

SHAREHOLDER DEMOCRACY SUMMIT

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CSCS

INAUGURAL REPORT

SHAREHOLDER DEMOCRACY SUMMIT

TORONTO, ONTARIO
OCTOBER 24 - 25, 2011

THE SHAREHOLDER DEMOCRACY SUMMIT IS AN INITIATIVE OF THE CANADIAN SOCIETY OF CORPORATE SECRETARIES ("CSCS")

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ACKNOWLEDGEMENTS

The CSCS *Shareholder Democracy Summit* is made possible by the hard work and dedication of a large number of individuals and the organizations they represent, and it is important to acknowledge their contributions.

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PREFACE TO THE INAUGURAL REPORT

The *Shareholder Democracy Summit* (the “Summit”) is an initiative of the *Canadian Society of Corporate Secretaries* (“CSCS”). In their capacity as governance professionals our members are on the front line of the relationship between Canadian public companies and their shareholders.

Our members witness first-hand the efforts that issuers make to communicate effectively with their shareholders, and the results of those efforts as shareholders express them by exercising their voting rights and attending annual general meetings.

We know that the current processes of shareholder democracy deliver far less than issuers and shareholders alike have the right to expect.

CSCS has offered to participants and stakeholders in the Canadian capital markets that it will take the initiative of assembling the key players and working diligently and resolutely with them towards a fundamental renewal of shareholder democracy process.

The Summit, (and an earlier Symposium held in Toronto in preparation for the Summit), demonstrate clearly that a consensus has begun to form among participants that the time has come to work collaboratively and vigorously towards a renewed shareholder participation platform.

This Inaugural Report is a first step in that endeavour.

Toronto, February 2, 2012

A handwritten signature in black ink, appearing to read 'David Masse', with a long horizontal flourish extending to the right.

David Masse
Chair, Organizing Committee
CSCS Shareholder Democracy Summit

1. Day One - Opening Remarks

PANEL SUMMARY:

This session provided a brief introduction to the topics that were to be covered by the various panels over the coming day. As well, these remarks outlined the goals for the summit and the key points to consider over the course of the following two days.

SPEAKERS:

David Masse – Senior Legal Counsel and Assistant Corporate Secretary, CGI Group Inc. Based in Montreal, Mr. Masse is responsible for corporate and securities law matters as well as related compliance activities in more than 90 jurisdictions worldwide and manages the day to day affairs of the CGI board of directors and its standing committees. He is also the Chairman of the Board of the Canadian Society of Corporate Secretaries (CSCS).

Rick Gant – Regional Head, Western Canada, RBC Dexia. Mr. Gant is responsible for managing RBC Dexia’s business in Western Canada from their two branches in Calgary and Vancouver. He has been in financial services for 22 years, 20 of those years with RBC.

OPENING REMARKS:

David Masse

- Carol Hansell’s/Davies’ paper “*The Quality of the Shareholder Vote In Canada*”¹ is the reference work upon which all the other contributions to this summit must ultimately rest.
- The mission we are undertaking is to find the path that will make the Canadian capital markets a world leader in shareholder democracy.
- Never has a private organization taken on the initiative of convening a summit meeting of government agencies and self-regulatory agencies, national industry associations, private sector enterprises and institutions and experts from abroad with a view to undertaking a reform of this scope, and with this much at stake for the competitiveness of a nation in the global economy.

¹ *The Quality of the Shareholder Vote in Canada* » a research lead by Carol Hansell, managing partner in corporate finance and securities, governance, mergers and acquisitions, Davies Ward Phillips & Vineberg LLP, Toronto, Chair, Corporate Governance Committee, American Bar Association, Canadian Foundation for Governance Research, director, Bank of Canada, Toronto East General Hospital, Investment PSP, member, consultative committee, corporate directors, Institute of Canadian Chartered Accountants (ICCA); Mark Q. Connelly, partner, corporate and commercial law, corporate finance and securities, mergers and acquisitions, Davies Ward Phillips & Vineberg LLP, Toronto; Michael Disney, partner, corporate finance and securities, financial restructuring and solvency, mergers and acquisitions, structured finance, Davies Ward Phillips & Vineberg LLP, Toronto ; Gillian Stacey, partner, corporate and commercial law, corporate finance and securities, mergers and acquisitions, technology, private equity and energy, communication and media, Davies Ward Phillips & Vineberg LLP, Toronto ; Tim Baron, partner, corporate finance and securities, structured finance, Davies Ward Phillips & Vineberg LLP, Toronto ; Adam E. Fanaki, partner, competition, foreign investment review and litigation, Davies Ward Phillips & Vineberg LLP, Toronto ; Richard Fridman, partners, corporate and commercial law, corporate finance and securities, financial restructuring and solvency, mergers and acquisitions, Davies Ward Phillips & Vineberg LLP, Toronto. October 22, 2010

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- Our business for the next two days is demolition work: We will be tearing down the silos in which we work to achieve a level of transparency and mutual understanding about the voting system that we hope will allow us to go beyond the boundaries of our current understanding.
- A basic summation of the proxy-plumbing problem: Votes go in, seem to disappear, or multiply.
- Many say the problem is too complex, the players too numerous, the cost prohibitive.
- Substantial benefits have already begun to flow, even before this summit was convened.
- The end goal of this whole process (*this summit is only the first step*) is to change the system.
- The proximate goal is for a second summit, which will focus on creating the most efficient voting platform of any in the world.
- We are seeking, during this summit, to impose as few constraints as possible, and for as many ideas to come forward as possible.
- We are looking to ferret out the truth, uncover the red herrings, dispose of some sacred cows, map out the processes and ultimately collaborate and distil a new, transparent and open proxy voting system.

Rick Gant

- RBC Dexia convened a previous gathering, on a smaller scale, earlier this year.
- The biggest lesson learned through that process, was the willingness of participants to actually get together and discuss the proxy plumbing system.
- Even amongst expert stakeholders playing similar roles at that gathering, surprising results arose with respect to how little was known about the proxy system.
- That symposium was prompted by meetings between British Columbia Investment Management Corporation (“BCIMC”) and RBC Dexia
- The Canadian Coalition for Good Governance (“CCGG”) was eventually brought in, and between CSCS and CCGG (representing the buy side and issuers), things started moving to culminate with the summit today
- Overall, the system “isn’t that bad,” and there are a number of areas that function well.
- But there are three definitive areas that require our attention: Transparency, reconciliation from end to end, and vote confirmation

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“The mission we are undertaking is to find the path that will make the Canadian capital markets a world leader in shareholder democracy

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We are looking to: ferret out the truth, uncover the red herrings, dispose of some sacred cows, map out the processes and collaborate and distil a new, transparent and open proxy voting system.”

- David Masse, Chairman, CSCS

“...Surprising results arose with respect to how little was known about the proxy system.

There are three definitive areas that require our attention: Transparency, reconciliation from end to end, and vote confirmation”

- Rick Gant, Regional head, RBC Dexia

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- It is hard with so many layers in place (i.e. issuer, regulators, retail side, the buy side etc.) to fully examine and assess the system.
- There are a slew of stakeholders that need to get to work together, but the hope is to get a number of working groups together to tackle this problem and continue the momentum that has been building to address this issue.
- By the end, stakeholders were pledging support for investigating shareholder democracy.

2. Day One – Shareholders’ Panel

PANEL SUMMARY:

This session focused on the shareholder’s economic and governance roles, policy objectives, expectations of the proxy voting process and perceived opportunities for improvement. Specific topics included the approaches employed by the panelists’ organizations in the lead-up to proxy voting, issues surrounding share lending and the possibility of over-voting, and the need for increased transparency in the proxy voting system as a whole.

KEY TOPICS:

- 1) How does the panel undertake proxy voting?
- 2) Issues Affecting Shareholders

PANEL MODERATOR: William (Bill) Mackenzie - Senior Advisor, Hermes Equity Ownership Services. Prior to joining Hermes as a Senior Advisor, Bill was Director of Special Projects with the Canadian Coalition for Good Governance (CCGG). Prior to working with CCGG, he spent most of his career serving as the president of governance for ISS Canada.

PANELISTS:

Danielle LaRivière – Partner, Operations and Compliance, Jarislowsky Fraser Limited (JFL), Montreal. Ms. LaRivière has been a partner at JFL since 2004, following a 16-year stay at the CN Investment Division (Pension Fund), first as a research analyst and finally as portfolio manager. In her current role within operations and compliance, Ms. LaRivière is responsible for the proxy voting process at JFL, ensuring that voting is executed in accordance with the firm’s policies and are properly documented.

Paul S. Schneider – Senior Investment Associate, Corporate Governance, Ontario Teachers’ Pension Plan (OTPP). Mr. Schneider joined the OTPP in January 2010 and is currently responsible for the Fund’s global corporate governance initiatives, including corporate governance policy development, shareholder engagement and proxy voting activities. Prior to joining OTPP, he spent six years at the Canadian Coalition for Good Governance (CCGG), where he contributed to the Coalition’s policies and guidelines on a wide range of governance-related issues.

Jason J. Milne – Manager, ESG Policy and Research, Philips Hager & North. Mr. Milne is the current in-house expert on environmental, social and governance issues as they relate to the investment process. His current responsibility at PH&N is overseeing proxy voting, and prior to joining PH&N he worked as a mutual fund accountant in the corporate finance department of a national brokerage firm.

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DISCUSSION:

Setting the Stage for the Panel (Bill Mackenzie)

- This group represents the money at the table and any solutions must include the input of shareholders
- So often it used to be that voting proxies was a secondary concern of shareholders.
- There has been an encouraging shift on the part of institutional shareholders to make voting a primary responsibility.
- There are three baskets of change this summit should be concentrating on
 1. Confidence in the proxy voting system.
 2. Ensuring a simple, efficiency and effective system.
 3. The representation and protection of shareholder rights.

TOPIC 1- How does the panel undertake proxy voting?

Danielle LaRivière:

- Jarislowsky Fraser (JF) takes proxy voting seriously, and clients will often request that JF vote on their behalf.
- The Investment Strategy Committee reviews all investment decisions or upcoming proxies and seeks to ensure that no outstanding questions are left on the table.
- Decisions are reached in part using research provided by Glass Lewis and ISS reports, as well as new information from issuers and the market.
- Proxy voting personnel work to be consistent and any votes against the recommendations of management are well documented throughout the process.

Paul Schneider:

- The Ontario Teachers Pension Plan votes through an internal process, based on its proxy voting guidelines.
- These guidelines are made public on the OTPP website and are a guiding framework for voting, not a set of rigid rules.
- If the OTPP votes against management or against their guidelines (based on case by case analysis), a commentary provided as to why the OTPP chose to vote the way it did.
- The OTPP publishes votes slightly prior to the meetings it votes in.
- The OTPP uses Glass Lewis as an input into the entire system of proxy decision-making but they are not beholden to Glass Lewis' recommendations; those recommendations are only one part of the information gathering process.
- As well, Glass Lewis adheres to its conflict of interest policy when advising OTPP, given that OTPP now owns Glass Lewis.
- In addition to its own analysis, the OTPP belongs to international governance networks (CCGG, ICGN, etc.) to understand emerging trends in corporate governance and best practices, but not to get voting advice from other institutions.

Jason Milne:

- Philips Hager & North (PH&N) takes an active approach to proxy voting and vote based on their internal proxy guidelines

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- The guidelines are instructive, but are not meant to be rigid rules, and so they are continually reviewed and updated to account for emerging best practices.
- As of this year, PH&N is using ISS for a voting platform and for vote recommendations, but in previous years they utilized the ProxyEdge platform through Broadridge, with research provided by Glass Lewis.
- Voting recommendation are generated by ISS, but are based on PH&N's internal guidelines that have been input into the system.
- PH&N is required to vote in the best interests of its clients, and so it will sometimes vote against its own guidelines on a case-by-case basis, though such a vote must be reviewed by PH&N's Corporate Governance committee prior to being cast.
- Research is currently purchased from both ISS and Glass Lewis to inform the internal voting process.
- Approximately 80% of PH&N's portfolio is composed of institutional funds and the firm maintains an ongoing dialogue with its institutional clients regarding how they plan to vote and the continued importance of shareholder voting and corporate governance practices in general.

Bill Mackenzie:

- Hermes, the pension plan of British Telecom workers, has had an established department to vote proxies and to be an active owner, for many years.
- What began as a department of 7 people in the UK is now 30 people, but Hermes has expanded beyond BT workers as their sole beneficiaries.
- Hermes votes based on its corporate governance proxy voting guidelines, which are loosely worded, and meant to encourage investigation into what systems are in place at a given portfolio company.
- Portfolio companies are examined on a case-by-case basis with respect to these guidelines prior to a vote being cast.

TOPIC 2- Issues Affecting Shareholders

Bill Mackenzie:

- We need to focus on building confidence in the system and what problems are inhibiting that.
- Indiscriminate cutoff dates from custodians and sub-custodians are one of the major problems facing institutional investors.
- As an example, proxy meeting cutoffs through a foreign custodian are 10 days and it is not clear why this is the case and what motivated this rule.

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“The Investment Strategy Committee reviews all investment decisions or upcoming proxies and seeks to ensure that no outstanding questions are left on the table. Decisions are reached in part using research provided by Glass Lewis and ISS reports, as well as new information from issuers and the market.”

**- Danielle LaRivière,
Jarislowsky Fraser**

“The OTPP uses Glass Lewis (owned by OTPP) as an input into the entire system of proxy decision-making but they are not beholden to Glass Lewis' recommendations, which are only one part of the information gathering process.”

**- Paul Schneider, Ontario
Teachers**

“PH&N votes based on its internal proxy guidelines. As of this year, PH&N is using ISS, but used previously the ProxyEdge platform through Broadridge, with research provided by Glass Lewis.”

**- Jason Milne
Philips Hager & North
(PH&N)**

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“Hermes votes based on its corporate governance proxy voting guidelines, which are loosely worded, and meant to encourage investigation into what systems are in place at a given portfolio company.”

**- Bill Mackenzie
Hermes**

“Shareholders with broker-held accounts face difficulties in voting because many broker-held platforms lack the necessary fields to send the requisite proxy voting information to us.”

When a retail investor sets up an account, proxy voting is set up through a custodian who has control over that voting account. Custodian are often a middle office that does not have an expertise in proxy voting, with a high turnover in personnel during proxy season.”

**- Danielle LaRivière,
Jarislowsky Fraser**

Danielle LaRivière:

- Retail investors face a number of difficulties with respect to voting, and they vary depending on whether the retail shareholder has a broker-held account or a multi-manager account.

Broker-Held Accounts:

- Shareholders with broker-held accounts face difficulties in voting because many broker-held platforms lack the necessary fields to send the requisite proxy voting information to Jarislowsky Fraser.
- These platforms were set up 20 years ago when proxy voting was much less prominent among investors and retail shareholders, and so those shareholders who choose a broker-held account are indirectly waiving their voting rights because the broker platforms do not have the capacity to vote.
- These retail clients represent 20% of all shareholders who want their votes cast by professionals, and if those votes can't be cast, they want to know why.

Multi-Manager Retail Accounts:

- Managers should be able to aggregate votes by manager, but they are not able to do so in these accounts.
- Managers of these accounts are able to send clients their statements showing the shares they own but they still cannot aggregate for voting purposes.
- When a retail investor sets up an account, proxy voting is actually set up through a custodian and that custodian has control over that voting account.
- The relationship between a manager and the custodian is important as a result
- Custodian are often a middle office that does not have an expertise in proxy voting, and which experience a large amount of turnover in personnel, especially during proxy season.
- There is a wide range of quality amongst custodians: There are those who are excellent with voting, and those who have high turnover and training problems among their staff because of the turnover rate.
- Even if a ballot does get voted by a custodian, once the ballot is in, if it is incorrectly coded, then it will not get counted so it is crucial that the personnel in charge of submitting the ballots is checking that everything has been properly executed.
- Until this is solved, these programs should explain to retail investors that they might be unable to vote as a result of their multi-manager account.

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Recalling Shares Out on Loan:

- Recalling of lent securities is supposed to occur on T+3, but this often does not occur.
- The system is, for the most part, very manual and it is difficult to get shares back on time, but when shares are not recalled on time, the risk of over voting and empty voting increases.
- Should there be a discussion to determine if penalties should be levied against those who do not return shares in time?
- We need to consider all options as to how to ensure compliance with T+3.

Paul Schneider:

- Transparency is where, from a shareholder perspective, the confidence issues in the system stem from.
- The institutional vote is now a major area of concern because proxy voting is growing in prominence and so these votes are becoming highly visible.
- The OTPP sees three areas of concern:

1) Lack of an end-to-end confirmation of the vote

- At present, the OTPP can confirm that Broadridge has received a vote, but there is no confirmation that it was counted or if it was entered as instructed.
- SEDAR aggregated results are cold comfort
- This concern becomes more acute, the more contested a meeting becomes.
- It is important for shareholders and issuers to know the vote is coming in properly and accurately, but without end-to-end confirmation, there will remain a nagging question around voting accuracy.
- Voting should not be based on hope, voting should be based on the idea that the vote will arrive as it was intended to.

2) Over Voting:

- The main culprit behind over voting appears to be share lending and as of now we have no way to reconcile that shareholder A had X number of shares and voted X number.
- A major question to address is, when a share is out on loan, who has the vote? We need clarity on this issue, and a system around this to say “this is where the vote goes when a share is lent out”
- This concern ties back into the concerns noted earlier about shares being recalled by T+3; the system needs to recall shares fast enough for them to be voted at meetings.
- The OTPP also has a concern with how votes are being dealt with by tabulators, specifically First In First Out (FIFO) and pro-rating as corrections for over voting.

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“Once the ballot is in, if it is incorrectly coded, then it will not get counted so it is crucial that the personnel in charge of submitting the ballots is checking that everything has been properly executed.”

Recalling loans is supposed to occur on T+3, but this often does not occur. The system is very manual and it is difficult to get shares back on time, but when shares are not recalled on time, the risk of over voting and empty voting increases.”

**- Danielle LaRivière,
Jarislowsky Fraser**

***“Institutional voting is a major area of concern because proxy voting is growing in prominence and these votes are increasingly visible with 3 areas of concern:
✓ No confirmation of count or of compliance;
✓ No reconciliation of shareholder votes and holdings;
✓ Difficult system mapping.”***

**- Paul Schneider, Ontario
Teachers**

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- The problem with FIFO is one of fairness: Those who get their votes in prior to reaching the number of outstanding shares will have their votes counted, but those who submit afterwards do not.
 - There is also a lack of transparency as to which method is applied by tabulators to fix over voting as well; both methods disenfranchise voters who have a legitimate right to vote and voters never know which is used.
 - These processes only seem to kick in when the number of votes cast exceed the total number of shares outstanding.
 - But even if the number of outstanding shares is not reached, over voting remains a problem because there is still the potential for those who should not have a vote to be voting.
 - Voters who should not be able to influence the votes are doing so even when the number of votes cast is below the number of shares outstanding.

“We need clarity on a system to say ‘this is where the vote goes when a share is lent out’

OTPP is concerned by how votes are being dealt with by tabulators, specifically First In First Out (FIFO) and pro-rating as corrections for over voting. The problem is one of fairness: Those who get their votes in prior to reaching the number of outstanding shares will have their votes counted, but those who submit afterwards do not.”

