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Your reference

Our reference
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Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
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CSA Multilateral Staff Notice 54-304 – Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols

This letter is submitted in response to Multilateral Staff Notice 54-304 – Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols (**Staff Notice 54-304**) issued by the Canadian Securities Administrators (the **CSA**) on March 31, 2016. It reflects the views of a working group consisting of issuers having a combined market capitalization of more than $100 billion (the **Working Group**). We thank you for affording us an opportunity to comment on this important matter.

Through this letter, the members of the Working Group wish to provide general comments and discuss broad principles. Although we answer some of the specific questions posed in Staff Notice 54-304, the intent is not to discuss the mechanics and technicalities of the proposed protocols described in that notice (the **Protocols**).

General

It is not disputed that shareholder voting is one of the most important ways by which shareholders can affect governance, communicate preferences and signal confidence or lack of confidence in an issuer's management and oversight.

Over the last few years, numerous authors and market participants have raised questions on the reliability of our proxy voting system. Instances of over-voting, empty voting or mismatch between ownership and vote have been well documented.[1] Fixing our voting system must be a priority of the CSA. In doing so, the CSA must embrace innovation and coordinate required changes with corporate law authorities.

From a process standpoint, the objective is to match voting entitlements with the actual votes. In order to do so, each entitlement could, for instance, be identified by a serial number (tracker). Using such tracker, tabulators would be able to follow the votes in the system. We believe that many Canadian technology companies are able to create a technological platform that would allow such tracking of the votes. As a second-best solution, the CSA could require market participants to use a computerized protocol, with standard fields.

In order to match voting entitlements to actual votes, the CSA should rethink the OBO-NOBO distinction and allow tabulators to identify who is entitled to vote. Confidentiality of voting should not be an issue : the identity of shareholders entitled to vote can be protected by tabulators in the same way as confidentiality of voting is currently protected at various meetings of shareholders. Furthermore, nominee accounts or segregated accounts can be used by shareholders: they prevent the disclosure of the shareholders' identification while keeping efficiency and integrity in the voting process.

The Protocols, as proposed, seem to increase the work for tabulators, as they will have the onus to reach out to intermediaries if there is a problem. This would need to be done at the back-end of the process, under extreme time constraints. Multiple issues would indeed arise late in the process and, with standard cut-off time being 48 hours prior to a shareholder meeting, the time to properly resolve these issues would be insufficient. This is inefficient and costly. Instead, tabulators should be able to rely on a system that guarantees the matching of voting entitlements to actual votes throughout the process.

Other jurisdictions are better than Canada at allowing the tracking of votes.[2] However, Canada is well positioned at this time in its reflection on the proxy voting infrastructure to take an innovative approach and embrace digital information technology as a solution to the challenges faced in this area. We should not be discouraged by the complexity of the system.

CSA Request for Comments

You will find below the comments of the members of the Working Group in response to each question set forth in Staff Notice 54-304.

1 The Protocols contain detailed guidance on operational process to support accurate, reliable and accountable proxy voting. Does the guidance achieve this objective? If not, what specific areas can be improved, or what alternative guidance could be provided?

There is currently an information gap between voting entitlements and actual voting. Ideally, the matching process would be fully automated. The members of the Working Group are of the view that piling on "old-fashioned" processes is not the answer to the problem. Instead, a computerized system, used by all market participants, should be put in place.

[1] See for instance: C. Hansell et als, *The Quality of Shareholder Vote in Canada*, October 22, 2010, Davies, available at: www.dwpv.com and CSCS, *Inaugural report, Shareholder democracy summit*, October 24-25, 2011 available at: www.cscs.org.
[2] See for instance the description of the Australian system in: Computershare*, Transparency of Share Ownership, Shareholder Communications and Voting in Global Capital Markets*, March 2015, available at www.computershare.com.

2 *What are the cost and resource impacts on key stakeholders of implementing the information and communication improvements contemplated in the Protocols? In particular, what issues do intermediaries such as investment dealers anticipate in implementing the Protocols, and to what extent would any additional costs associated with implementing the Protocols be passed on to issuers or investors?*

The members of the Working Group are of the view that an automated voting system should be developed and supported by regulators and financed through the existing fees paid by issuers and other market participants. Issuers should not have to bear additional costs in this regard.

Once developed, such system would generate efficiencies and economies of scale and could even be exported to other jurisdictions.

3 *What is a reasonable timeframe for implementing the information and communication improvements contemplated in the Protocols?*

A period of five years should be enough to develop and test a fully automated platform that would reconcile entitlements and actual voting. Requiring market participants to use standard fields and an automated system should be doable within two years. If instead regulators were to use the proposed Protocols, this could be done within a year.

4 *Which aspects of the Protocols (if any) should be codified as securities legislation, and which as CSA policy or CSA staff guidance?*

Some of the solutions favored by members of the Working Group and described above would require changes to corporate law. Securities regulators should thus coordinate their efforts with corporate law authorities.

In all cases, voting protocols should be codified through securities rules. Such rules are more flexible and can be changed more easily than legislation and still allow enforcement to take place.

5 *Not all the entities that engage in meeting vote reconciliation are "market participants" or subject to compliance review provisions (where the "market participant" concept does not exist) under securities legislation. Do you think that all entities that play a key role in meeting vote reconciliation should be "market participants" or subject to compliance review provisions, including proxy voting agents and meeting tabulators?*

Given the importance of voting, all those who play an active role in vote reconciliation should be regulated and subject to auditing by securities regulators. That would include tabulators, market intermediaries and brokers.

Conclusion

Resolving the numerous issues that prevent reconciliation between entitlements to vote and actual voting requires determination, courage and innovation. Members of the Working Group believe that such a task should be performed by securities regulators, in coordination with corporate law authorities.

In doing so, the challenges are significant but the objective is essential for the credibility and fairness of our capital markets.

Yours very truly,

(signed)

Norton Rose Fulbright Canada LLP