of attempting to paper it over with a proxy from the borrower after the mailing to both the lender's beneficial owners and purchaser's beneficial owners has taken place is impractical.

[1] IIAC response letter to OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues* (March 31, 2011), online: <http://www.osc.gov.on.ca/en/30575.htm>

Question 2 – How often, and in what circumstances, are restricted proxies being used?

Of the STAC members who have tracked these statistics, restricted proxies were used at approximately 15% of the meetings that were held in 2013. Restricted proxies are typically used in situations where intermediaries are bypassing the Broadridge system to submit a vote, or they are not a client of Broadridge. We would also note that restricted proxies are more common in meetings that are contentious, which further heightens scrutiny level needed for every proxy received.

Restricted proxies, in and of themselves, do not cause problems. A restricted proxy is merely a proxy that an intermediary has provided to a beneficial investor that is "restricted" to the specific number of shares held by that beneficial investor on record date. The beneficial holder can then complete the proxy and submit it to the tabulator directly. However, a restricted proxy will cause problems unless the intermediary is required to take steps to make sure that the shares are not voted elsewhere (e.g. through Broadridge.). When a restricted proxy is received, the tabulator cannot check whether that beneficial investor has already used a Voting Instruction Form to instruct the intermediary to file a vote because the vote will have been lodged with the tabulator as a single bulk vote combined with votes from other investors. The tabulator has no means of ensuring whether the intermediary has adequate controls in place to prevent such duplication of an investor's vote.

Improved transparency in the system, at a minimum at record date, and issuer solicitation of all beneficial owners, as discussed further at 6.1 below, would also alleviate this risk by enabling validation of the beneficial owner voting against a fully-disclosed record date file.

Question 5 – 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?

We recommend that the current provisions in Companion Policy 54-101CP ("54-101CP") requiring intermediaries to submit reconciled files (at Section 4.3) should be given regulatory force by being included in National Instrument 54-101 ("NI 54-101"). The requirement should include details of the steps that must be covered by the reconciliation process including the provision of supplemental omnibus proxies. The statistics on over-voting and missing or incomplete proxy documentation provide compelling evidence that pre-reconciliation is not occurring systematically. Accordingly, we believe that pre-reconciliation should be a regulatory requirement for all intermediaries.

Some of the steps could include:

- Reconciliation of the total record date share position with the total shares held for beneficial owners and other intermediaries
- Adjustment to reflect pending trade settlements
- Reduction of positions with respect to lent securities
- Preparation of supplemental omnibus proxies with respect to securities held for other intermediaries with consequent reduction in shares available for voting by the intermediary holding the securities
- Preparation of omnibus proxies with respect to shares not held in CDS

The reconciliation process would be similar to the process used by intermediaries to reconcile dividend payments and other entitlements.

The preparation of supplemental omnibus proxies is important because our analysis has indicated that a substantial majority of voting concerns are related to voting by US intermediaries that hold securities through a Canadian custodian in CDS. The beneficial owners of those shares cannot have their votes counted unless the CDS sub custodian proxy is provided.

STAC additionally recommends that the current provisions in Section 4.3 of 54-101CP be enhanced as part of NI 54-101 to require from a Senior Officer of each intermediary certification that they reconcile all beneficial investor files. Notionally the certificate could be provided for every meeting, similar to the confirmation of mailing transfer agents produce for every meeting. However, if that is too onerous then an annual certificate could be considered. The certificate should also be available, on demand, to issuers involved in a contentious meeting.

Being directly accountable to their issuer clients, STAC members have a legal obligation to follow the requirements of NI 54-101, as not doing so may invalidate the meeting. In addition, STAC members provide the scrutineer and tabulation reports at investor meetings and are thereby liable for decisions made by the Chair as to quorum and final voting results on specific motions. It should be noted that STAC members, as a matter of practice, qualify their reports with respect to aspects of the voting process over which they have no control.

Section 5.1.3 – Over-reporting and over-voting

Question 1 – How often do over-reporting and over-voting occur (including pending over-votes that are ultimately resolved)?

It is important to note that over-voting and over-reporting are only indicators of extreme out of balance situations. There is no way to identify double voting of shares that goes undetected because there are enough unvoted shares to conceal the problem, specifically those belonging to beneficial owners who do not vote or even get material due to the material selection option available in NI 54-101.

Of the STAC members who have tracked these statistics, approximately 51% of meetings from 2013 had occurrences of over-reporting and over-voting. In combination, over-voting and missing omnibus documentation result in votes for more than an estimated two billion shares annually not being counted.

The incidence of potential over-votes that are resolved by the tabulator or proxy solicitor before the meeting is not a statistic that has been tracked by STAC members to date. We will endeavour to start tracking this statistic for any future meetings, and provide the CSA with our findings.

Question 3 – Is over-reporting or over-voting more common for certain types of intermediaries than others, e.g. smaller intermediaries, intermediaries who do not subscribe to Broadridge's services? Are NOBO solicitations by issuers a factor in the frequency of over-reporting or over-voting?

We do not consider that issuer NOBO solicitations per se are a factor in the frequency of over-voting except to the extent that splitting the file between NOBOs and OBOs has exposed overvoting situations either because the NOBO file alone exceeds an intermediary's record date position or there are not enough shares left to accommodate all the votes received from OBOs which might otherwise be absorbed by unvoted NOBO securities.