**- Paul Schneider,
Ontario Teachers**

3) Mapping out the proxy voting system

- The system is very complex, and it is uncertain if all the actors know the roles of each other, and how those roles work together.
- This type of complexity erodes confidence because market actors don’t understand what each other are doing.
- We need to aim to simplify the system.
- Market actors should be able to easily determine who they should be approaching to rectify problems that develop at different points in the current system, but right now that is difficult because of the layers of complexity.

Bill Mackenzie:

- The materials provided by RBC Dexia may contain a map of the proxy voting system
- ISS did a more complete map of the US system as well, including the direction of money flows through the whole process
- Confidence is key to enforcing the rights of shareholders because it affects the way we think of the system

Jason Milne:

There are three areas of concern within shareholder meetings.

1) Role of the Meeting Chair:

- The meeting chair retains discretion over how and whether votes are counted.
- The major concern for shareholders is how that discretion is exercised.
- This presents a potential conflict of interest because the role is usually occupied by the chair of the board, particularly at contested meetings.
- The role of the meeting chair has been defined to a degree, but moreso in terms of putting limits on certain practices as opposed to defining the role outright, or as to how it should be carried out.
- If shares are rejected, the only real recourse for a shareholder is to turn to the courts.

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2) Show of hands voting:

- Default voting method unless a shareholder asks for a ballot to be conducted
- If we're going to go to the effort and expense of sending out proxies, it would make sense to count the votes that come in via those same proxies to the meeting
- Show of hands impacts the reporting of proxy voting; allows the company to avoid providing an actual count of votes at the meeting
- It is not always the case that proxy materials/ballots are cast
- At a contested meeting, where there may be concerns about the quality of management or the quality of the board, these concerns may be indicative of other underlying issues at the company
- Counting votes is important for the markets in these contested meetings because they help the markets value the company more accurately
- Good voting disclosure is exactly what we are trying to get to

3) Voting in person:

- There are 3 distinct methods for a shareholder to be able to attend a meeting, vote, and have their vote counted:
 1. Become a Registered Shareholder which can take upwards of two weeks
 2. Request a legal proxy, also known as a "Voting power of attorney"
 - ✓ An issuer must comply if a shareholder requests a legal proxy, but it is a cumbersome process, with most steps done through by mail, which takes additional time and increase the risk of missing the cutoff date.
 3. Use an appointee system:
 - ✓ If you have received a paper ballot, you write your name in on the ballot and return it to the tabulator via your intermediary.
 - ✓ The tabulator will ensure a paper ballot is available at the meeting for you to vote
 - ✓ Most shareholders do not understand that they are not permitted to just show up with whatever materials were sent to them and expect a ballot.
 - ✓ All three methods are cumbersome and require lead time, and none allow a shareholder to show up at a meeting and vote (which would be ideal).
 - ✓ Ultimately the discretion to accept a vote remains with the chair anyway, so a shareholder could go through one of these processes and still see their vote rejected by the meeting chair.
- Overall, corporate governance is a cornerstone of capital markets
- If people have no confidence that a company is being run in their best interest, they won't invest, so good proxy voting system is key to the efficient operation of the capital markets

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“Confidence is key to enforcing the rights of shareholders because it affects the way we think of the system”

**- Bill Mackenzie
Hermes**

“There are 3 areas of concern within shareholder meetings:

- ✓ *The discretionary power of the chair;*
- ✓ *Show of hands allows the company to avoid providing an actual count of votes at the meeting*
- ✓ *There are 3 distinct methods to attend a meeting, vote, and have their vote counted-*

- As a registered shareholder (taking upwards of 2 weeks);

- As a legal proxy, or “Voting power of attorney”

- As an appointee system.”

**- Jason Milne
Philips Hager & North
(PH&N)**

QUESTIONS FOR THE PANEL:

1) Glenn Keeling:

- When do institutional votes actually come in to be counted?
- It seems to be that institutional votes come in close to the wire, why?
- Do all institutional votes go to their respective committees, or do they lie with the portfolio managers based on their individual expertise?

Q & A

When do institutional votes actually come in to be counted?

“Institutional voters generally try to get the vote in as soon as possible, but they often find that the information they want to use to make their decisions is not quickly forthcoming until closer to the cutoff date”.

- Paul Schneider, Ontario Teachers

“JF does not vote to the deadline. A single committee oversees voting, and all the analysts who interact with a portfolio company are in on the voting decisions at all times. If it is a contentious vote, the discussion may last up to a week to ensure thorough decision-making.”

- Danielle LaRivière, Jarislowsky Fraser

Paul Schneider:

- The delay is for information gathering, especially with contested meetings.
- Institutional voters generally try to get the vote in as soon as possible, but institutional investors often find that the information they want to use to make their decisions is not quickly forthcoming until closer to the cutoff date.
- Institutions want to be sure that they are executing the vote properly; they ensure that they have their Glass Lewis and ISS materials, and they speak with other investors to get clarity on issues.
- One person may have the responsibility to execute the vote, but many people have input
- Portfolio managers are consulted before voting in order to get their input, determine if there are any gaps in the information, and ensure that they are comfortable with the way the plan intends to vote, given the relationship that the portfolio manager has with the portfolio company.
- The overall guiding principle is “At the end of the day, is it good for the company, and good for the OTPP members?”

2) David Masse (Comment):

- When considering the speed of votes being submitted, consider the way dividends are transmitted and how seldom they are held up or lost.
- Dividend payments follow a similar path through the maze and yet they are efficiently distributed, so why is this not true of votes as well?

Danielle LaRivière:

- JF does not vote to the deadline.
- A single committee oversees voting, and all the analysts who interact with a portfolio company are in on the voting decisions at all times.
- If it is a contentious vote, the discussion may last up to a week to ensure thorough decision-making.
- JF have rarely changed their mind with respect to submitted votes.
- Voting close to the deadline is the product of additional information gathering and the speed with which custodians can submit the votes to issuers.
- Institutional owners do not often make a point to hold up the vote.

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- There is no clear insight as to why votes do not go through the same efficient system as dividends, but it is worth noting that custodians set up a different platform for dividends and votes.
- Proxy voting is not linked into the same system as dividends, and that is why you don't see over counting on dividends, for example.

Paul Conn:

- There is a big difference as to how votes and dividends are treated, and it is not necessarily as a result of there being a different platform for both.
- The difference is that issuers can manufacture a dividend; Cash can be pulled out of somewhere else to replace entitlements, if need be.
- Issuers cannot pull a vote from somewhere else and replace it if the system lose it.
- A lack of transparency in the system causes further problems.

Carol Hansell:

- Dividends are regulated as part of the clearance system, which was deliberately set up to make sure money didn't go missing.
- The same is not true of votes.

Bill Mackenzie:

- The view used to be that votes were votes but money was money
- Part of what this panel is trying to say is that votes should be treated on par with money; the old paradigm does not hold given the increasing importance of voting in the current corporate governance environment.
- One major difference is that with dividends, there are auditors in the process to see that dividends have been paid.
- There are no similar checks and balances for proxy votes coming in.

Jane Ambachtsheer (Comment):

- For small and medium size clients, there has not always been an opportunity to focus on proxy plumbing to the degree we are here, so there is room for improvement.
- In terms of institutions conducting reviews of management of their portfolio companies, there is a huge range, from large institutional investors who carefully scrutinize management, to SMEs, where this focus hasn't always been a priority.

Q & A

Should we develop a stewardship code for investors, such as in Europe and South Africa?

“PH&N is required to disclose voting for some investors, but many shareholders prefer private engagement over public in order to maintain a good relationship with a given issuer.”

*- Jason Milne
Philips Hager & North
(PH&N)*

“It is worth remembering that during proxy season, investors are dealing with over 250 meetings per week. Those meetings are going to have anywhere between 12 and 100 resolutions”

*- Sarah Wilson,
Manifest*

- Should Canada be developing a stewardship code for these investors, as has been done in Europe and South Africa?
 - The CCGG in 2010 updated the principles on monitoring and shareholder engagement, and these seem like a possible platform for something more like a stewardship code.

Q & A

Dividend payments follow a similar path and yet are efficiently distributed, so why is this not true of votes?

“There is a big difference as to how votes and dividends are treated, and it is not necessarily as a result of there being a different platform for both. The difference is that issuers can manufacture a dividend; Cash can be pulled out of somewhere else to replace entitlements, if need be. Issuers cannot pull a vote from somewhere else and replace it if the system lose it.”

*- Paul Conn,
Computershare*

“One major difference is that with dividends, there are auditors in the process to see that dividends have been paid. There are no similar checks and balances for proxy votes coming in.”

*- Bill Mackenzie,
Hermes*

Jason Milne:

- Large shareholders prefer informal or private engagement to openly disclosed engagement
- PH&N is required to disclose voting for some investors, but many institutional shareholders prefer private engagement over public in order to maintain a good relationship with a given issuer.
- A relationship with a portfolio company becomes more difficult if they know you will be going public with your engagement tactics.

3) Sarah Wilson: A Message to the Corporate Secretaries in the room

- It is worth remembering that during proxy season, investors are dealing with over 250 meetings per week.
- Those meetings are going to have anywhere between 12 and 100 resolutions
- This is a logjam in the system
- So if proxy solicitors and corporate secretaries in the room are wondering where the votes are, consider the situation faced by your shareholders and consider if it may be worth moving the year end.
- You may also get cheaper audit from your auditor as a result.
- And you may get a better response rate and dialogue because investors are all run ragged during the height of proxy season, as are their intermediaries.

Carol Hansell:

- It would be interesting to see if banks and broadcasters have fewer problems because their proxy votes aren't happening at high season (fewer logjams as a result of their different year end dates)

4) Sylvia Groves: Common Rules for Share Lending

- It was suggested earlier that common rules for vote ownership during share lending should be developed, but where should this kind of rule come from?

Paul Schneider:

- In order to get an answer to that question, you need to get everyone involved because it's a question of ownership
- It's not just regulators or issuers; there needs to be a complete buy in from all sides to move forward, rather than imposing it on any one side.

5) Carol Hansell: Institutional Investors Relying on Proxy Advisors

- There is contentious perception in the issuer community that some institutional investors rely heavily on Glass Lewis and ISS without any other checks and balances.
- Issuers are concerned about the quality of some PA reports
- Issuers have less of an issue with proxy advisory firms than with institutional investors who rely on them without subsequent checks and balances
- How do we get issuers and institutional investors together to work it out, and what do we do to dispel the perception that some investors rely exclusively on proxy advisors to inform their voting decisions?

Bill Mackenzie (Response)

- When an investor has 17 meetings to vote at, and they are trying to gather sufficient information in a compressed time period, it can be very difficult.
- Sometimes even the best intentioned institutional investors have to fall back on PA firms because they just don't have enough time for the level of thought that they would like.
- The concern seems to be that some may just be flicking the switch based on the recommendations because of the sheer number of votes during proxy season.

Paul Schneider:

- There isn't any group or investor that does not take the voting seriously and just blindly vote as per Glass Lewis or ISS.
- Case in point: The fifth analyst call idea, to give an idea of the level of engagement of institutional investors, there were 40 institutional investors participating, representing trillions of dollars from around the world.
- PA firms, from OTPP's perspective, are a part of the information process that goes into informing the decision for a vote but they are not the final say on how a vote will be cast
- The votes that really add up and matter always have a second thought.

Danielle LaRivière:

- Many institutional investors engage the issuer more than once a year, but some firms will just vote along with the PA firms.
- These concerns have prompted the SEC require proxy advisors to register as financial advisers in the US.
- American proxy advisors are being reminded that their role is very important, and that they do influence decisions.

Jason Milne:

Q & A

Common rules for vote ownership during share lending should be developed, but where should this kind of rule come from?

“There needs to be a complete buy in from all sides to move forward, rather than imposing it on any one side.”

- Paul Schneider, Ontario Teachers

“There is contentious perception in the issuer community that some institutional investors rely heavily on Glass Lewis and ISS without any other checks and balances. Issuers are concerned about the quality of some PA reports.”

- Carol Hansell Davies
Ward Phillips & Vineberg LLP

“When an investor has 17 meetings to vote at, and they are trying to gather sufficient information in a compressed time period, it can be very difficult.”

- Bill Mackenzie, Hermes

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- For the larger institutional shareholders there is a lot of thought that goes into votes
- Smaller institutions may be more liable to follow the advice of proxy advisors because there is a large regulatory burden on them to keep up with the information flows, but they do not have the resources to be as thorough as larger institutional investors can be when they investigate portfolio companies.

Q & A

If the dividend is traceable, is the vote also traceable in a securities loan?

“Some custodians will have accurate record keeping and be able to definitively state which securities are on loan, and which are not.”

- *Danielle LaRivière,
Jarislowsky Fraser*

“Lending agreements deal with this question, but they tend to vary and so we need to ask whether or not this issue should have a standardized way to deal with it. Those who retain the vote should work with their custodian to ensure that the custodian recalls the vote in time for the cutoff date.”

- *Sylvia Groves,
GG Consulting*

Bill Mackenzie:

- There is a bit of a relationship issue that comes into play when voting on resolutions.
- Institutions want to maintain a good working relationship with their issuers, so how do they not threaten that relationship by voting to oppose board compensation?
- So sometimes investors will hide behind guidelines or recommendations to maintain these relationships with issuers.

6) Benjamin Silver: Traceability of Votes

- Over voting appears to stem from share lending and retail margin accounts, but apparently not from large institutional shareholders with the custodians.
- So if it the problem from the smaller investors how prevalent a problem is it?
- As well, when shares are on loan, the borrower sells short, so surely the buyer gets the right to vote and the right to dividends.
- If the dividend is traceable, is the vote also traceable?

Danielle LaRivière:

- It is a question of the accuracy with which custodians keep records.
- Some custodians will have accurate record keeping and be able to definitively state which securities are on loan, and which are not.
- But not every custodian has automated reporting on lending that can accurately state which shares are out on loan.
- A large part of tracing votes will be how a custodian reports its lending, which will dictate the quality of the trail to be followed.

7) Sylvia Groves: Who do we want to have the vote when a share is on loan?

- Do you want the long-term investor to have the vote or the short-term investor whose focus is economic gain?
- When most shareholders lend their securities out, they do so for economic interest not to change the vote.
- Lending agreements deal with this question, but they tend to vary and so we need to ask whether or not this issue should have a standardized way to deal with it.

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- As an example, RBC Dexia provides security lending services, and each party can determine within each agreement if they want to retain voting rights, otherwise the voting right goes to the borrower.
- Those who retain the vote should work with their custodian to ensure that the custodian recalls the vote in time for the cutoff date.
- RBC knows well in advance what votes are coming up, and their clients' position, so if the client wants those shares recalled, they will be given the right to vote because RBC will have enough notice to recall in time.
- At the end of the day, the vote attaches to the share and shareholders want to keep the vote they need to make it known and the shares need to be recalled to get back into the position.
- Absent those proper records, we will see the continued problem of over voting.

David Masse:

- If the necessary back office systems were developed, could shares be traded ex-vote?
- If the institution has made it clear that they want to retain the right to vote, then that information could be input into an XML data tag as a way to track shareholder voting rights.

8) David Masse: Final Comment - OBOs and NOBOs

Bill Mackenzie:

- OBO and NOBO status was brought up as a discussion topic at the CCGG a year and a half ago and the commentary went nowhere.
- Is there a way to get rid of OBO status if the availability of shareholder ownership information to the issuer was restricted to one day a year?
- There is a feeling that the market knows too much about what shareholder intentions are, and those intentions are a highly guarded secret among institutional investors.
- Transparency is what drives this question and if shareholders want to engage in a dialogue, with issuers, they need to make themselves known.

Paul Schneider:

- The OBO status is a red herring.

Q & A

How can we dispel the perception that some investors rely solely on proxy advisors to inform their voting decisions?

“There isn’t any group or investor that does not take the voting seriously and just blindly vote as per Glass Lewis or ISS”.

- *Paul Schneider,
Ontario Teachers*

“Many institutional investors engage the issuer more than once a year, but some firms will just vote along with the PA firms.”

- *Danielle LaRivière,
Jarislowsky Fraser*

“Smaller institutions may be more liable to follow the advice of proxy advisors because there is a large regulatory burden on them to keep up with the information flows.”

- *Jason Milne
Philips Hager & North
(PH&N)*

Q & A

Is there a way to get rid of OBO status

“In the UK, there is a right for shareholders to be identified and while Canadian shareholders may not be identified at home, they may be identified abroad, specifically in the UK. Canada is not in step with much of the rest of the world as a result..”

*-- Paul Schneider,
Ontario Teachers*

“In real estate, owners are known because they must register their title. A careful look at the registry would not show the listed owner, but a management company. Yet, no one is jumping up and down and demanding disclosure of the true beneficial ownership in real estate.”

David Masse, CSCS

- In the UK, there is a right for shareholders to be identified and while Canadian shareholders may not be identified at home, they may be identified abroad, specifically in the UK.
- Canada is not in step with much of the rest of the world as a result.

David Masse

- In real estate, owners are known because they must register their title.
- A careful look at the registry would not show the listed owner, however, it will typically show a management company
- But no one is jumping up and down and demanding disclosure of the true beneficial ownership in real estate.
- If institutional owners are concerned about tipping their hand, what would prevent them from setting up a nominee?

3. Day One – Issuers’ Panel

PANEL SUMMARY:

This session focused on the issuer’s role in the proxy voting system, and the views of the panelists on the strengths, weaknesses and opportunities for improvement in the system. Specific topics of discussion included issues arising from OBO and NOBO designations, over voting and empty voting arising from share lending, and the role of Proxy Advisory Firms.

KEY TOPICS:

1. OBO / NOBO Statuses
2. Securities Lending (Over Voting, Confusion as to Owner of Voting Rights)
3. The person with ultimate economic interest of casting the vote
4. Broadridge Acting on Behalf of Intermediaries:
5. The Role of Proxy Solicitors
6. ISS and Glass Lewis:
7. If there were one thing you could change, what would it be?

PANEL MODERATOR: Carol Hansell - Senior Partner, Davies Ward Phillips & Vineberg LLP. As a senior partner in the Capital Markets, Corporate Governance and Mergers & Acquisitions practices, Ms. Hansell has acted for both private and public corporations and for governments on a variety of matters, including acquisitions, financings and reorganizations. She has extensive involvement in the development of public policy in Canada, working closely with securities regulators and the TSX and is the past chair of the Securities Advisory Committee.

PANELISTS:

Dawn Moss – Vice President, Administration and Corporate Secretary, Eldorado Gold Corporation. Ms. Moss joined the Eldorado Gold Corporation in 1997, and was appointed corporate secretary in 2000. She was subsequently appointed Vice President, Administration in 2009. She has 25 years of administration experience in the resource sector and has held administrative and management positions in the forestry and mineral resource industries for both public and private companies.

Jill Aebker – Senior Vice President, Legal and Corporate Secretary, Tim Horton’s Inc. In her current role, Ms. Aebker is accountable for the company’s corporate governance and general board and committee functions. She also leads the public company securities team, and she and her team provide legal support for external reporting, finance, investor relations and complex corporate transactions.

Tom Enright – President and CEO, Canadian Investor Relations Institute (CIRI). Prior to joining CIRI in 2008, Mr. Enright was the President and CEO of CNW Group, a global leader in news and information distribution services, where he led the organization through a major expansion of electronic communication services for public companies. He also served

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as an independent director of the CNW board, and in the role of Deputy Chairman until March 2011.

David Masse – Senior Legal Counsel and Assistant Corporate Secretary, CGI Group Inc. Based in Montreal, Mr. Masse is responsible for corporate and securities law matters as well as related compliance activities in more than 90 jurisdictions worldwide and manages the day to day affairs of the CGI board of directors and its standing committees. He is also the Chairman of the Board of the Canadian Society of Corporate Secretaries, and Chair of the Shareholder Democracy Summit Organizing Committee.

Carol McNamara – Vice President and Corporate Secretary, RBC Financial Group.

DISCUSSION:

Carol Hansell:

- The approach to understanding the proxy voting system in Canada is very much a community effort.
- Canadian market stakeholder are going to need to keep an eye on what the SEC does, and watch for the final version of 54-101 as they move forward on these issues.

Topic 1: OBO / NOBO Statuses

The OBO and NOBO statuses are particular to North America; do they make life more difficult as an issuer?

Dawn Moss:

- Transparency is the key concern around OBO/NOBO statuses, because they complicate the system in terms of communication.
- If it is too complicated to get rid of OBO and NOBO statuses, regulators should at least lower the ownership warning level from 10% to a level where shareholders are readily identifiable, without having to go outside the country to look for them.
- Why do shareholders need to remain anonymous?
- Doing away with the OBO/NOBO distinction does not address the issue of over voting.
- As well, engagement on governance issues needs to be with those investors who have a long-term view and interest in governance and it is unlikely to be retail investors as much as it is to be institutional shareholders.

Tom Enright:

- Our current ownership warning threshold is commensurate with Latvia, Pakistan, and Chile but is not as high as Russia at 25%.
- The threshold should be set at 5% and notification of additional incremental acquisitions or sales of 1% should be implemented in place of the current 2% by purchase only.
- We are setting up a paradox in how this issue plays out.

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- We hear time and again how important the voice of the shareholder is, so why are issuers barred from knowing whom the voice is coming from?
- Say on pay is a prime example: Issuers cannot properly address the concerns voiced by shareholders in such a vote if the issuer cannot identify the concerned shareholders.
- One justification for OBO status was that institutional investors do not want to get on the wrong side of an issuer (*i.e. by allowing the issuer to know who they are and how they have voted, it could make informal negotiations more difficult in the future*).
- From an investor relations' perspective, an issuer should be seeking to create more dialogue if they are not getting favorable reviews.
- Issuers insist that voicing concerns would open up dialogue, not shut it down, as might be the case with a negative review put forward by a financial analyst.
- It would spur a frank conversation about the company from both sides.

David Masse:

- Are third parties really trolling NOBO lists for information?
- If no one is looking at those that are available, why the concern over confidentiality?
- Although, it is not unheard of for proxy solicitors calling up institutions and tell them “you have to vote these shares of XYZ”, to which the institutional investors reply “we don’t have shares of XYZ”, and the proxy solicitor says “Yes you do.”
- CGI produces a monthly report that gets down to the 100,000 shares held level, with reasonable accuracy, notwithstanding OBO restrictions.
- We also need to keep in mind how beneficial shareholders are treated with respect to attending meetings to vote their shares.
- The actual ability to vote and methods to achieve that are illusory for beneficial shareholders in person at shareholder meetings.
- Recall that all of the processes for beneficial shareholders to vote were laid out in the previous panel, and they were all determined to be cumbersome.
- The CBCA should be amended to recognize beneficial shareholders in addition to registered shareholders for the purposes of shareholder meetings.
- Lists of beneficial shareholders are almost as accurate as the register, so why not let them vote?
- It is also worth noting that in some cases, even brokers are unaware that OBO is often the default designation for new beneficial owners opening accounts.
- As an aside, it should also be noted that if Broadridge is physically present at a meeting, they can validate a beneficial shareholder as

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- Tom Enright, Canadian Investor Relations Institute

“The CBCA should be amended to recognize beneficial shareholders in addition to registered shareholders for the purposes of shareholder meetings.”

- David Masse, CSCS

“Given that retail shareholders are 20% of the shareholder population, if issuers cannot know who 20% of their shareholders are, how can they know whom to engage with, and how can they achieve other objectives like end-to-end vote confirmation?”

- Jill Aebker
Tim Horton's Inc

being an OBO or NOBO, and make them an appointee who can vote in person.

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“If there is uncertainty surrounding the margin of error in a given vote, then how can directors who are concerned about having received less than their board colleagues receive any assurances that the vote is representative of shareholder sentiment?”

- Carol Hansell, Davies
Ward Phillips & Vineberg
LLP

“International investors are often OBOs because custodians set up their domestic accounts, without consultation, so it often comes as a shock to them that they have been put in that situation.”

- Sarah Wilson, Manifest

“Some of the responsibility lies with the custodians to inform investors of the voting significance of the designations when they set up their accounts and let them make the decision”

- Dawn Moss,
Eldorado Gold Corp.

Jill Aebker:

- One of the proposed justifications for privacy is to maintain the potential for taking aggressive action against an issuer, or to quietly acquire shares.
- In Canada, with our higher early warning threshold, that is already easy to achieve.
- In encouraging shareholder democracy and voice, there is a need to determine who the shareholders are.
- Given that retail shareholders are 20% of the shareholder population, if issuers cannot know who 20% of their shareholders are, how can they know whom to engage with, and how can they achieve other objectives like end-to-end vote confirmation?

Carol Hansell:

- From a director perspective, if you are called upon to explain to a board what the results of a say on pay vote mean, what do you tell directors who got a lower vote?
- If there is uncertainty surrounding the margin of error in a given vote, then how can directors who are concerned about having received less than their board colleagues receive any assurances that the vote is representative of shareholder sentiment?
- Who do you tell the board to reach out to in order to engage in a dialogue if everyone is anonymous?

Sarah Wilson (Comment):

- International investors are often OBOs because custodians set up their domestic accounts, without consultation, so it often comes as a shock to them that they have been put in that situation.
- But those foreign shareholders would likely be with on side in terms of increasing the level of dialogue and opening up the lines of communication.

Dawn Moss (Response):

- Some of the responsibility lies with the custodians to inform investors of the voting significance of the designations when they set up their accounts and let them make the decision, but this education piece is often missed and so a lot of shareholders are not informed of the distinction, its ramifications, and the fact that they can choose between the statuses.
- As well, as regulations change etc., a client agreement between custodians and a shareholder does not get updated or changed along the way.

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- Some responsibility has to lie with the custodians to ensure that these agreements do in fact get examined and updated on a regular basis, and so that shareholders are made aware of their rights and responsibilities in the system.

Eric Pau: If issuers move over to DRS, is there still an OBO NOBO distinction?

- Have your respective corporations adopted the DRS (Direct Registration System), and if so, why not?
- In the DRS system, there are no share certificates at all, so would issuers be able to determine the identity of shareholders?

David Masse:

- The same rules that govern physical securities would likely apply if an issuer wanted access to the list, but third parties would need to submit a [... *inaudible*...] to apply for access.
- Under DRS, a shareholder is immediately considered to be a registered holder and so OBO/NOBO doesn't apply because these are not beneficial holders.

Carol McNamara:

- It's worth noting the continued presence of the registered/beneficial shareholder systems in the various governing legislations, even as markets evolve.
- Even with the advent of notice and access, we nonetheless have corporate statutes that aren't playing catch up
- DRS points to the fact that as markets change, we have statutes that are not keeping pace.

Topic 2: Securities Lending (Over Voting, Confusion as to Owner of Voting Rights)

Dawn Moss:

- When corporate secretaries are trying to solicit approval for a corporate transaction, it becomes a problematic to have too many votes and a meeting chairman who can make an arbitrary decision as to which votes count and which do not.
- Legitimate and valid shareholder voters can be disenfranchised too easily, which is concerning because shareholder are the party that need to approve such transactions.
- Possible disenfranchisement is exacerbated by the fact that no shareholder actually knows if it is happening to them.

Carol McNamara:

- There is a lack of voting at annual meetings; it is very rare to see even 50% of shareholders voting at the RBC annual meeting.
- If there were serious instances of over voting, there would be a higher turnout of shareholder voters in general.
- Issuers need to consider what it is that they expect from shareholders, and whether they are doing enough to facilitate voting.

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- Internal controls exist to check positions and reconcile the number of votes, but those reconciliations can only happen against a total position.
 - Measuring the response rate requires generating a ratio where the number of shareholders who voted is the numerator, but what statistic should represent the denominator is unclear.
 - There was a time when issuers used to send to all shareholders, but from a shareholder relationship management perspective, that created problems because mail to all meant mailing to who requested not to be mailed to.
 - Regardless, the same voting problems exist when an issuer mails to all shareholders, or chooses to selectively mail.

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“There is a lack of voting at annual meetings; it is very rare to see even 50% of shareholders voting at the RBC annual meeting”

- Carol McNamara,
RBC Financial Group

“Part of the problem is information overload (i.e. beneficial shareholders get a stack of letters in the mail and they don’t really want to open them).”

- David Masse, CSCS

“The retail base has decided not to vote and this has been going on for a long time”

- Glenn Keeling
Phoenix Advisory Partners

It takes a lot to incentivise retail shareholders to vote, and they are making their own decisions not to vote. Fidelity got a better vote turnout by promising to plant trees for each vote received.

- Carol Hansell,
Davies Ward Phillips &
Vineberg LLP

Tom Enright:

- Shareholders choose whether or not they want to receive materials and issuers also make decisions that it may not be economical to mail out to all shareholders
- Therefore the number of people issuers are mailing to and are who are eligible to vote is already less than the outstanding number of shares.
- This makes it difficult to measure properly.

David Masse:

- Part of the problem is information overload (*i.e. beneficial shareholders get a stack of letters in the mail and they don’t really want to open them*)
- By comparison, how nice would it be to have a dashboard that allows shareholders to look at all the positions they can vote, and to drill down into various areas of issuer materials?

Glenn Keeling:

- The retail base has decided not to vote and this has been going on for a long time.
- This all becomes very visible in the event of a contested vote.

Carol Hansell:

- If the retail base chooses not to vote, why not let them not vote?
- When you look at the way the system works, it’s undeniable that double voting happens, regardless of whether or not it accelerates all the way up to over voting.
- It takes a lot to incentivise retail shareholders to vote, and they are making their own decisions not to vote.
- Fidelity got a better vote turnout by promising to plant trees for each vote received.
- As stated earlier, most retail investors have multi-manager accounts and are unable to vote, but they don’t know that.

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Jill Aebker:

- Do the retail shareholders not want to vote, or do they not like the system they are currently expected to vote in?
- Tim Hortons got feedback that shareholders aren't necessarily interested in receiving the package and voting via mail
- If we had a system to get information to shareholders that is easier to digest and interpret, we may see better turnout (i.e. through a website that gave the ability to drill down)
- Tim Hortons also had notice and access for two years when it was a US public company.
- There was a 10% decline in the first year of voting because of retail shareholders abandoning the voting process.
- There was a smaller decline the next year.
- But then when they returned to Canada, they went back to paper, which is a huge problem in the system.
- Often times, people don't even realize they have received their proxy vote and throw it away, and then they call and ask for it from the issuer.

Patricia Rosch:

- The OSC has allowed electronic delivery and voting of proxies since 2000.
- We have an investor choice method in Canada, and we are seeing a growing increase in electronic communication of votes and ballots.
- Shift towards notice and access, and the change in demographics will expedite this.
- We're trying to work with the brokers and retail side of the equation to really drive e-delivery.

Topic 3: Is the person with ultimate economic interest the one casting the vote?

- The period leading up to the record date and the meeting date is critical, as is the problem of share lending, especially where margin accounts are concerned
- All sorts of trading can happen in between and economic interest may reside with one person, while another casts the vote
- Does this area represent an area of concern?

Jill Aebker:

- If we're looking at changing the proxy voting system, this area is a low hanging fruit.
- Paper based system requires 6 – 7 weeks of lead time because mailing materials is time consuming.
- Collapsing the time between the two can more easily be done if you take paper out of the system and move to an electronic-based system.

Carol Hansell:

“Paper based system requires 6 – 7 weeks of lead time because mailing materials is time consuming.”

Jill Aebker
Tim Hortons Inc

“The UK system operates with a 21 day notice period, 48 hour cutoff period and these reduce over voting. European countries that have left long gaps between record date vote and cutoff date have had the most trouble with possible over voting.”

- Sarah Wilson,
Manifest
received.

- Carol Hansell,
Davies Ward Phillips &
Vineberg LLP

- If you take paper out of the system, that will help, but we’ll still need to leave enough time for the analysis to happen from the perspective of institutional investors, or by ISS/Glass Lewis.
- As we’re dealing with the problems that the issuers have with ISS and GL, you need to give those issuers time to rebut any inaccuracies in those reports as well.
- There is no suggestion that we should move back to the old “day before meeting transferee system”.
- There has been a big move to get the actual holder of the actual economic interest to vote.
- In the US, there is a lot of excitement about the bifurcation of the record dates in Delaware for example, where you can have a different record date and voting date.
- Our statutes have had that bifurcation for a long time, but everyone uses the record date.
- We have a 21 day lead period as of now, but at least part of that is because of the continued presence of paper in the system.
- What it would take is for a regulator to impose electronic voting in place of paper for the retail investors

Sarah Wilson:

- Consider the UK proxy system, which accommodates paper and electronic voting.
- The record date, subsequently, is the same date as the vote cut off date
- The system operates with a 21 day notice period, 48 hour cutoff period and these reduce over voting.
- European countries that have left long gaps between record date vote and cutoff date have had the most trouble with possible over voting.
- So even if you compress the timelines, you can accommodate both paper and electronic voting in the system.
- All the information is online, even if you have acquired after the

issuing date/mailing date

- If you as a shareholder have acquired your shares after the mailing date in the UK, it’s up to you to go online and get the material from the issuer’s website
- As well, lists are reconciled intra-day up to the record date in the UK, meaning there is an accurate snapshot of who has what positions, and where shares are when they have been lent out.
- This presents itself as a more transparent system, and that transparency permits the compressed timelines.
- The Canadian system’s high level opaqueness limits the ability we have in our capital markets to have our system work with the same 48 hour cutoff period that is enjoyed in the UK.

Comment:

- To look at reducing the lead time and getting a closer cutoff date, we also need to look at the speed of custodians
- If you want a really rapid meeting, you need to deal with the speed of custodians, but they are not all quick and not all equal.

Topic 4: Broadridge Acting on Behalf of Intermediaries:

Carol Hansell:

- There is concern around the notion that there is no direct relationship between the issuer and the intermediary, and therefore no relationship between the issuer and Broadridge, who typically acts on behalf of the intermediary

Dawn Moss:

- This is a cause for concern because issuers are regulated about when they have to file, mail, post on SEDAR, etc.
- But there are no regulations around intermediaries/Broadridge, or any part of their portion of the voting chain of events.
- They don't have to disclose anything, they don't have to certify that they have done anything when voting instructions come in, when they receive materials, etc.
- Issuers have had problems in the past where materials have not been delivered on time, or delivered at all, or have been destroyed so that they couldn't be delivered.
- There is nothing to prevent this from happening because there is no onus on the intermediary.
- Issuers used to take it for granted that, because the certification was done by a transfer agent that everything was okay, but that is not the case.
- There may be value in requiring that intermediaries had to post a certificate similar to transfer agents that they had executed their functions.

Jill Aebker:

- Tim Horton's asks for certificates from intermediaries and they do provide them when asked.
- Broadridge's monopoly means issuers may not always get a view right down to the shareholder level.
- For issuers to be able to drive the mailing, it would be nice to have more choice in the system.

David Masse:

- Current regulations are focused on the intermediaries, but this

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“There is concern around the notion that there is no direct relationship between the issuer and the intermediary, and therefore no relationship between the issuer and Broadridge.”

- Carol Hansell,
Davies Ward Phillips &
Vineberg LLP

“This is a cause for concern because issuers are regulated about when they have to file, mail, post on SEDAR, etc. But there are no regulations around intermediaries /Broadridge, or any part of their portion of the voting chain. They don't have to disclose anything, they don't have to certify that they have done anything when voting instructions come in, when they receive materials, etc.”

- Dawn Masse, Eldorado
Gold Corp.

“Broadridge's monopoly means issuers may not always get a view right down to the shareholder level”

- Jill Aebker,
Tim Hortons Inc

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ignores the fact that Broadridge has been nominated to conduct all communications.

- We need a regulation to deal with the reality, and that speaks to the Proxy agent's role
- Broadridge itself may not be regulated, but we need to keep in mind that its activities that it performs on behalf of intermediaries ARE regulated
- The concern appears to be as to where the information needs to go in order to get results
- Consider the simplest and most transparent portion of the shareholder base: share purchase plans:
- Issuers know who those people are, based on the plan administration
- When CGI did a mailing, they pushed out through the NOBO list via Broadridge
- For two years in a row, those mailings failed because the route was too circuitous and there were too many layers, and so no one was able to check for problems
- You would expect the system to fail for retail shareholders because of the complexity inherent in the system
- It's like looking down a hose from only one end

Carol Hansell:

- Most of Broadridge's activities are activities which the regulations hold are to be done by intermediaries.
- Broadridge also undertakes a voluntary annual audit to demonstrate that 3 days upon receipt they have completed the mailing, and they also look at vote tabulation and vote aggregation and those audits are then delivered to intermediaries.
- So the gap in the relationship is between Broadridge and the intermediary, while the service is being delivered to the issuer.

Topic 5: The Role of Proxy Solicitors

- Are proxy solicitors a part of the IR (investor relations) function, or part of the plumbing?

Sarah Wilson:

- In European systems, the PS firms are part of the tactical corporate secretaries' investor relations system to get in touch with investors who may not otherwise vote.

Carol Hansell:

- There has been an increase in the number of issuers who have a greater number of firms that have proxy solicitation firms on retainer.

Tom Enright:

- Any time you take away the opportunity for dialogue between investors and issuers, we lose efficiency.

Glenn Keeling:

- The importance of the vote to directors is driving growth in PS firms here
- There isn't a board member in this country who doesn't know their vote to the third decimal point

- Relative to the US, the proxy solicitor firms are still much smaller here, but more Canadian issuers are turning to PS firms for advice, more than for mechanical plumbing issues.

Topic 6: ISS and Glass Lewis:

- Do issuers think that the roles that proxy advisor firms are causing problems?

Dawn Moss:

- There are potential conflict of interest issues with proxy advisory firms
- They have to decide what they want to focus on: ISS cannot help formulate proposals and then have another arm offering recommendations for the proposal.
- For issuers, it can be frustrating to pick up the phone and speak with institutional shareholders and find out that they don't want to engage in a dialogue with the issuer, because they are voting in lockstep with ISS.
- PA firms should be part of the mix of information, but not the basis for decision.

Jill Aebker:

- There is a danger of “check the box governance” with respect to ISS and GL.
- We have noticed that there is a reluctance, on the part of PA firms, to receive and correct feedback from issuers.
- There can be a reluctance to correct information, even when the correct facts are freely available in the public domain.
- Under the guise of the need to create independence, they won't communicate.
- Even if errors are found based on public information, the perception of absolute independence is overriding everything.
- The ISS team in Canada is very good and very receptive
- There is a lot of pressure on them not to have dialogues with issuers, and to follow the same line as GL.
- The pressure has to do with them having another side of their business that works with issuers to cast proposals in a certain light.
- But when it is a matter of ensuring accuracy in reporting, sometimes it may be that an issuer hasn't been clear in their disclosure but in our experience, we have had very good useful dialogues that result in better reports that have been given the opportunity to have a two day turn around from ISS.