Where the issuer has solicited Canadian NOBOs, our members found no incidence of over-voting because the NOBO file is reconciled to the intermediary position before Voting Instructions Forms are mailed. However the agent has no way of knowing whether the NOBO file includes positions that should not be entitled to vote.

Question 5 – 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?

As discussed in Question 5 of section 5.1.2 above, STAC recommends that all intermediaries be required to pre-reconcile and provide supporting proxy documents. This obligation should be embedded in NI 54-101 rather than in 54-101CP. These problems will be largely addressed when there is some certainty that the records going into the process are fully pre-reconciled and documented as outlined above.

Section 5.2 – End-to-end vote confirmation

Question 2 – 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 vote 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?

STAC supports calls for end to end vote confirmation for investors. We are of the opinion that confirmation of the acceptance or rejection of a vote should take place as soon as possible after the vote is received, and, wherever possible, in advance of the meeting. The confirmation should be available to the investor themselves, through the intermediary, as they are the ones with the information needed to correct any discrepancies. The investor who owns the shares has cast their vote through a position carried by the intermediary who should be accountable for making sure that their voting files will allow the vote to count. In addition to receiving confirmation that the vote was received, investors should subsequently receive confirmation that the vote was in fact counted at the meeting.

STAC is committed to working with the CSA and our industry partners to develop such a process in parallel with resolving the current problems with the structure of the proxy system.

However there is a major caveat. End to end vote confirmation won't really be feasible until reconciled records are being used. STAC members currently receive votes from Broadridge during the tabulation period, which are applied against a bulk position for each intermediary; multiple voting files can be received and added to the position. Because of this, they will not be able to confirm that the vote has been accepted until the last file is received because they won't know until then that they are not going to receive votes for more securities than are available. At that point we would need to establish standards with Broadridge as to how their client intermediaries want the vote handled, e.g. reject the entire vote or only the voting file that takes the vote over the limit of shares.

In considering vote confirmation, it is important to note also that an aggregate vote that encompasses many smaller investor positions can only be confirmed as receipt of a single vote by the tabulator. For beneficial investors to then receive confirmation, it will be necessary for the intermediary or its service provider to communicate this. If the tabulator can only confirm that a portion of the vote has been accepted, we question how that intermediary will identify which of their underlying beneficial investors' vote have been counted unless they have pre-reconciled their clients' voting positions before the voting files were transmitted. It cannot be an arbitrary process.

We understand that Broadridge and other members of the US market are currently working towards a pilot system for vote confirmation and suggest that this can be referenced in developing an appropriate solution for Canada. STAC does not believe, given the concentration of votes passing through Broadridge, that it should be difficult to set up a process that will provide prompt confirmation of whether votes have been tabulated as directed. Based on that, Broadridge should be able to work with participants to rectify any problems, but again, there needs to be some certainty that the problems are being resolved in such a way as not to prejudice the integrity of the vote.

Further, end to end vote confirmation will be more difficult in a situation where a dissident proxy has been mailed because of the possibility of management votes being revoked in favour of the dissidents and vice versa

Lastly end to end confirmation of how votes are actually cast at a meeting will be subject to revocations, exercise of discretionary authority to vote and security holders deciding to vote in person.

Section 6.1 – Impact of the OBO-NOBO concept on voting integrity

Question 1 – Are there any specific instances where the existence of the OBO-NOBO concept has compromised the accuracy and reliability of proxy voting?

As noted above, STAC members have all noted incidents where the OBO-NOBO concept has indicated questions about the accuracy and reliability of the voting files. This occurs when the NOBO record date mailing file either exceeds the intermediary's position or does not leave enough securities to cover their OBO position.

Once the intermediary is made aware of the problem, it is typically quickly rectified. However, this prompts substantial questions as to the overall accuracy of the records received, when it is dealt with reactively as opposed to pro-actively, also as well as how such situations are resolved in a way that ensures that all properly entitled investors are able to vote.

In addition the lack of transparency of the OBO data complicates the process of identifying who may be entitled to vote the shares.

Question 2 – 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?

STAC is of the opinion that the more transparency there is, the easier it will be to rectify voting discrepancies. It would enable those involved in the process to contact the beneficial owner directly rather than channelling requests through layers of intermediaries. This would also facilitate end-to-end vote confirmation to all investors.

We recognize that there are some institutional and individual OBO investors who wish to prevent their identities from being disclosed to the issuers. This could be achieved by using a nominee account or a segregated account in CDS while still facilitating greater efficiency and integrity in the voting process.

Any prejudice to the rights of OBO investors can also be addressed by setting up confidential voting processes as many issuers already do.

Section 6.3 – Accountability of service providers

Question 1 – What mechanisms are in place to support the accountability of the various service providers in proxy voting? How effective are these mechanisms?

As proxy tabulator and scrutineer for companies that trade in both the US and Canada, STAC members have accountability to their Issuer clients. Reports of voting on proxies and ballots that we provide to the Chair allow for confirmation that the meeting is properly constituted with respect to quorum, and that motions have passed by the required vote. Errors in those reports result in direct liability to the STAC

member. Unfortunately, as mentioned previously, the current problems with the proxy process have resulted in STAC members providing qualified reports to the Chair, as we are relying on reports from third parties that we cannot audit or verify.

As stated above, we believe that intermediaries should be held more accountable for providing reconciled records and at the very least, some type of certification process should be in place to confirm that.

Question 2 – 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?

STAC believes that the existing requirements simply need to be enhanced to make the reconciliation of files more specific and part of NI 54-101 itself along with some type of certification.