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“There are potential conflict of interest issues with proxy advisory firms. They have to decide what they want to focus on: ISS cannot help formulate proposals and then have another arm offering recommendations for the proposal.”

**- Dawn Moss,
Eldorado Gold Corp.**

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**- Jill Aebker,
Tim Hortons Inc.**

“The CPPIB review ISS recommendations, but they will go back to ISS if they disagree with those recommendations.

They have always been receptive to us as clients, but GL analysts aren't always as receptive”

**- Eleanor Farrell,
CCP Investment Board**

Eleanor Farrell:

- The CPPIB review ISS recommendations, but they will go back to ISS if they disagree with those recommendations.
- They have always been receptive to us as clients, but GL analysts aren't always as receptive
- You need to keep in mind that smaller institutional investors may not have the resources to investigate outside of PA firms, so they may need to check the boxes when making decisions on governance.

“*From CIRI's perspective, the bigger you are as an investor, the more attention you get from the proxy advisors of the world. We want to see good communication all the way through, from large investors to small investors.*”

- Tom Enright,
Canadian Investor
Relations Institute

“*60% of the value of the assets that are voted have had their own independent analyses and voting guidelines. Institutions are taking this seriously and have gone out of their way to tell ISS, “you do your analysis, but when you vote our shares, we want you to vote it against our criteria.”*”

- Chris Makuch,
Georgeson Inc.

Tom Enright:

- From CIRI's perspective, the bigger you are as an investor, the more attention you get from the proxy advisors of the world.
- CIRI wants to see good communication all the way through, from large investors to small investors.
- If the factual information is wrong, you have a clock ticking down on you as an issuer.
- There are some areas of improvement on this topic, specifically in terms of dialogue throughout, between issuers and PA firms, to ensure that the factual information is a non-issue.
- Why not have the same relationship between a PA firm and an issuer that is akin to an issuer and a financial analyst, which is an ongoing dialogue.
- Financial analysts retain their independence, so why can that same integrity not be maintained with PA firms?

Chris Makuch:

- 60% of the value of the assets that are voted have had their own independent analyses and voting guidelines.
- Institutions are taking this seriously and have gone out of their way to tell ISS, “you do your analysis, but when you vote our shares, we want you to vote it against our criteria.”
- So bigger investors are giving this more scrutiny and telling ISS to vote their shares based not only on ISS's research, but also based on the research done by the institutions themselves.
- However, if there are factual inaccuracies in ISS's analysis, applying it to a different set of voting guidelines prepared by the issuer may not result in an accurate result anyway.

Benjamin Silver:

- What percentage of institutions have completely given over voting rights to the PA firms so that they have no independent analyses?

Carol Hansell:

- Assume that the inverse of the 60% with independent voting guidelines don't have independent policies, so that means 40% do not.

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- Just because an investor is using an ISS policy doesn't mean that they have abdicated responsibility for their decision making processes
- In most cases, the internal process is that they have reviewed the ISS guidelines and said "these look fine to us" and put those in place, rather than reinventing the wheel.
- The challenge for issuers is when they approach the person who makes the voting decision and say "you need to take another look at this", the internal process of having to go back up the chain to make a change in voting policy can be difficult and this is a frustration point
- It may not be the ISS recommendations that frustrate issuers so much as it is the quality of the work.

Bob McCormick:

- The fact that institutions may be relying on advisors is not the fault of the advisors.
- For those who follow the GL policies, consider that some institutions do so for non-contentious issues
- Or the institutions are simply comfortable with how GL handles that particular governance issue
- A lot of considerations go into this, and very few institutions blindly vote.
- PA firms tend to engage with companies in the off-season, especially where they lost a vote
- Say on pay provides a good example:
 - ✓ 3000 US companies held SOP votes last year, 1.5% lost them
 - ✓ The ISS recommendation was around 14%, GL recommendation was around 17%
 - ✓ If there is any proposal where clients were more inclined to follow recommendations, it would be this one because it is complex, with a lot of moving parts, and included both quantitative and qualitative aspects that are difficult to decipher and measure.
 - ✓ This is a narrow single issue, but this may be a good proxy for clients following the recommendations of PA firms.

Bill Mackenzie:

- There is room for more advisors in the market, and more advisors means more people thinking about these issues.
- The real question is not whose guidelines are being applied, but how they are being applied
- There is a danger to put the guidelines into practice blindly
- Consider Linamar Corporation as an example:
- They had a board composition that was just shy of majority independent, and so they had a majority of votes withheld

Q & A

What percentage of institutions have completely given over voting rights to the PA firms so that they have no independent analyses?

“Assume the inverse of 60%, so that means 40%.”

*- Carol Hansell,
Davies Ward Phillips &
Vineberg LLP*

“The fact that institutions may be relying on advisors is not the fault of the advisors.

Say on pay provides a good example:

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*- Bob McCormick,
Glass, Lewis & Co*

Q & A

If there were one thing you could change, what would it be?

“Develop a better mechanism for error correction in PA reports. Errors exist either because the issuers situation was misinterpreted, or there was a glaring error in the analytics.”

- David Masse, CSCS

“More transparency about who shareholders are.”

*- Dawn Moss,
Eldorado Gold Corp.*

“Get rid of the NOBO / OBO system.”

*- Jill Aebker,
Tim Hortons Inc.*

“Streamline communications out to shareholders”

*- Dawn Moss,
Eldorado Gold Corp.*

“Streamline communications out to shareholders and get the vote in by keeping everything clear and consistent.”

*- Carol McNamara,
RBC Financial Group.*

“Reduction of early warning system to 5%”

*- Tom Enright,
Canadian Investor
Relations Institute*

- When an additional independent director was elected, the board became majority independent and they got 99% in favor
- This was with a board that was almost exactly the same
- The next year, they lost their additional independent director, and the majority of votes were withheld
- So really, what was different about that board to garner that swing in support?

Topic 7: If there were one thing you could change, what would it be?

David Masse:

- Develop a better mechanism for error correction in PA reports
- Errors exist either because the issuers situation was misinterpreted, or there was a glaring error in the analytics.
- As well, we need to address the ability of beneficial shareholders to vote at the meeting.
- As of now, beneficial ballots can be submitted, but aren't counted
- No one is telling the beneficial holders at the meeting that their ballots aren't being counted
- A registered shareholder is a concept of the 19th century.
- 85% of shareholders are beneficial for CGI, and this reflects the reality of the world as it stands now.

Dawn Moss:

- More transparency about who shareholders are.

Jill Aebker:

- Get rid of the NOBO / OBO system: It makes things complex and reduces the visibility of shareholders.

Carol McNamara:

- Streamline communications out to shareholders and get the vote in by keeping everything clear and consistent.

Tom Enright:

- Reduction of early warning system to 5%
- **Carol Hansell:**
- We expect that we are going to hear from the PA firms as to why some of us misunderstand the way they go about their business

4. Day One – Service Provider Panel

PANEL SUMMARY:

This session focused on the roles of service providers in the proxy voting system, including perceived strengths, weaknesses and areas for improvement. Specific discussion topics included the effectiveness of end-to-end voting confirmation, the need for a holistic approach to improving the proxy voting system, transparency concerns around OBO and NOBO designations and issues surrounding over voting.

KEY TOPICS

- 1) The Quality of the Vote Received
- 2) Post-Reconciliation
- 3) End-to-End Confirmation
- 4) Causes of Over Voting
- 5) International Holdings
- 6) Who is legally responsible for obtaining the authority to vote?

PANEL MODERATOR: Benjamin Silver - Counsel, McCarthy Tétrault LLP. Mr. Silver primarily advises public companies on corporate governance and continuous disclosure matters, and acts for them on acquisitions, reorganizations, and public offerings. In addition, Mr. Silver was also a member of the advisory committee to the Québec securities regulator, Autorité des Marchés Financiers, for many years.

PANELISTS:

Glenn G. Keeling – Partner, Phoenix Advisory Partners. Mr. Keeling is a Canadian authority on shareholder services, strategic solicitation, and corporate governance matters. In his 18-year career he has served as the President and CEO of Georgeson Canada, a founder and partner of Laurel Hill Advisory Group and most recently, a partner with Phoenix Advisory Partners. His current role focuses on significant cross border and internationally connected shareholder communications and corporate governance advisory.

Chris Makuch – Vice President, National Sales and Marketing, Georgeson Canada. As a specialist in shareholder response services, Mr. Makuch provides strategic counseling and program execution in proxy solicitation, shareholder base analysis, information agent services, and shareholder asset reunification/small shareholder programs. Prior to joining Georgeson in 2008, Mr. Makuch co-founded The Shareholder Response Group in 2002. He has also worked in the Financial Services Division of Hill & Knowlton Canada and at Georgeson Shareholder Communications as Director of Business Development.

Penny Rice – Senior Vice President, Proxy Advisory Services Laurel Hill Advisory Group. Ms. Rice has 20 plus years of experience in shareholder relations for publicly traded companies. She is currently responsible for the Proxy Advisory Service at Laurel Hill, and oversees the implementation of various aspects of shareholder communication and related activities including shareholder identification, proxy solicitation and information agent

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services in her role overseeing. Prior to joining Laurel Hill, she was entrusted with progressively expanding responsibilities within Computershare Investor Services and Georgeson Shareholder.

Patricia Rosch – President, Investor Communication Solutions, International Broadridge Financial Solutions, Inc. Ms. Rosch joined Broadridge in 1996 as Director of Sales and Marketing, after having held a number of strategic planning positions at a major Canadian bank and a number of product development and marketing positions in the brokerage and mutual fund industries. In May 2011, she was named President of Investor Communication Solutions, International. She is currently responsible for Broadridge’s global proxy business.

Bill Brolly – Senior Manager Market Development, Global Capital Markets Group Computershare. In his 25 years of experience, Mr. Brolly has chaired various industry committees relating to depository and securities processing, including the Canadian Capital Markets Association (CCMA). His consulting work has focused on advising government agencies on the pre-issue logistics of wide spread public distribution of securities (demutualization, commercialization, privatization, and government retail savings bonds). His experience and knowledge of securities processing, has also included depository, registration and share transfer in the UK, Caribbean, Latin America, US, India, Philippines, Hong Kong, and Canada.

Helen Stratigeas – Vice President, Client Services Equity Transfer & Trust Company. Ms. Stratigeas is a recognized industry expert in investor communications, shareholder meeting conduct, and proxy voting solutions. She has worked closely with the CSA and securities industry participants to implement best practices that meet the needs of all stakeholders. She has been quoted on best practices for investor communications and has led and participated in numerous steering and regulatory committees to identify and improve regulations.

James Hinnecke – Director, Product Management, Canadian Stock Transfer Company (CST). Having worked in the Canadian life insurance and financial services industries for more than 30 years (including 22 years in transfer agency services, working for a number of different transfer agents), Mr. Hinnecke has been an active participant in the evolution of beneficial shareholder communications. He is currently responsible for ensuring that CST’s products and services incorporate client needs, current and pending regulatory requirements, and emerging technological opportunities. He also serves on the Securities Transfer Association of Canada’s (STAC) Legal Regulatory Working Group.

DISCUSSION:

Topic 1- The Quality of the Vote Received

Bill Brolly:

- Computershare is a tabulator and vote scrutineer at over 2400 meetings in Canada
- Declining voting statistics and other associated problems are systemic
- They don't necessarily originate in the transfer agent's office
- The integrity of the system is something that regulators must resolve to address and a holistic approach must be taken
- The Canadian system has not kept pace with trading growth and the settlement system does really lend itself to direct communications between issuers and investors
- Growing international interest in Canadian companies will only make the problems worse
- There are problems with votes at 55% of meetings and over voting occurs in 1 out of 5 meetings
- There is a fundamental difference between how shares are voted in the beneficial and registered voters systems:
 - ✓ In the registered environment, there's a direct 1:1 relationship between the investors and their shares
 - ✓ 2 registered shareholders can either vote their shares, or not vote their shares
 - ✓ In the beneficial holder system, shares are pooled; there is no direct relationship between the holder and his or her shares
 - ✓ The record of client ownership exists only on the bank's internal record keeping system
 - ✓ In a pooled account, 2 shareholders may be shown to have 100 shares each, while in actuality only one does because of share lending by the broker, or any number of reasons; in any event, the voting by one is predicated on the non-

Helen Stratigeas:

- The First Step of Proxy Voting:
 - ✓ A list of registered voters is maintained for issuers and produced for mailing purposes
 - ✓ This lists the holders entitled to vote as of the record date and is comprised of those who have physical certificates and those registered in DRS
 - ✓ It also includes positions held by depositories like CDS and DTC and includes registered nominee positions held in a bank or nominee name or shares held by depositories

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“The Canadian system has not kept pace with trading growth and the settlement system does really lend itself to direct communications between issuers and investors

There are problems with votes at 55% of meetings and over voting occurs in 1 out of 5 meetings. Proxies can be issued for a greater number of shares than are held in bulk by the intermediary at the record date.

This result causes a problem in 20% of meetings. Occurrences of intermediary over voting were recorded over 7000 times this year alone.

...No public issuer in Canada can say that voting is 100% accurate, and that those who voted have an economic interest in the shares voted.”

*- Bill Brolly,
Computershare*

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- The Second Step of Proxy Voting:
 - ✓ Broadridge pulls data from intermediaries to create files for their mailing, for the creation of omnibus proxies, if coded, and to create vote files for tabulation purposes.
 - ✓ They also receive info from CDS listing the total brokerage position for each of the intermediaries.
 - ✓ The problem is that there are intermediaries that may lend or borrow shares, or there are omnibus accounts.
 - ✓ The depositories and intermediaries holding positions for other parties give the authority to the parties that have control over the execution of the votes that they are entitled to vote on.
 - ✓ CDS sends an omnibus proxy, as a registered shareholder, along with the list of the issuer, giving them the authority to accept votes directly from the intermediaries
 - ✓ Info may include omnibus account info, intermediaries holding for other parties, etc.
 - ✓ Once CDS gets the omnibus proxy, they break it down by shareholder
 - ✓ As the registered shareholder, CDS sends omnibus proxy to intermediaries that they can receive authorization.
 - ✓ If the issuer is mailing directly to NOBOs, an omnibus proxy is provided where the intermediaries are giving the authority to the issuer to accept votes directly from the NOBO holders.

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“There is a flaw in these simple steps that raises the potential of over voting, with three possible scenarios:

- ✓ *Shares on loan as the most common over voting case;*
 - ✓ ***Proxies are being executed by intermediaries without checking to see if they have already been voted;***
- ✓ *Once an omnibus proxy is provided to the issuer for NOBOs, the intermediary position is over and they should refer their client to the party that mailed or is tabulating. If the shareholder refuses, then they should contact the tabulator to assist them.*

No one wants a shareholder to be disenfranchised and so intermediaries need to ensure that their clients are aware that their account needs to be set up exactly as it is reported”

***- Helen Stratigeas,
Equity Financial Trust
Company***

- The Third Step of Proxy Voting:
 - ✓ Upon receipt of these documents, the issuer’s tabulator begins to adjust the voting records accordingly
 - ✓ The depository positions are reduced and an appropriate number of shares are allocated to the intermediaries, as authorized by the depositories
 - ✓ For the mini-omnibus proxy positions, the same mechanism is applied.
 - ✓ The same happens under the NOBO omnibus proxy as well: shares are deducted from the intermediary’s position in accordance with their instructions

There is a flaw in these simple

Topic 2- Post-Reconciliation

Bill Brolly:

- Proxies can be issued for a greater number of shares than are held in bulk by the intermediary at the record date.
- This isn’t known to the shareholder who receives an entitlement.
- Reconciliation only occurs if there is an excess of votes by a shareholder over the number of shares held by the intermediary.
- This means that more voting instructions are mailed out than there are shares held.

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- This result causes a problem in 20% of meetings
- Over voting usually occurs because multiple intermediaries over vote.
- Occurrences of intermediary over voting were recorded over 7000 times this year alone.
- Given that we are experiencing voting discrepancies at 55% of meetings, no public issuer in Canada can say that voting is 100% accurate, and that those who voted have an economic interest in the shares voted.

Topic 3- End-to-End Confirmation

Bill Brolly:

- Unless we address the integrity of the underlying vote, we cannot address other problems in the voting system.
- We may be counting votes of holders who are not entitled to vote.
- Transfer agents can provide vote confirmations for registered holders and NOBOs who have chosen the transfer agent to be a distributor, because in both cases you have a 1:1 relationship.
- But this cannot happen with OBOs and NOBOs that are mailed by the issuer's agent; you can get omnibus level confirmation, but nothing more.
- Vote confirmation on its own will be insufficient to solve the larger problems in the system.
- The integrity of the system needs to be properly addressed before end-to-end confirmation should be fully considered.

Topic 4- Causes of Over Voting

Bill Brolly:

- Voting files are not pre-reconciled before materials go out.
- More than one holder votes as a result of share lending, and the account has not been updated to reflect the shares being out on loan.
- Participants voting shares being held by a third party depository.

Helen Stratigeas:

- Tabulators can only deal with issues that arise as a result of votes being submitted that cannot be matched to an intermediary position or if there are no shares left to apply the votes.
- When this occurs, it's usually for hundreds of thousands or millions of shares.
- Possible Over Voting Scenarios:

- 1) Shares on Loan

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“A sizeable number of Canadian issuers have investors who choose to hold their shares via a US broker, or a European broker.”

37% of shareholders (held by intermediaries in the US or abroad) do not receive DTC omnibus proxies by the meeting date and without the omnibus proxy, those shares may not get counted.

Each season Computershare receives 8000 faxes from Broadridge to allocate votes from one participant to another – the sheer number begs the question of why these votes are being allocated between the participants.”

- Bill Brolly, Computershare

“There is a flaw in these simple steps that raises the potential of over voting.”

- Helen Stratigeas, Equity Financial Trust Company

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- ✓ This is one of the most common over voting scenarios.
 - ✓ Some intermediaries include and distribute proxy materials when shares are on loan, or have been delivered to someone else.
 - ✓ If both the votes are recorded, then there is a double vote.
 - ✓ Intermediaries do not always issue and forward omnibus proxies.
 - ✓ Often this problem is either impossible to figure out, or by the time it is discovered, it is too late to do anything about it.
- 2) Intermediaries executing proxies on behalf of their clients
- ✓ Proxies are being executed without checking to see whether they have already been voted or not.
 - ✓ If a position has already been voted, a revocation needs to be issued before the newly executed proxy can be accepted.
 - ✓ Intermediaries need to check with Broadridge before issuing a proxy to their clients, and ensure that the account gets blocked to avoid over voting.
- 3) Intermediaries executing votes for NOBOs
- ✓ As soon as an omnibus proxy is provided to the issuer for NOBOs, the intermediary position is reduced and they should refer their client to the party that mailed or is tabulating.
 - ✓ If the shareholder refuses, then they should contact the tabulator to assist them.
 - ✓ Pre-reconciliation is a good practice for helping to reduce the occurrence of over voting, but the number crunching is a time consuming task for regulators
- These scenarios can be resolved by intermediaries undertaking the following:
 - ✓ Engage in the reconciliation of votes.
 - ✓ Provide mini omnibus proxies to ensure the proper allocation of shares for voting.
 - ✓ Intermediaries need to clearly identify who will be voting the shares where a clearing broker is setting up an account.
 - ✓ If clients ask for a proxy, make sure the position has not been voted.
 - If the position has not been voted, before executing the proxy, intermediaries need to make sure that they instruct Broadridge to block the account to prevent double voting
 - If the position has been voted, revoke and resubmit new instructions.
 - ✓ If the issuer exercised the right to handle the NOBO portion of the process, the broker should refer the NOBO to the tabulator to assist.

Topic 5- International Holdings

Bill Brolly:

- A sizeable number of Canadian issuers have investors who choose to hold their shares via a US broker, or a European broker.
- For some clients, intermediaries do not request or receive the DTC omnibus proxy.
- 37% of shareholders (held by intermediaries in the US or abroad) do not receive DTC omnibus proxies by the meeting date and without the omnibus proxy, those shares may not get counted.

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- Foreign central depositories also becoming participants in one another, but none of these depositories are providing omnibus proxies to facilitate voting.
- This may be okay where there is no expectation by the owner that they be able to vote those shares, but when they do expect it, those shares can't be voted without proper delegation authority.

Topic 6- Who is legally responsible for obtaining the authority to vote?

Bill Brolly:

- It should be the investor and its intermediary and should not fall to the issuer to go through a complex chain of intermediaries to find out who owns the votes and receives the materials.
- The integrity of the system can be repaired through the effective use of technology
- Each season Computershare receives 8000 faxes from Broadridge to allocate votes from one participant to another – the sheer number begs the question of why these votes are being allocated between the participants.
- Holistic reforms are needed before a major scandal breaks (i.e. a takeover that should have gone through but votes were not counted, or a director is left on a board that should have been removed, or a CEO salary is approved or rejected because votes were left sitting on the floor)
- This is a problem that needs leadership, and we can't just accept the status quo

Bill Brolly:

- These scenarios can be resolved by intermediaries undertaking the following:
 - ✓ Engage in the reconciliation of votes.
 - ✓ Provide mini omnibus proxies to ensure the proper allocation of shares for voting.
 - ✓ Intermediaries need to clearly identify who will be voting the shares where a clearing broker is setting up an account.
 - ✓ If clients ask for a proxy, make sure the position has not been voted.
 - If the position has not been voted, before executing the proxy, intermediaries need to make sure that they instruct Broadridge to block the account to prevent double voting
 - If the position has been voted, revoke and resubmit new instructions.
 - ✓ If the issuer exercised the right to handle the NOBO portion of the process, the broker should refer the NOBO to the tabulator to assist.
- No one wants a shareholder to be disenfranchised and so intermediaries need to ensure that their clients are aware that their account needs to be set up exactly as it is reported by their service providers, and advise Broadridge to code the account as an omnibus position.
- If the custodians notify Broadridge of such an account, then a mini omnibus proxy will automatically be generated three days after the record date.
- There is a need to educate and train parties within the intermediary organizations, with respect to the voting process, including whomever sets up the account, those taking and receiving instructions from clients, and proxy departments.

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- The bottom line: Assigning the right vote to the right shareholder is vital

Benjamin Silver (Question):

- Transfer agents and tabulators will receive, from Broadridge, the aggregate proxy in respect of each intermediary, at the issuer's proxy cutoff time, correct?
- They are not a cumulative vote though and at the end of the day, those votes need to be added up to ensure the number does not exceed the stated CDS record date position held by that intermediary.
- How often have you had to go back and say, "This exceeds the CDS position?"

Q & A

How often have you had to go back and say, "This exceeds the CDS position?"

"This happens 90% of the time, with respect to individual intermediary positions. It's not always a true over vote.

The situation may arise because:

- ✓ **Entries haven't been applied;**
- ✓ **Documentation has not arrived for the broker position;**
- ✓ **Information is lost."**

- Helen Stratigeas,
Equity Financial Trust
Company

Helen Stratigeas:

- This happens 90% of the time, with respect to individual intermediary positions.
- It's not always a true over vote; the situation may arise because the entries haven't been applied, because there is documentation that has not arrived for the broker position, or because that information is lost.
- Every time there is a tabulation, it is tabulated against the actual broker position because once CDS passes the information to them, it is broken down by broker.
- These are the positions that have a 90% over vote rate (or the documentation can't be found etc.)

James Hinnecke:

OBO and NOBO Issues

- CST is interested in making the system as efficient as possible, as transparent, and as equitable as possible for all shareholders.
- The notion of OBO status is inconsistent with those stated goals
- North America is the only place where the OBO designation exists, but the SEC in the US has suggested that these differentiations should be abolished.
- The effect of the OBO and NOBO statuses is that shareholders end up with two different systems for distribution.
- This results in inconsistent communications to shareholders because their respective timing is different.
- Even electronic communications are bifurcated along OBO NOBO lines.
- Distributing to their OBOs is expensive for issuers, and they should have a right to know who their shareholders are.
- There is a conflict as to who should pay for OBO distribution, regardless of who actually undertakes the distribution.
- NI 54-101 states that issuers do not have to pay for OBO material distribution, but OBOs are still required to receive the materials.

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- There is also a lack of information and/or education for retail shareholders, who are often not told that they may have to bear the cost of the communications from the issuers in question.
- The cost of the current bifurcated system between \$5 million and \$7 million each year.
- NI 54-101 is being reviewed and re-written this year, and we push for OBO and NOBO to be abolished.
- Absent a full removal, in order to encourage consistency of communication, the mailing agent should be able to handle all kinds of communications for OBO, NOBO or registered holders so that everyone gets the same treatment and receives the same material.
- This would make it easier to justify that the issuer should bear the cost as well, given that they control the communication channels.
- Doing so will make things more efficient, transparent and make shareholder treatment more equitable.

Penny Rice

Transparency

- Most voters just want to see their vote made it through and got counted but the current lack of transparency makes it impossible for any one part of the system to give that kind of confirmation
- One of the biggest impediments is OBO/NOBO: If issuers could see their full shareholder base as of the record date, they would have fewer problems.
- Right now, issuers don't control the voting process, or the delivery process either.
- They don't know which shareholders received a proxy, let alone who returned one.
- If the issuer could see their entire base, they could take control of the full process.
- They could direct who mails the material and ensure who it went to, and then confirm back to that shareholder when it was received.
- All the different parties work for whoever hired them, and have little incentive to coordinate beyond those relationships.
- Consider the following: Custodians send info to Broadridge but if part of the information doesn't make it from Broadridge to the scrutineer, then no one knows.
- If you had total transparency, you could solve a lot of problems (i.e. compressing the timelines for records dates).
- Reconciliation between the parties is as important as eliminating OBO/NOBO
- It is critical that we make sure the right person gets the vote, and if a mistake is made in the process, it would be much easier to identify and then fix the situation if the system were more transparent.

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“North America is the only place where the OBO designation exists, but the SEC in the US has suggested that these differentiations should be abolished.”

The effect of the OBO and NOBO statuses is that shareholders end up with two different systems for distribution.

This results in inconsistent communications to shareholders because their respective timing is different..”

**- James Hinnecke
Canadian Stock Transfer
Company**

“Right now, issuers don't control the voting process, or the delivery process either.”

They don't know which shareholders received a proxy, let alone who returned one.

If the issuer could see their entire base, they could take control of the full process.”

**- Penny Rice
Laurel Hill Advisory Group**

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- **Glenn Keeling:**

- There are three main issues that many market stakeholders are grappling with:

- 1) Over Voting

- ✓ Over voting has the potential to seriously distort the outcome of shareholder meetings.
- ✓ The solution to the problem must balance the desire for integrity in the proxy voting system, with the rights of those who have invested in a share to use the innovation of the financial markets to derive as much value as possible from that security.
- ✓ So the overall solution is not to prohibit securities lending; rather, the solution is to ensure that the voting right of the share is voted by either the lender, or borrower and not by both.
- ✓ Very few retail shareholders actually vote, but over voting takes place and has since as far back as 1994

- 2) Reconciliation

- ✓ The reconciliation process needs to be taking place at the custodial level, so that when it comes to a vote, only one vote gets cast.

- 3) Issuer-Shareholder Dialogue

- ✓ The issuer community is upset by the fact that they cannot reach out and engage in a dialogue with a percentage of their shareholder base, a base that can actually command enough attention to remove them from office.
- ✓ This is a significant problem.
- ✓ We need to be looking out for the well being of the dynamic between issuers and shareholders.

Chris Makuch:

- We need to find those pieces that we can use to fix the whole system.
- We have been slapping band-aids on the system and the body of the process has been slowly dying away.
- If we don't address the system as a whole, then we risk losing the engagement of the Canadian shareholder population.
- On the front end of the shareholder experience, the very idea that we can't mail to shareholders already says to them that we don't want them to vote.
- At the back end, issuers wind up reporting numbers that don't accurately portray how many shareholders they mailed to, and when shareholders show up to a meeting, and but aren't registered, they get disenfranchised.
- We all agree that directors are very sensitive to their votes, but they don't even know how many they mailed to.
- We should be able to say that we have an end-to-end process that engages all shareholders equally, that reflects what happens at the meeting, and it is incumbent on all of us to get us to that point.

Patricia Rosch:

The Role of Broadridge – Vote Confirmation

- It is critical to look at the current system on a factual basis, but also to look forward to what we can do to improve the process.
- We can do that by leveraging technology, and through dialogue between market players, as well as through the education of investors and other stakeholders.
- Broadridge has built out an over vote reporting system, which is an early warning system, offered at no cost to intermediary market.
- Vote confirmation in the form of Swift has been on offer since 2004. Custodians and sub-custodians around the world are using it right now
- Confirmation has been in place in the US since 2007 and globally, 25% of votes are getting confirmation that they have been accepted at a meeting.
- When Broadridge is acting on behalf of both the beneficial and registered shareholders, they do have the ability to show that the vote was submitted, accepted and certified at the meeting.

Note 1: Restricted Proxies for shares acquired after record date:

- Where a shareholder has lost their proxy, they call up their intermediary and ask for the issuance of a restricted form of proxy
- They stamp CDS on the omnibus proxy for the number of shares of that shareholder’s position and the proxy accepted by transfer agents
- There is no reconciliation to determine that the seller of the shares has not also voted.
- To the extent you have excess shares in the account, unvoted, whatever came in against that position, would be applied

Note 2 – Materials Distribution Gaps:

- Larger companies will often send materials out to all beneficial owners, but smaller issuers will not because of cost concerns
- Some larger issuers will pay for delivery to their entire shareholder base

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“There are three main issues that many market stakeholders are grappling with:

- ✓ ***Over Voting with the potential of seriously distorting the outcome of shareholder meetings;***
- ✓ *The reconciliation process that needs to be taking place at the custodial level;*
- ✓ ***The issuer-shareholder Dialogue that needs to be reviewed.”***

- Glenn Keeling,
Phoenix Advisory Partners

“We have been slapping band-aids on the system and the the process has been slowly dying away.

If we don’t address the system as a whole, then we risk losing the engagement of the Canadian shareholder population.”

- Chris Makuch,
Georgeson Inc.

“It is critical to look forward to what we can do to improve the process. We can do that by leveraging technology, and through dialogue ...

Confirmation through Swift has been in place in the US since 2007 and globally, 25% of votes are getting confirmation that they have been accepted at a meeting.”

- Patricia Rosch
Broadridge

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- The move towards notice and access and electronic delivery gives everyone an opportunity to contact shareholders more efficiently
- When an issuer is using a transfer agent to send out materials, 46% of those issuers send to OBOs
- Someone else often picks up the slack (intermediaries, custodians, etc.).

Note 3 – Borrowed Shares Used to Oppose Transactions/Benefit Short Positions

- There is a real danger that, in the example of a hedge fund borrowing shares, they could do so and have a short position on the shares and then oppose a merger, for example, to benefit their other holdings.
- It is difficult to restrict and uncover this kind of benefitting via shorting, we do need to in order to ensure the integrity of the system.
- There is US research indicating that this does, and has happened.
- These shareholders are influencing mergers to their own economic benefit when they have no economic stake, and they use the votes that they borrow.
- This goes to the heart of our capital markets and we can't prevent that as of now.
- There is an ongoing case in Delaware right now dealing with this point.
- Under Reg. T in the US, it would be illegal to do this, but it is unclear as to whether this is being enforced.

End-to-End Vote Confirmation

- You can confirm from the files that Broadridge has received whether or not someone's vote has gone through, but if those files being delivered by intermediaries are incorrect because there have been transactions after the fact, for example, those votes can't be confirmed.
- It shouldn't be held out as the be-all-end-all solution to our problems.
- We also need to ensure that there are other safeguards are operating in tandem with vote confirmation.
- Tabulators should be disclosing how they are doing the vote process
- Brokers and intermediaries should be saying if they are doing pre or post reconciliation.
- There are a number of transparency measures that are also going to be crucial
- If the files don't reconcile, then it is not surprising that we get over voting at the back end.
- End to end confirmation is a "nice to have" feature for when we have other aspects of proxy plumbing sorted out.

QUESTIONS FOR THE PANEL:

What percentage of Canadian issuers take advantage of the right to mail directly to their Canadian NOBOs?

- Direct mail to NOBOs is the norm, so it's a high percentage.
- From the client base of Broadridge, it's 80% who take advantage of that.
- For Computershare, it's 50%.
- But it all depends on the nature of the upcoming meeting and on the size of the issuer as well.

David Masse:

- Something that is not clear as of now, is whether the problem is currently resting at the intermediary level.
- Does anyone know whether intermediaries are using systems that are compatible with one another? Can the data flows go machine to machine, or do they all have to be interpreted by a human?

Response:

- Institutional custodians reconcile with CDS and Broadridge every day, not just for proxies.
- Custodians also account for, and flag, securities lending in these files.
- Subsequent to the June RBC Dexia symposium, Bill Brolly reached out and said that while RBC is claiming that it has 96% accuracy, he could show them instances of over voting.
- RBC sent him balanced reports, and he responded with tabulation problems in those reports.
- It's hard to know about the extent of these issues until you start going through these examples.
- Bear in mind as well, that the companion policy to 54-101 mandates pre-reconciliation
- As well, it's great to point out all of the issues we are seeing here, but what we really need to do is bring forward concrete examples and start picking apart the machinery to see where mistake are made.
- There should be a factual basis for the discussion
- Recall, we have problems at 55% of all meetings, and it's these kinds of statistics that can drive this conversation and investigation
- There may be merit in approaching this in a forensic way after the fact
- There would need to be a multi disciplinary committee to investigate contentious votes.
- It would be worthwhile to capture the data and have the various stakeholders dissect it.

- We can't try and do the analysis of the problem in real time because there's just too much data flying around.

Q & A

How many Canadian issuers take advantage of the right to mail directly to their Canadian NOBOs?

“From the client base of Broadridge, it's 80% who take advantage of that. For Computershare, it's 50%.”

- Various panelists

“Does anyone know whether intermediaries are using systems that are compatible with one another? Can data flows go machine to machine ?

“Institutional custodians reconcile with CDS and Broadridge every day, not just for proxies.

Custodians also account for, and flag, securities lending in these files.

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- Various panelists

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- Could we get a multi-disciplinary panel to conduct post-mortems on votes to see where problems are?

5. Day One – Markets and Intermediaries Panel

PANEL SUMMARY:

This session focused on the respective roles of various market participants, and their perceptions of the current system, including strengths, weaknesses and areas for improvement. Specific topics of discussion included the relationship between proxy plumbing and dividend plumbing, the current state of NI 54-101 and the potential role for regulators in changing the current proxy system.

Key Topics:

1. 54-101: State of the Nation
2. Will ‘Notice and Access’ and impact on the type of problems we are discussing today
3. For issuers with large American investor bases who hold through DTC, DTC holding and separate registered holder
4. Retail Shareholders’ Impression of OBO/NOBO
5. The Role of the Regulators
6. Getting the retail broker side to the table
7. Removing the OBO Option

PANEL MODERATOR: Ross McKee - Partner, Blake, Cassels & Graydon LLP. A partner in the securities group in the Toronto office of Blakes, Mr. McKee’s practice involves all aspects of Canadian and cross-border securities regulation and financial compliance. He has served as a member of the Ontario Securities Commission’s Continuous Disclosure Advisory Committee, and was retained by the Toronto Stock Exchange to develop and maintain its Filing Guide for TSX-listed companies. He also assisted in developing the Canadian Investor Relations Institute’s Standards & Guidance for Disclosure for public companies.

PANELISTS:

Rick Gant –Regional Head, Western Canada RBC Dexia. Mr. Gant is responsible for managing RBC Dexia’s business in Western Canada from their two branches in Calgary and Vancouver. He has been in financial services for 22 years, 20 of those years with RBC Dexia. Mr. Gant held numerous management positions in Toronto before moving to Halifax as Director of Relationship Management in 1998 and then to Vancouver in 2006.

Kathy Byles – Director, Compliance, RBC Dexia Investor Services. Ms. Byles and her team of compliance specialists provide compliance advice to institutional clients, specializing in pension and securities regulations. She plays a key role in developing and implementing policies, controls and staff training to ensure compliance with a wide range of regulatory requirements, including code of conduct, conflict of interest, anti- money laundering, privacy, KYC and anti-terrorist account reviews.

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Fran Daly – Managing Director, Business Development CDS Clearing and Depository Services Inc. Mr. Daly has been Managing Director, Business Development since 2010. He and his time are responsible for the identification and development of strategic initiatives and works closely with all areas of the organization to continually improve the services offered by CDS. Prior to assuming his current role, Mr. Daly managed the customer service team at CDS and was responsible for ensuring that participants effectively utilize the clearing and depository services of CDS.

Ungad Chadda – Senior Vice President, Toronto Stock Exchange (TSX). Mr. Chadda joined the Canadian Dealing Network (CDN), the over-the-counter market previously owned by the Toronto Stock Exchange, in 1997 in Corporate Finance. He has held progressively senior roles, including Director of Listings for TSX Venture Exchange, Chief Operating Officer, TSX Venture Exchange, and Vice President, Business Development, Toronto Stock Exchange and TSX Venture Exchange. Mr. Chadda assumed his current role in May of 2009 and is responsible for all aspects of Toronto Stock Exchange’s listings business.

DISCUSSION: _____

Opening Point of Consideration:

- Look at this all as a game of broken telephone
- The people sending or receiving the communications (*shareholders and issuers*) are all removed from one another by various degrees (*through intermediaries and other marker players*).

Rick Gant:

- RBC Dexia acts as a custodian and is responsible for settling transactions, holding positions on behalf of clients and holding assets on behalf of third parties.
- Their clients are mainly pension plans, fund companies and insurance companies, which are going through the same pressures as everyone else in the market.
- The number of transactions has exploded by 100 fold since 1995
- Proxy voting has also grown by leaps and bounds, resulting in a huge number of transactions occurring during the proxy-voting season.
- One of the largest drivers for RBC to look into corporate governance best practices has been client requests.
- Keep in mind that dividends, which are 99.9% on time and accurate, and shareholder voting, which has problems at 55% of meeting are driven by the same piece of paper but by two divergent processes.
- American shareholder voting technology is advancing quickly, and it is becoming incumbent upon us to get to the point where shareholders can all use a simple web interface to vote.
- One of the reasons behind the continued use of OBO and NOBO statuses is because they are automated and more electronic than sending out proxies.
- When OBO/NOBO forms first came out, and RBC tried to explain it to clients, the big question in return was “what does this mean for me as an investor/voter?”

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- Majority decided to be OBO so as to be able to electronically vote and go through Broadridge and not be inundated by mailings.
- It sounds like investors would be fine to give up OBO status if they could enjoy the electronic voting benefits and not get inundated with mailings.
- Some investors who are OBOs fail to realize that in other jurisdictions they cannot hide behind the OBO designation, and when that happens, they may get inundated with Proxy Solicitation Firm calls anyway.
- Issuers can request beneficial shareholder information in these other jurisdictions and custodians are obligated to give it.

Ungad Chadda:

- From the TSX perspective, the quality of the vote, the effectiveness of the vote and the accuracy of the vote are all important
- Throughout the TSX rulebook there are rules for shareholder protection involving pricing and dilution, but in most cases these rules can be bypassed if there is shareholder approval.
- The effectiveness of the TSX rules, therefore rest on the quality of the vote in order to enforce them, or bypass them.
- The current TSX rules require transfer agents to have a trust requirement and to see where the TSX is heading, look at recent additions to the rulebook.
- The TSX can play a role in educating on these issues, facilitate proxy plumbing changes through roundtables or working groups and are in a position to do so based on where they sit as a stakeholder.
- As well, the TSX can also mobilize stakeholders to move these issues forward because typically when the TSX comes forward to speak on these issues, people respond.

Proxy Advisory Firms:

- Regulation may not be the solution for the issues being raised at this summit.
- An issuer channel through to the proxy advisors would be important as an addition, and is what is currently missing.
- From the buy side, institutions don't seem to mind proxy advisors.
- From an issuer perspective discovering a factual inaccuracy in a Proxy Advisory Firm report is frustrating, and it would be helpful for all involved to have a communication channel between the issuer and that firm.

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“Keep in mind that dividends, which are 99.9% on time and accurate, and shareholder voting, which has problems at 55% of meeting are driven by the same piece of paper but by two divergent processes.

American shareholder voting technology is advancing quickly.

One of the reasons behind the continued use of OBO and NOBO statuses is because they are automated and more electronic than sending out proxies.

Most shareholders decided to be OBO so as to be able to electronically vote and go through Broadridge and not be inundated by mailings.”

- **Rick Gant,**
RBC Dexia

“Throughout the TSX rulebook there are rules for shareholder protection involving pricing and dilution, but these rules can be bypassed if there is shareholder approval.

The effectiveness of the TSX rules, therefore rest on the quality of the vote.”

- **Ungad Chadda,**
Toronto Stock Exchange

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Fran Daly:

An Overview of the CDS Real Time Settlement System (CDSX):

- The system reconciles every position with participants and omnibus positions with transfer agents every day.
- There is no point at which CDS is not reconciled with respect to the positions held by transfer agents.
- They are likely the first link in the chain because issuers know that they hold the largest position
- Once a proxy event comes up, it triggers the requisite information flow.
- There needs to be a combination of processes that reconcile between CDS and participants, and between Broadridge and beneficial holders; it all needs to be reconciled between issuers and shareholders and at every point in between.
- Reconciliation needs to be such that when proxies are sent out to investors, the total number of proxies being distributed equals the number in the register.

Dividends vs. Votes:

- Intermediaries will pay out before they themselves receive a dividend and are contractually required to pay out.
- If a security is lent out, you can seek cash from someone if the chain of ownership is unclear or a mistake is made.
- A vote and a security however cannot be separated out, and a missing vote is not fungible and so cannot be replaced.
- If you don't have the security, you don't have the right to vote.
- The two are fundamentally different and we should be careful about comparing the processes.

Kathy Byles:

- RBC is sub-custodian to 8 out of 10 world largest custodians, and it holds their Canadian equities.
- When it comes to the voting processes for foreign institutional investors, not all are voting through the same Broadridge services.
- Some expect an omnibus proxy to be sent to their home jurisdiction so they can get instructions from holders there.
- There are a substantial number of foreign investors in Canadian markets and they don't understand OBO/NOBO, nor do they want to.
- They just want their voting rights provided to them by RBC as sub-custodian.
- International investors often focus on getting shares recalled for a vote, and then getting them back out for lending as soon as possible thereafter.

Topic 1: 54-101: State of the Nation

Kathy Byles:

- Foreign investors want the OBO NOBO designation done away with.
- If an issuer wants to know who they are, foreign investors have no problem revealing their identity because they can't disguise themselves in their home jurisdictions anyway

Fran Daly:

- 54-101 is clear on the responsibility of CDS to provide information to parties looking for it.
- However, there are no clear rules for intermediaries and service providers as they move down the chain of proxy voting.
- So the regulation is very good at the issuer end of the chain as to what issuers are required to provide, what CDS's obligations are, and at the shareholder end, but it isn't nearly as comprehensive in the middle
- There is nothing to say that "as the distributor of the proxy material, here is what you need to do"

Ungad Chadda:

- The TSX supported the request for comment on 54-101 when it came out, but discussions surrounding different abilities to have notice and access was not as beneficial in the eyes of the exchange.

Topic 2: Will 'Notice and Access' have any impact on the type of problems we are discussing today?

Kathy Byles:

- Whatever technology drives this system, there has to be a reconciliation piece all the way down the line
- If an investor can electronically change the number of shares they are entitled to vote, or request a restricted proxy, it can circumvent existing reconciliation methods.
- The controls aren't in place yet to prevent these problems from arising and we will need reconciliation and controls in the whole process from end to end.

Topic 3: For issuers with large American investor bases who hold through DTC, does DTC hold through CDS, or is it a separate registered holder who gets a separate omnibus proxy?

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“There is no point at which CDS is not reconciled with respect to the positions held by transfer agents.

They are likely the first link in the chain because issuers know that they hold the largest position

Once a proxy event comes up, it triggers the requisite information flow.

There needs to be a combination of processes that reconcile between CDS and participants, and between Broadridge and beneficial holders; it all needs to be reconciled between issuers and shareholders and at every point in between.

A vote and a security however cannot be separated out, and a missing vote is not fungible and so cannot be replaced.”

*- Fran Daly,
CDS*

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- If the securities were issued in Canada, an American shareholder would hold them like RBC Dexia does.
- If DTC has its own position registered under a nominee name, then the situation is slightly different.
- DTC will have its own position on the register and will issue an omnibus proxy to its brokers.
- Part of the problem for DTC is that a US broker may already have a US position registered under DTC's nominee name and then they'll have acquired additional positions through the transfer from CDS into DTC.

David Masse:

- We also need to consider dual-listed companies when considering this question.
- These companies benefit from private placement rules in US, but they must have a majority Canadian shareholder population.
- The question of determining what percentage of shares are domiciled in the US turns out to be nebulous.
- You can see CDS and DTC accounts in the register, but how do you tell which ones are domiciled in the US, but registered in CDS and vice versa?

Topic 4: Retail Shareholders' Impression of OBO/NOBO:

- The typical explanation to retail investors is: "Do you want to receive a whole bunch of paper in your mailbox or not?"
- As retail shareholders become more educated on governance and want to vote, how are they being educated about OBO NOBO?
- How proficient are brokers at explaining this educational component to retail shareholders?
- During the development of NP 54-101, which preceded NI 54-101, there was a discussion about whether or not the explanation of OBO/NOBO should be included.
- The policy view was that there should be some explanation around this to make clear to investors what this designation is for and what the implications of being an OBO or NOBO would be.
- Firms thought that the document would provide more clarification to pass along to consumers.
- It may be time to revisit it to get a more readily understandable wording.

Sarah Wilson:

- When thinking about OBO NOBO dissolution, consider the legal protection offered by segregated bank accounts.
- If you want a regulatory excuse/shareholder protection reason to get rid of OBO NOBO, think about a liquidation situation, and how you would determine ownership.
- Recall the Lehman Bros. collapse: everyone in a segregated account got their money back, but anyone who wasn't in a segregated account was not so lucky.
- In Canada, all registered banks must have segregated accounts by law, and separate records.

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- To the extent that the intermediary is a regulated bank or trust company, OSFE constantly audits them and 59-70 reports give assurances of segregation
- If we had totally segregated accounts, we would be less likely to have reconciliation problems
- On liquidation, a court would carefully considering the evidence before considering any transfer of ownership of liquidated segregated accounts.
- Segregation is good for legal rights, and in the midst of an insolvency situation, the regulators/courts want to not put a foot wrong.
- There would always be a time delay to determine ownership, even in a segregated ownership scenario.

Topic 5: The Role of the Regulators

Tom Enright (Question):

- How much of what we have discussed requires action from regulators and how much requires action from others in this room?

Rick Gant:

- For the most part, we in the room can all determine the quick hits that can be made now.
- There are nine key streams identified in the Davies report and working groups could take these streams apart piece by piece.
- Even with respect to OBO/NOBO we could develop technology solutions to address it, or abolish it.
- The key point is that if the industry can't agree where the problems lie, the regulators can't step in and address areas of concern.

Carol Hansell:

- There is a strong and compelling role for the regulators and solutions cannot be developed without regulatory support
- NI 54-101, despite being well drafted instrument, is old and it doesn't respond to current needs, disparities and questions.

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“RBC is sub-custodian to 8 out of 10 world largest custodians, and it holds their Canadian equities.

When it comes to the voting processes for foreign institutional investors, not all are voting through the same Broadridge services.

If an investor can electronically change the number of shares they are entitled to vote, or request a restricted proxy, it can circumvent existing reconciliation methods.

The controls aren't in place yet to prevent these problems from arising and we will need reconciliation and controls in the whole process from end to end.”

**- Kathy Byles,
RBC Dexia Investor services**

“You can see CDS and DTC accounts in the register, but how do you tell which ones are domiciled in the US, but registered in CDS and vice versa?”

**- David Masse,
CSCS**

Q & A

As retail shareholders become more educated on governance and want to vote, how are they being educated about OBO NOBO?

“During the development of NP 54-101, prior to NI 54-101, there was a discussion about whether or not the explanation of OBO/NOBO should be included. Firms thought that the document would provide more clarification to pass along to consumers. It may be time to revisit it to get a more readily understandable wording.”

- David Masse, CSCS

“When thinking about OBO NOBO dissolution, consider the legal protection offered by segregated bank accounts.

Recall the Lehman Bros. collapse: everyone in a segregated account got their money back, but anyone who wasn't in a segregated account was not so lucky.

Segregation is good for legal rights, and in the midst of an insolvency situation, the regulators/courts want to not put a foot wrong.”

- Sarah Wilson, Manifest.

- We can't fix the problems we are trying to address at this summit, except by going through 54-101
- Consider perennial problems like share lending and over voting: Regulators have been aware of this for years, and brokers have shown they will not resolve on their own, so it seems that they may need some regulatory authority to help with the problem.

Ungad Chadda:

- There is ultimately a role for the TSX to play in this.
- But industry needs to map out the problems and start determining the likely fixes before regulators can get involved in earnest.
- The TSX is currently situated to help determine the issues, but not much beyond that until more of the problems and processes are mapped out.

Paul Conn:

- There needs to be reconciliation at all 3 levels.
- Reconciliation needs to happen at the register level (CDS), participant level and customer level, and it needs to go top to bottom.
- This could go a long way to reducing over voting and reducing the quality of the vote
- It is critical that the foreign depositories be brought into this as quickly as possible because it gets messy when shares are being exchanged between depositories
- There is no reconciliation mechanism in place as of now to do this, and no one has ever attempted to determine the mechanism that would permit reconciliation from top to bottom.
- Determining such a mechanism requires the industry to get together to map out the problem.

David Masse:

- Are there any lessons to be learned from the birth of CDS?
- CDS was born out of the need to deal with the frequency of trading.
- 40 years ago the solution was to put the beneficial shareholder information in the depository to ensure it was clear who had it.
- Certificates used to be endorsed in blank and allowed trades to get away from the register but this system became too cumbersome over time.
- CDS responded to a need in the markets.
- There was an account open for each broker and registered each position on behalf of clients.
- CDS started as a broker system where there was an account

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open for each broker, who registered each position on behalf of clients.

- Certificates were held in a vault for each broker, which represented the positions of the broker's clients.

Rick Gant:

- Securities lending ten years ago separated the security from the proxy, and this was a feasible outcome because proxies were paper based.
- Going back to that would be complex and could create another market unto itself.
- Could lending shares go through a central clearinghouse?
- You could track lenders and borrowers, but it would still be a complicated process.

Curtis Wennberg:

- Do we really need regulators to facilitate the development of a solution?
- What we need is a concerted collective action from market stakeholders to make this work.
- Cancelling OBO/NOBO is a strong form of this argument
- If a reconciliation hub were to be developed, it would not be outrageously expensive.
- CDS can easily handle this kind of structure, and involve all the necessary personnel to make it work.
- If you cancel OBO/NOBO, then you may not need the reconciliation hub
- In the end, what we may need is a regulatory response to encourage buy-in from stakeholders, because the incentive isn't there for any one party to take this all on.
- This is a public good, and so there is an associated free rider problem; if CDS were to take on this problem, it would incur the costs and the benefits would be shared amongst market participants.

Rick Gant:

- The RBC Symposium was a forum for getting buy-in from various parties needed to make this all work.
- It was surprising as to how many people willingly came to the table to discuss it.
- When the idea was first floated, no one was sure whether or not anyone would come to the table because this is a problem that had been around for 15 years and no one had taken a look at it.
- Moving forward, all participants will need to have a hard look at themselves, and everyone has to be willing to open their kimonos and share information.

Q & A

How much of what we have discussed requires action from regulators and how much requires action from others in this room?

“For the most part, we in the room can all determine the quick hits that can be made now.”

There are nine key streams identified in the Davies report and working groups could take these streams apart piece by piece.”

- *Rick Gant, RBC Dexia*

“NI 54-101, despite being well drafted instrument, is old and it doesn't respond to current needs, disparities and questions.”

- *Carol Hansell, Davies Ward Phillips & Vineberg*

“Industry needs to map out the problems and determine the likely fixes before regulators can get involved in earnest.”

- *Ungad Chadda
Toronto Stock Exchange*

“There needs to be reconciliation at all 3 levels:
✓ Register level (CDS);
✓ Participant level;
✓ Customer level,
and it needs to go top to bottom.”

*Paul Conn,
Computershare Ltd*

Q & A

Are there any lessons to be learned from the birth of CDS?

“Securities lending ten years ago separated the security from the proxy, and this was a feasible outcome because proxies were paper based.”

Going back to that would be complex and could create another market unto itself.”

- *Rick Gant, RBC Dexia*

“If you cancel OBO/NOBO, then you may not need the reconciliation hub.”

- *Curtis Wennberg, CDS*

“It is uncertain whether anyone on the retail level is looking at proxy voting as part of a fiduciary obligation in the same way.”

- *Kathy Byles
RBC Dexia Investor Srvices*

“Restricted proxies are a strong reason to include the retail brokers in this conversation.”

*Ross McKee
Blake, Cassels & Graydon*

“Could we remove the OBO NOBO designation for one day to securely transmit this information to issuers for the purposes of reconciliation?”

*Sylvia Groves,
GG Consulting*

Topic 6: How do we get the retail broker side to the table?

- The industry players gathered today all speak to each other, but the broker side is more isolated.
- The CCGG would be a good path to pursue to help get brokers to the table.
- The Corporate Law actors would be important stakeholders as well.
- There is a feeling though, that the broker client base isn't pushing for any real changes in the areas we are concerned with.

Kathy Byles:

- Institutional investors are being pushed by regulators to develop governance programs, and so these institutions are pushing for changes to the proxy system.
- It is uncertain whether anyone on the retail level is looking at proxy voting as part of a fiduciary obligation in the same way.

Ross McKee:

- Restricted proxies are a strong reason to include the retail brokers in this conversation.
- This pool of stock does not come with instructions for brokers as to how it should be voted, and we should know what happens to that stock.
- Does someone vote it? More specifically, does it get voted through restricted proxies?

David Masse:

- Returning to the idea of a data hub for a moment, one of the spinoff benefits would be that all shareholders would get a dashboard.
- There is no reason that retail and institutional shareholders should vote differently.
- The key is to have good back office systems to do the reconciling and to ensure that data flows are properly supported.
- XBRL data is going to be critical.
- Assume everyone gets an XBRL dashboard to compare apples to apples, why shouldn't the same dashboard be used for proxy voting?
- This may not be much of a regulatory issue, but the regulators may have a role to push the industry to act.
- The regulators have the mandate to encourage this conversation and set milestones so that the process doesn't drag on indefinitely.

Topic 7: Removing the OBO Option

Rick Gant:

- Fund managers and pension funds are obstacles to this happening, because they are worried about revealing their investing secrets/strategies.
- Mutual funds have to publish portfolio quarterly reports, but there is a marked difference between daily and quarterly reports.
- An additional consideration with respect to beneficial shareholders is that everyone uses the term beneficial owner, but the definition, use and understanding of that term can be flexible.
- Often, it is assumed to be the party with the voting right.
- But often the voting right will be delegated to a manager or ISS.

Sylvia Groves:

- Issuers want to know who has the right to vote.
- Could we remove the OBO NOBO designation for one day (*for the purposes of proxy reconciliation*) to securely transmit this information to issuers for the purposes of reconciliation?

6. Day One – End of Day Briefing

PANEL SUMMARY:

This session was run as a final reflection by the panel moderators, on the information that was elicited during the course of the day. Specific topics included possible transparency problems stemming from the OBO NOBO distinctions, the need to engage retail brokers in future discussions and over voting.

KEY TOPICS:

1. The missing issues of today
2. Shareholder Privacy Issues
3. Empty Voting
4. Proxy Advisors
5. Final Thoughts

PANEL MODERATOR: David Masse - Senior Legal Counsel and Assistant Corporate Secretary, CGI Group. Based in Montreal, Mr. Masse is responsible for corporate and securities law matters as well as related compliance activities in more than 90 jurisdictions worldwide and manages the day to day affairs of the CGI board of directors and its standing committees. He is also the Chairman of the Board of the Canadian Society of Corporate Secretaries and Chair of the CSCS Shareholder Democracy Summit Organizing Committee.

PANELISTS:

William (Bill) Mackenzie – Senior Advisor, Hermes Equity Ownership Services. Prior to joining Hermes as a Senior Advisor, Bill was Director of Special Projects with the Canadian Coalition for Good Governance (CCGG). Prior to working with CCGG, he spent most of his career serving as the president of governance for ISS Canada.

Rick Gant –Regional Head, Western Canada RBC Dexia. Mr. Gant is responsible for managing RBC Dexia’s business in Western Canada from their two branches in Calgary and Vancouver. He has been in financial services for 22 years, 20 of those years with RBC Dexia. Mr. Gant held numerous management positions in Toronto before moving to Halifax as Director of Relationship Management in 1998 and then to Vancouver in 2006.

Benjamin Silver – Counsel, McCarthy Tétrault LLP. Mr. Silver primarily advises public companies on corporate governance and continuous disclosure matters, and acts for them on acquisitions, reorganizations, and public offerings. In addition, Mr. Silver was also a member of the advisory committee to the Québec securities regulator, Autorité des Marchés Financiers, for many years.

Carol Hansell – Senior Partner, Davies Ward Phillips & Vineberg LLP. As a senior partner

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in the Capital Markets, Corporate Governance and Mergers & Acquisitions practices, Ms. Hansell has acted for both private and public corporations and for governments on a variety of matters, including acquisitions, financings and reorganizations. She has extensive involvement in the development of public policy in Canada, working closely with securities regulators and the TSX and is the past chair of the Securities Advisory Committee.

Ross McKee – Partner, Blake, Cassels & Graydon LLP. A partner in the securities group in the Toronto office of Blakes, Mr. McKee’s practice involves all aspects of Canadian and cross-border securities regulation and financial compliance. He has served as a member of the Ontario Securities Commission’s Continuous Disclosure Advisory Committee, and was retained by the Toronto Stock Exchange to develop and maintain its Filing Guide for TSX-listed companies. He also assisted in developing the Canadian Investor Relations Institute’s Standards & Guidance for Disclosure for public companies.

DISCUSSION:

The Original Purpose of this Session

- This was originally meant to be a 45-minute session undertaken by policy makers.
- We all need to work to get the message back to policy makers and make clear that the issues discussed here today are problems that need to be solved.
- If we don’t solve these problems, someone else will, and they will not do as good of a job of it as we will.

Topic 1: Was there anything that came out of the pre-summit discussions that didn’t come out today?

Bill Mackenzie:

- There has been no real discussion of the difficulties of dealing with custodians (*intermediary banks*), especially during downturns when custodian staff are laid off and there is high turnover among staff, lacks of new recruits, etc.
- Another issue was the idea of parties in the chain who are not fulfilling their role, and the question of how we can put teeth behind the rules to prevent those gaps in the chain.
- Enforcing fines might be necessary, but that raises the question of who would levy them, and the answer is unclear.
- With respect to OBO, we all need to look at the paradox of shareholders wanting to engage (*i.e. via say on pay and majority voting*), but remain anonymous at the same time.
- Proponents will need a good reason to maintain OBO status because change is coming at them like a steamroller.

David Masse:

- We heard a number of arguments today with respect to the fact that OBOs might have trouble voting.
- There is a view among institutional investors that the system should work without their identity being known, but is that simply a question of the plumbing?

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“There has been no real discussion of the difficulties of dealing with custodians (intermediary banks), especially during downturns when custodian staff are laid off and there is high turnover among staff, lacks of new recruits, etc.”

- Bill Mackenzie
Hermes

There is a view among institutional investors that the system should work without their identity being known, but is that simply a question of the plumbing?

Most shareholders decided to be OBO so as to be able to electronically vote and go through Broadridge and not be inundated by mailings.”

- David Masse, CSCS

“Low hanging fruit is the best way to go initially, and the Early Warning System is very low hanging fruit. It should be lowered to 5% in order to learn about who shareholders are.”

- Benjamin Silver
McCarthy Tétrault

- No, this goes beyond the plumbing and gets to relationships; voting is increasingly a process of making a decision based on people in order to get to the heart of corporate governance issues.
- You need to have a dialogue that goes both ways in order to develop and foster those relationships.

Benjamin Silver:

- Low hanging fruit is the best way to go initially, and the Early Warning System is very low hanging fruit.
- It should be lowered to 5% in order to learn about who shareholders are.
- The counterpoint to that, however, is that most shareholders are well under 5% but are still part of the top 20 of a given issuer.
- Why can't issuers talk to their shareholders?

Carol Hansell:

- The only reason we need communication is for management to reach out to recommend on votes to be undertaken by shareholders (*because they have to make certain decisions*).
- If shareholders are not going to be put in a position to make the decisions on a reasoned basis in their own interest, then does the governance model work anymore?
- Also, the smaller the company the more likely you are to see 5% holders, but the reality is different for larger issuers.

Topic 2: Shareholder Privacy Issues

David Masse:

- You don't need OBO status to mask ownership and nominees should not be registrants.
- As an issuer, you want to be able to get back to the ultimate beneficial owner; the person who can actually vote the shares.
- Issuers would have a regulatory lever to use to access the information.

Carol Hansell:

- When an issuer wants to persuade a shareholder for the purposes of a management recommendation for a vote, just seeing a number code may not be sufficient.
- The issuer is going to want to get behind that nominee to the beneficial owner.
- Why are privacy concerns so prevalent here in North America and not the rest of the world?

Bill Mackenzie:

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- B.C. has already made it mandatory that all private placement purchases be made public through a register/the public record.
- Stakeholder will need to see if there is a resulting chill from that policy decision and whether raising money will become more as a result.

Ross McKee:

- Buried in notice and access are some plumbing issues around shareholder privacy
- We may want to design a rigorous system that confirms the votes, but does not reveal who has visited the voting site in order to maintain investor privacy.
- This would be another example where shareholders may be disclosed, and they may say that they are in fact a shareholder, but they don't want anyone noting who exactly they are and how many shares they have, etc.
- We may also need to consider key-type voting.
- As well, could someone set up an industry based on creating nominee companies, and would there be regulatory creep around this?

Sarah Wilson:

- How does Canada identify money laundering?

David Masse:

- In Canada, the AML (money laundering documentation) documents are collected by the intermediaries (anyone with accounts and holding assets), not issuers.

Topic 3: Empty Voting

Carol Hansell:

- What does it do to the governance model to not actually know if the people with an economic interest are the ones actually casting the votes?
- How are directors supposed to respond if they can't be sure that anyone who voted actually had an economic interest, or if the votes were counted properly?
- Directors need to be able to take these inputs and carry on with their jobs
- Should we be trying to accurately determine if people with an economic interest are voting?

Bill Mackenzie:

- How do we reconcile the need to maintain share lending as a practice, with the possibility of empty voting?
- Could we legislate against empty voting?

David Masse:

- Empty voting is more of a market liquidity issue than anything
- Investors and financial can finely slice and dice to assemble derivatives, and it's a good thing for the market to be able to do this, but clamping down on stock lending would prevent this from happening effectively.
- Consider CGI as an example:

- ✓ CGI has a large short position that is constantly outstanding
- ✓ But there has been tremendous stock appreciation and one would expect that it would send investors out to cover their shorts
- ✓ It turns out that CGI's stock, because of the nature of the company and the fact that it doesn't pay a dividend, is one of a handful of stocks that are key to some advanced derivatives in the market.
- ✓ US institutions wanted to keep the short positions as a result.
- ✓ It had nothing to do with the intrinsic value of the company; it had to do with fitting a given profile for a specific derivative.

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“Empty voting is more of a market liquidity issue than anything

Clamping down on stock lending would prevent this from happening effectively.”

- David Masse,
CSCS

“The smaller scale issuers/investors is where a lot of the problems we have talked about today tend to exist.

70% of money managers in North America have less than 25 employees -It's a boutique industry

They don't have governance research wings and they are being crushed by new compliance measures etc.

Keep in mind that proxy advisors only provide an opinion.”

- Carol Hansell, Davies
Ward Phillips & Vineberg
LLP

Topic 4: Proxy Advisors

Carol Hansell:

- We need to keep in mind that in this market, we have a lot of small issuers and institutions.
- The smaller scale issuers/investors is where a lot of the problems we have talked about today tend to exist.
- 70% of money managers in North America have less than 25 employees -It's a boutique industry
- They don't have governance research wings and they are being crushed by new compliance measures etc.
- Reaching out to proxy advisors for advice should not be viewed with suspicion for smaller investors, but proxy advisors should be treated like investment analysts and should be registered.
- Keep in mind that proxy advisors only provide an opinion.
- Issuers and institutional investors should convene to address this issue, because issuers are not the clients of advisory firms, and they need to find a forum to address any grievances with advisory firms because they do not have such a forum at present

Robert Pouliot:

- Investment managers in Canada have no professional association or a self-regulator; how could we expect the proxy advisors do the same?
- We are the only country in G8 without investment manager regulations or registration.
- Portfolio managers are regulated on capital, insurance, but not advice so could we really regulate the advice of proxy advisors?
- Would we regulate the advice? No, it's a moving target.
- In the US investment advisors are regulated and are self-regulating all operations (*including back office*).

David Masse:

- We could aggregate problematic/suspicious behavior by proxy advisory firms

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- If you get consistent complaints that there is a flaw in a proxy firm's data gathering or analysis, you can report it.

Sarah Wilson:

- Issuers in the UK receive an email advisory firms whenever a research report is written, but the issuers do not always respond that they would like a copy.
- When examining inaccuracies in proxy advisor reports, it is important to determine whether or not they are material, given the volume of information during proxy season.
- Moreover, because it's just advice that is being given, the onus is on the investor to be accountable for taking the advice that is presented to them.
- None of the advisory firms are forcing themselves on the shareholders of the world.

Topic 5: Final Thoughts

Ross McKee:

- If we talk to each other, we can figure out the connections between our individual silos.
- A lot of the problems that are being identified here are already being worked on.
- Communication between different players is key to cut through the various exclusive areas.

Benjamin Silver:

- The statistics presented today were flabbergasting and they go right to the integrity of the system.
- There is a problem here, and this is why the CCGG has a major push to focus on the proxy plumbing
- To what extent pre-reconciliation is an answer will be important.
- Intermediaries engaging in pre-reconciliation will be critical.

Sylvia Groves:

- The number of moments where people stopped and said "No, really? That doesn't happen" is extremely telling about how we have only scratched the surface of these issues.

“Canada is the only country in G8 without investment manager regulations or registration. Portfolio managers are regulated on capital, insurance, but not advice so could we really regulate the advice of proxy advisors?”

- Robert Pouliot,
Université du Québec à
Montréal

“Issuers in the UK receive an email advisory firms whenever a research report is written, but the issuers do not always respond that they would like a copy.

Moreover, because it's just advice that is being given, the onus is on the investor to be accountable for taking the advice that is presented to them.”

- Sarah Wilson,
Manifest

“If you get consistent complaints that there is a flaw in a proxy firm's data gathering or analysis, you can report it.

7. Day Two – Voting Agent Panel

PANEL SUMMARY:

This session featured a selection of voting agents, who discussed their economic and governance roles, policy objectives, expectations of the proxy voting process, and perceived opportunities for improvement. Specific discussion points included the prevalence of customized client voting guidelines, the current state of record dates in Canada, and the accuracy of proxy voting in Canada.

Key Topics:

8. Investors' dependency on Voting agents
9. Electronic information

PANEL MODERATOR: Sylvia Groves - Principal, GG Consulting. Ms. Groves is a governance solutions provider focused on “Getting Corporate Secretaries Home in Time for Dinner” and “Adding Value for Boards”. She is a past chair of the Canadian Society of Corporate Secretaries (CSCS) and was Chief Governance Advisor at Nexen, where she led the development of their award-winning governance programs and related public disclosure. Her extensive experience and client work covers governance for domestic and international private companies, US and Canadian listed issuers, crown corporations, and not-for-profit and charitable organizations.

PANELISTS:

Robert McCormick – Chief Policy Officer Glass, Lewis & Co. Mr. McCormick oversees the analysis of 20,000 proxy paper research reports on shareholder meetings of public companies in 100 countries. Before joining Glass Lewis, he was the Director of Investment Proxy Research at Fidelity Investments where he managed the proxy voting of over 700 accounts, holding 5,000 global securities worth in excess of \$1 trillion. Prior to joining Fidelity, Mr. McCormick was a staff attorney at Keenan, Powers & Andrews and Prudential Securities, both in New York City.

Michael Jennings – Proxy Voting Specialist, Institutional Shareholder Services Inc. (ISS). Mr. Jennings' current role with ISS is to provide expertise to their internal teams with regard to the mechanics around proxy voting. Mr. Jennings has been with ISS for 12 years and has held management positions within account management, custodian operations, vote disclosure, and client implementation.

DISCUSSION:

Sylvia Groves:

- The absence of brokers and dealers is a gap at this summit.
- We should be able to close that gap with the help from some of the people in this room.
- Asset managers and additional pension funds would also be an important gap to close.

Bob McCormick:

The Role of Glass Lewis

- Glass Lewis' (GL) role is to empower clients with information to make informed voting decisions.
- GL will analyze the issues being put to a shareholder vote, do research and make a recommendation.
- Clients have custom voting policies for the most part, and GL's online tool, "Viewpoint", allows clients to customize their approach to voting, down to the level of individual votes (*i.e. approval of auditors, etc.*).
- On the other hand, some clients will rely on GL's recommendations entirely.
- These clients tend to be managers who buy and sell quite frequently with very small shops, and who are more likely to vote with their feet.
- They see corporate governance requirements as more of a regulatory burden than anything else, and so they just let GL make the decisions rather than spend a lot of time and energy with an internal voting process.
- Additionally, certain groups that follow specific proposals closely (*i.e. Stock option plans*) will follow GL's voting recommendations because they have reviewed GL's approaches on these issues and have become comfortable with those approaches.
- Once these clients are comfortable with the detailed/nuanced approach undertaken by GL, they will say "yes we like this approach, and we are going to follow it, but on other issues we are going to follow our own processes."
- Clients often use GL as a filter to identify outliers when they have a large number of companies to evaluate during a busy proxy season.
- Once GL can get a sense of what a client considers to be an outlier (*based on pay for performance models, single trigger change of control, etc.*), they can set up a filter based on those

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“The absence of brokers and dealers, as well as asset managers, is a gap at this summit”

- Sylvia Groves,
GG Consulting

“Some clients rely on GL's recommendations entirely. These clients tend to be managers who buy and sell quite frequently with very small shops, and who are more likely to vote with their feet.

They see corporate governance requirements as more of a regulatory burden than anything else.

Groups that follow specific proposals closely (i.e. Stock option plans) will follow GL's voting recommendations because they have reviewed GL's approaches on these issues and are comfortable with those approaches.”

- Bob McCormick,
Glass Lewis

“ISS conducts an annual policy review where it meets with market constituents (issuers, etc.) to understand how to tailor standard ISS policy going forward.”

- Michael Jennings,
ISS

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parameters.

- But customers always have the right to override what GL has interpreted to be their intended vote.

Michael Jennings:

- *The Role of ISS*
- ISS conducts an annual policy review where it meets with market constituents (*issuers, etc.*) to understand how to tailor standard ISS policy going forward.
- Like GL, they also have a lot of clients that want to use their own voting policies that they have developed.
- Some clients will give explicit instructions to execute votes when ISS completes its policy recommendations.
- Other clients may say that they want to look at the recommendations provided by ISS and only give instructions on how to vote once they have done their own internal review.

TOPIC 1- Voting agent dependency –

How many don't have their own policy at all, and are directly following your recommendations?

Bob McCormick:

- By the number of clients of GL, 40% follow and 60% have some semblance of a custom policy.
- Those customer policies can range in complexity from very specific rules on a few issues, to covering 60-70 issues in depth.
- In terms of assets, the more assets a client manages, the more likely you are to see custom policies.
- As you move up the scale of assets, the policies will get more customized and they will have more proxy advisors.

Michael Jennings:

- The split is roughly the same for ISS.
- Even if the client has a standard ISS policy, they can deviate.
- ISS offers proxy levels (*rankings*) from 1-6 on issues, with a 6 being something like a merger/acquisition, and clients will look more strenuously at those higher ranked meetings because they are likely to be contentious.

Sylvia Groves:

- Given that 70% of brokers have 25 people or less in them, it is unlikely that these shops are going to have experts in these proxy issues, so ISS and GL are critical players in the market.
- Where do you get proxy information and material?
- Do clients bring it to you, or is there a process you need to be kick starting to get that information?

Bob McCormick:

- Some clients are research only, so they give us their holdings list and we undertake the necessary research.
- GL will aggregate all those lists to get a sense of the workload throughout the year.
- In North America, SEDAR and EDGAR make disclosure very easy.
- A second type of client is that group of clients that will be using a voting platform of some type.
- As soon as we get a ballot, that's a trigger for those clients.
- If a custodian bank hasn't engaged in electronic balloting, sometimes GL will actually get a paper ballot, but it has the same triggering effect.
- This is used to determine if there are any discrepancies between a client's holdings and the proxy materials they received.
- The size of GL now means that there will be a lot of overlap between meetings for holdings by clients.
- GL's analysts will be writing close to 20,000 reports for its client base.

Michael Jennings:

- The best way to get proxy ballots is electronically.
- ISS has relationships with the ballot distributors, Broadridge, GPD, ProxyTrust, and they have data feeds set up to send information back and forth constantly, so ISS is receiving meeting details all the time.
- As soon as they receive them, they put them on their platform and allow clients to vote.
- The ISS procurement team is independent of Broadridge in terms of procuring meeting details as well and reconciling the ballots with the meeting lists.
- The first step is to reconcile the ballots with the meeting notices that have been received.
- ISS will sometimes also receive holdings ballots from clients, and they try to match that up as well, but if there are discrepancies they reach out to Broadridge, etc., and try and figure out why they didn't get the ballot.
- Paper ballots will sometimes wind up going straight to the NOBO, who will then direct it back to ISS.
- Other times the paper ballot may end up in a mailroom of a custodian bank or intermediary, or go to the portfolio manager who has no interest in the proxy process and these situations all represent time delays associated with paper ballots.
- It's important for ISS, if they are to put everything up on their platform, to get all the ballots, and if possible, to get everything electronically

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“60% of investors have some semblance of a custom policy.

Those customer policies can range in complexity from very specific rules on a few issues, to covering 60-70 issues in depth.

GL's analysts will be writing close to 20,000 reports for its client base.”

- Bob McCormick,
Glass Lewis

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We also receive holdings ballots from clients, and they try to match that up as well, but if there are discrepancies they reach out to Broadridge, etc., and try and figure out why they didn't get the ballot.”

- Michael Jennings,
ISS

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- The longer it takes to get to the client, the less time they get to review and think about the vote.

TOPIC 1- Electronic information – Would any clients be opposed to signing up to receive electronic information?

Bob McCormick:

- From an issuer perspective, if we can at least make sure that votes are being handled and processed, that takes a little of the flex out of the system.
- If we were asking those institutions that we know are on our list, who are not electronic, to go electronic, it would make life easier.

Michael Jennings:

- From a processing standpoint, when we set up a new account with an investment manager, we want to get the electronic voting/proxy system in place as soon as possible to prevent any problems.
 - We need to make sure ballots get routed to ISS/GL to prevent errors and malfunctions.
 - These electronic processes are the best processes to prevent errors or malfunctions with the balloting process.
 - It's in no one's interest to have a manual process with paper.
-

QUESTIONS FOR THE PANEL:

Do you, on behalf of your clients, reconcile or help them to determine reconciliation in cases of share lending?

Bob McCormick:

- It depends on what information the clients are providing in terms of holdings and on the information that the custodian bank provides.
- When reconciliation is done, the most frequent reason they don't get ballot information is because the shares are on loan.
- But GL doesn't always get notified that shares have been loaned out and there is no automatic process in place for this kind of notification.
- It's less in the purview of the client, and falls more to the custodian bank to provide the information because they have the books and records.

Michael Jennings:

- Where the information is provided to ISS by the custodian bank, that information is put up on the voting platform so that clients know their voting positions versus what they have out on loan.
- We can also get that information from the clients themselves.
- Clients in the past have joined with ISS to look for missing ballots stemming from share lending, which remains a major reason for ballots going missing.

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- ISS's proxy department may not know that a share is being loaned or not.

Do a lot of clients have clear policies about whether a vote will go out with a share when they lend it out?

Bob McCormick:

- There are two extreme positions at either end of the spectrum:
- Some managers refuse to lend because of empty voting possibility.
- Some will recall everything to vote because they view every vote as material and will forgo the income from those shares.
- In the middle of the spectrum is the majority of managers who will recall on a case-by-case basis, making a determination that certain votes are material while others are not.
- Clients will usually determine whether a vote is material or not before making the decision to recall the shares or not.
- Materiality can be difficult to determine because issuers won't always know exactly what will be voted on at the meeting
- The challenge is knowing what the proposals are, prior to record date, so that effective recalls can be done.

Sylvia Groves:

- Advance notice of record date is required in Canada, and the record date is the date that shares must be recalled by if they are to be properly voted, and to be certain that they have been voted.
- There must be 23-25 days advanced notification on SEDAR, in addition to the requirement to publish in a national newspaper, 7 days prior to record date.
- However, there is no indication of what is on the agenda of these meeting in the advance notice period.
- From an issuer perspective, you probably don't want to put a final stamp on the agenda so far out from the meeting, but it might be beneficial if there was a way to give some notice that "these are the items we are considering"
- Would this help the clients? Especially if a 1-6 rating (*as per ISS*) were included, to give clients the lead time to recall shares for executing votes on contentious issues?

Michael Jennings:

Q & A

Do you, on behalf of your clients, reconcile or help them to determine reconciliation in cases of share lending?

“When reconciliation is done, the most frequent reason they don't get ballot information is because the shares are on loan.

But GL doesn't always get notified that shares have been loaned out and there is no automatic process in place for this kind of notification.”

**- Bob McCormick,
Glass Lewis**

“Clients in the past have joined with ISS to look for missing ballots stemming from share lending, which remains a major reason for ballots going missing.”

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Q & A

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**- Sylvia Groves,
GG Consulting**

“ISS does send out notices for recall purposes (“Global Share Recall”) as an early warning system that a meeting will be upcoming. However, this system is not 100% accurate.”

**- Michael Jennings,
ISS**

- ISS does send out notices for recall purposes (“Global Share Recall”) as an early warning system that a meeting will be upcoming, but does so based on historical data and whatever current information is available.
- This system is not 100% accurate, but it makes sure that meetings are on a client’s radar.
- Knowing specifically what would be on the agenda would greatly help those clients in the middle of the spectrum to recall on a case by case basis.
- It will weigh more heavily on a shareholder where a contentious issue is being voted on, and will inform the decision about whether a shareholder recalls their shares to vote.

Dawn Moss:

- With respect to providing information ahead of meeting, for general meetings it’s probably not a big deal.
- When you are in transaction mode, you don’t want to tip your hand in advance.
- Could issuers make the system run more smoothly by information and possible agenda items in advance of general meetings then?

David Masse:

- When determining agendas and material distribution, the first thing to do is determine the key dates for the shareholder meeting, and then set the record date and meeting date (*for a January meeting for example, this would happen at the November board meeting*).
- In such a case, an issuer would only publish its circular on December 22nd, which gets approved at a December board meeting.
- So, if the requirement were to publish the agenda at the time the record date is being set, that could happen, but we would need to shift gears and we would need to know that this is in fact the expectation at that December board.
- This for an issuer is doable, if there were a requirement in place to do so.
- This would need to be a regulatory intervention, but would need to be more than practice. It could be a regulation under NI 51-102, which would ensure it had some weight behind it.
- A key aspect of this all is whether issuers are still using paper or not. If issuers are still going to print, then the timelines are much harder to compress.
- Issuers could get of the AIF and Proxy Circulars done, but mailing takes time.

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- If you went electronic, all bets would be off in terms of record date and information flow.
- For shareholders who, for whatever reason wouldn't be able take part in the full electronic system, issuers could still send them a PDF, but this would likely disenfranchise some shareholders as well.
- If you had to make a regulatory choice, and you had to disenfranchise some people, why not do so to a small group who felt that they had to do a paper process?
- The lesser of two evils would always be to switch over to electronic.

Bob McCormick:

- Having a record date closer to the meeting would also help.
- A lot of the aspects of the proxy system are historical artifacts based on practices like showing up in person, and paper ballots etc.
- Record dates needed to be further out when you were mailing out your materials to shareholders.
- Now that need is undercut by the advent of electronic voting and processing for most issuers and clients.
- But there is a balance needed: While time isn't needed to send out and digest information, time will be needed to chase down shares that are out on loan.
- ICGen has recommended a record date for 21 days out for voting purposes, which is enough time to track down missing ballots and to digest information on the part of shareholders receiving info from issuers.
- This would help you to know what the proposals at the meeting are being put forward

Once you have submitted a vote, how comfortable are you that it got through the process to the meeting?

Bob McCormick:

- We have a high level confidence, but we still have no end to end confirmation.
- The biggest challenge is that GL can't tell it clients that their whole position was voted exactly how they requested and was counted by the tabulator.
- There is no electronic data tagging of that vote to allow tracing through the whole process.
- North America has the best proxy voting systems in the world, but there is definitely room for improvement among custodians and other intermediaries in the chain.
- A lot of this is a lack of consistent account nomenclature that you can use to be consistent across the chain of intermediaries.

Q & A

Could issuers make the system run more smoothly by information and possible agenda items in advance of general meetings?

“When determining agendas and material distribution, the first thing to do is determine the key dates for the shareholder meeting, and then set the record date and meeting date (for a January meeting for example, this would happen at the November board meeting).

A key aspect of this all is whether issuers are still using paper or not. If issuers are still going to print, then the timelines are much harder to compress.”

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*- Bob McCormick,
Glass Lewis*

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- Some custodians use several account numbers for a single account depending on how they process it (*i.e. as a global job, etc.*).
- We may get 3 or 4 ballots for the same meeting, but it is really only one client and one meeting.
- The parties in the process have different account numerology from start to finish.

Michael Jennings:

- We are very confident that a vote will be executed by Broadridge and that it will make it on to the tabulator, but this is all the confirmation we will get and there is no 100% guarantee.
- Broadridge can confirm that they received the vote, and processed it, but that is the current extent of confirmation in the system.
- Sometimes on contentious votes, they can get manual confirmation from the tabulators, but this only happens in rare situations.–
- In contentious situations, both sides often hire their own people to look at the vote returns, so that provides a higher level of vote confirmation in those situations that the numbers are correct.
- But in other situations, where you don't have this double-checking, you don't know for sure.
- If you have over voting in a vote at 51%, those over votes can carry the day

Paul Conn:

- It's not surprising that we are seeing double voting.
- Everyone talks about the length of the chain, and so that begs the question, why don't you source ballots and vote directly with the Tabulators?
- Are you compelled to vote by way of Broadridge? And who compels?
- Is it a preference, a regulation, or client instruction?

Michael Jennings:

- This is an idea that has been discussed before, but hasn't gained much traction.
- Ballots are received from Broadridge, and the expectation is that they will go back through Broadridge.
- Occasionally clients will vote outside the process and they will send their votes directly through a proxy solicitor and to the tabulator on a manual vote.
- Right now, ISS will receive through Broadridge, and they are required to then vote back through Broadridge.

Bob McCormick:

- It comes down to a question of who is authorized to submit the vote.
- Institutions hire custodians to do a lot of things, including proxy distribution and voting, and custodians often subcontract that out to Broadridge.
- The beneficial shareowner has the contractual right to vote, but the nominee retains the actual legal voting rights, and the tabulator can only accept ballots from those who have the legal voting rights, which are those intermediary custodians who have contracted that function out to Broadridge.

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- This is a process we need to use because this is the only authority the tabulator will recognize.
- Unless the shareholder requests a legal proxy, they must somehow ensure the voting instructions reach the tabulator by way of the authorized nominee.
- If we could empower the end investors to vote, could we simplify the plumbing because the custodian wouldn't need to play a role.

After votes are submitted, have you ever been surprised by the result of a given vote?

Bob McCormick:

- We generally don't monitor the voting decisions and look to see if there are any unexpected voting results.

Does the OBO/NOBO system contribute to the need for Broadridge?

Sylvia Groves:

- As we look at the system, if there was a way to keep the confidentiality of the end-holder, could we simplify things?
- If institutions could properly nominate ISS or GL to be their voter and their recipient of materials, it would maintain anonymity, but allow for a more direct process absent the custodian.

Bob McCormick:

- It doesn't make a big difference to GL as to how they get the information
- What is important is providing the most consistent voting transmission possible and ensuring client votes are properly executed.
- Paper ballots, doubling up on electronic ballots, and inconsistencies across the board make things much more difficult.
- Clients want to have one platform for voting and for receiving information, and given that they will have information coming in from multiple issuers, possibly in multiple jurisdictions, cutting an intermediary step out of the chain may remove this single platform that users want, and which could ultimately streamline the process, despite being a middle link.

Is there a reason for a custodian to even be involved in the voting process?

Kathy Byles:

- Custodians generally do not vote and do not have the power to vote.

- Clients generally inform the custodian as to who will vote for them.

Q & A

Once you vote, how comfortable are you that it got through the process to the meeting?

“We have a high level confidence, but we still have no end to end confirmation. The biggest challenge is that GL can’t tell it clients that their whole position was voted exactly how they requested and was counted by the tabulator.

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ISS*

“Everyone talks about the length of the chain, and so that begs the question, why don’t you source ballots and vote directly with the Tabulators?”

*- Paul Conn
Computershare*

- Out of 56,000 primarily institutional clients, there are 300-400 entities that have the authority to vote for those 56,000.
- So it’s either that the mega accounts are asking for the proxies to go directly to their shop, or they are going to an investment management firm.
- When RBC, or custodian works with Broadridge, Broadridge can download from the custodian to see who has proxy voting authority, and then they ensure that the distribution happens accordingly.
- Any shareholder who is holding physical securities in RBC’s vault must subsequently have a paper proxy.
- We wish they didn’t, but that currently is the process because they are registered in a name other than CDS.
- Tabulators need to see those paper securities coming in under the name of a corporate nominee.
- For those under the CDS nominee name, CDS gives the tabulator a report saying “these are the names that are totaled under the name of RBC Dexia.
- When Broadridge receives the votes in from the different sources, they then vote on behalf of RBC Dexia.
- The whole process goes with the legal authority to vote.
- Custodians have no authority to give that authority to give it to anyone else.

How accurate is voting today?

Robert Pouliot:

- Do we have any benchmark statistics for accuracy that compare Canada and the US?
- To what extent can we imagine that governance issues and proxy voting will influence financial decisions?

Michael Jennings:

- There is no full guarantee, but there is a great deal of confidence in the system.
- Generally speaking, executing a vote in the electronic process brings a high level of confidence that it will be submitted through to the tabulator.
- Other jurisdictions have problems like lacking record dates, power of attorney problems, but in the US and Canada there is a high degree of confidence.
- There are no real stats though.
- Canada and the US are fairly comparable, and the US is a little more efficient in terms of actually executing votes.
- Some Canadian voting will go back through the sub-custodian

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process as opposed to be directly executed through Broadridge.

Bob McCormick:

- From GL's perspective governance risk is one component of the overall risk profile
- Consider Newscorp: The company performed well, earned \$2.7 Billion, but the board of director received a substantial vote against them.
- But Newscorp is an outlier and broad based data doesn't exist.
- Where there are obvious governance failures, shareholders are less and less afraid to be vocal and vote against directors and management recommendations.
- Michael Eisner being voted down at Disney was a watershed moment.
- It is pretty rare overall that votes lead to change, but it is becoming more a part of the basket that is examined.
- Shareholders are very much more ready to vote against board directors and poor governance.
- It isn't completely overwhelming yet, but the governance issues are providing a rallying cry.
- On the M&A side, when hedge funds are looking for issues, they are now focusing on governance issues.
- It really isn't their biggest concern, but it makes it easy to galvanize shareholder opinion around these single events.

CONCLUDING REMARKS:

Bob McCormick:

- The biggest concerns with respect to the system are NOBO/OBO, and the beneficial owners who automatically become OBOs when they open an account.
- Multiple ballots also present significant challenges because they make it more confusing for voters, especially where the agendas don't match up.

Michael Jennings:

- The process is good overall, but that's not to say that there can't be changes.
- We've seen huge improvements in vote execution and governance in the last 5-10 years.

Q & A

How accurate is voting today?

“To what extent can we imagine that governance issues and proxy voting will influence financial decisions?”

- *Robert Pouliot,
Université du Québec à Montréal*

“Canada and the US are fairly comparable, and the US is a little more efficient in terms of actually executing votes. There are no real stats though.

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8. Day Two – U.S. Market Panel

PANEL SUMMARY:

This session focused on how the US market has approached shareholder democracy. The panel compared and contrasted processes and outcomes in both the US and Canada, and suggested lessons that might guide Canadian reforms. Specific topics included opening markets for transfer agent fees, the need for OBO NOBO designations and increasing retail shareholder engagement.

KEY TOPICS:

1. Integrity in the US System
2. Voting rights vs. Economic rights, OBOs and NOBOs
3. Transparency
4. Communication, Integrity and Accuracy
5. An Open Market for Transfer Agent Fees and Retail Participation
6. Shareholder Engagement

PANEL MODERATOR: Carol Hansell - Senior Partner, Davies Ward Phillips & Vineberg LLP. As a senior partner in the Capital Markets, Corporate Governance and Mergers & Acquisitions practices, Ms. Hansell has acted for both private and public corporations and for governments on a variety of matters, including acquisitions, financings and reorganizations. She has extensive involvement in the development of public policy in Canada, working closely with securities regulators and the TSX and is the past chair of the Securities Advisory Committee.

PANELISTS:

Charles Rossi – Executive Vice President, Client Services Computershare. Mr. Rossi’s role at Computershare includes a focus on client relationships, prospects and industry issues. He has over 25 years of experience in corporate stock and mutual funds operations management. He is the current president of the Securities Transfer Association (STA), which represents more than 150 commercial stock transfer agents within the United States, including corporate and mutual fund agents.

Lyell Dampeer – President, Investor Communication Solutions, North America Broadridge Financial Solutions Inc. Mr. Dampeer is the President of Investor Communication Solutions, North America, for Broadridge Financial Solutions. Prior to that, he was Senior Vice President, Operations for ADP’s Retirement Services Group and Vice President, Client Services for ADP’s Investor Communications Services. Before joining ADP, he held senior management positions at large outsourced services providers.

DISCUSSION:

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- The SEC had been conducting a similar review of the Proxy System in the US, but resources had to be re-allocated to Dodd-Frank.
- Approval to move on with the review was given a rare unanimous approval, so they will likely come back to it once D-F frees up resources.
- They have said the first issue they want to examine is Proxy Advisory Firms.

TOPIC 1: Integrity in the US System

Charlie Rossi:

- In December 2010, The University of Delaware held a roundtable sponsored by Broadridge.
- The Securities Transfer Association (*STA*) wanted to see a little more of an aggressive stance on the integrity piece of the proxy puzzle.
- The following quote best encapsulates what our collective goal is: “Shareholder elections need to be unimpeachably accurate.”
- Today, there is no regulatory requirement for banks and brokers to reconcile their eligible voting positions to create a certifiable voters list.
- In 2004, the Securities Transfer Association (*STA*) discovered that almost every meeting they examined had instances of over voting, or attempts to over vote.
- The STA immediately went to NYSE and began auditing issuers, and demanded that brokers get involved again.
- Audits revealed that most firms had outsourced the whole proxy process.
- The NYSE fined a number of brokers and insisted that brokers get re-engaged in the process.
- Over voting stemming from securities lending, especially with respect to margin accounts, remains an ongoing problem.
- Once a shareholder signs a margin account agreement, their broker can lend those shares out and the vote goes with the share when the borrower delivers them to the buyer.
- Unless the lists are pre-reconciled before the lending there exists the potential for multiple voting.
- Another problem, exists on the depository front: DTCC and CDS have clear voter lists that are generated as of the record date, but the same is not always true of Clearstream and Euroclear.
- Cascading omnibus proxies are required to get a full view of who can vote and to create a clear, certified eligible voter list as of the record date.
- Today the omnibus proxy process is manual.
- In the US, the Broadridge over voting service has helped to contain the number of over votes.
- That doesn’t mean they don’t exist, but Broadridge now takes the role that banks and tabulators used to undertake.
- The STA believes that the SEC should mandate a pre-reconciliation of record date positions in order to generate an eligible voter list.

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“There is no regulatory requirement for banks and brokers to reconcile their eligible voting positions to create a certifiable voters list.

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**Charlie Rossi,
US Securities Transfer Association**

“US public companies quorum is required to be 50.1% but is significantly less in Canada.

US regulations require that issuers to pay for distribution to all shareholders, beneficial or otherwise.”

**- Lyell Dampeer
Broadridge Financial Solutions**

Lyell Dampeer:

- Common goals of US and Canadian proxy systems:
 - ✓ Accuracy and integrity
 - ✓ Cost effective and efficient
 - ✓ Universal enfranchisement and engagement particularly among retail shareholders
- Structural Similarities:
 - ✓ Most shares of most public companies are now held in beneficial form due to investor preference and market efficiency.
 - ✓ Registered holders are at about 10-12% and that’s falling in both jurisdictions.
 - ✓ A regulatory framework surrounds the proxy process.
- Notable Differences:
 - ✓ US public companies quorum (shares present at the meeting) is required to be 50.1% but is significantly less in Canada.
 - ✓ NI 54-101 allows issuers to use NOBO lists for direct proxy distribution to Canadian NOBOs, but not OBOs.
 - ✓ US regulations require that issuers to pay for distribution to all shareholders, beneficial or otherwise.
 - ✓ In Canada, regulations are silent as to who pays to distribute to OBOs.

TOPIC 2: Voting rights vs. Economic rights OBOs AND NOBOs

Charlie Rossi:

- When a shareholder opens a margin account they authorize their broker to lend their shares out.
- When a borrower borrows the shares to make a delivery on a short sale, the vote goes with the share.
- There has to be a way to separate the economic interests and voting rights.
- It should not to be an acceptable practice that shareholders who have loaned their share are still able vote, based on the notion that those who actually have an economic interest might choose not to vote.
- Through a series of omnibus proxies, you could give a vote to every single holder, which would improve the integrity and transparency of every vote.

Lyell Dampeer:

- Both markets allow shareholders to be OBOs
- In the US OBO’s make up 30% of all positions and 70% of

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all assets.

- Abolishing the OBO status doesn't seem to be practical, and institutional investors would still find ways to hide behind nominees.
- Modifying those existing disclosure rules while protecting anonymity is a policy issue, not an issue for the STA or Broadridge.
- However, that is an opposing view from that of issuers, who want to know who their shareholders are while shareholders believe that they do not have to disclose their ownership.
- You can tweak the rules that require disclosure, but it is unlikely that regulators have an appetite to do away with OBO/NOBO completely
- Communication with shareholders does happen, but the processes are different for registered shareholders and beneficial shareholders.
- A transfer agent will know a registered shareholder, while a banker/broker will know the beneficial holders.
- Communication must take place through the record holder, which means that communication does happen, but sometimes it is said to be impeded because of the presence of intermediaries.
- Issuers also do not do any actual distribution of proxy materials because they use agents and the same is true on the broker side.
- It's not as though issuers, if they had the NOBO list, would start sending out mailers all the time.
- In the US market, about 70% of shares in public companies, are notified in 24 hours of meeting materials going out from an issuer.
- Beneficial NOBO voting rates in the US exceed registered shareholder rates.
- Where the issuer knows the identity of the registered holders, rates are still lower than beneficial NOBO holders.
- Beneficial OBO holders also vote at 75+%, a vote rate that is much higher than that of registered shareholders.
- Knowing the identity of a shareholder, therefore, doesn't drive higher rates of voting.
- There isn't more communication to registered shareholders, nor is there any aim to push voting rates higher by way of communication.

TOPIC 3: Transparency

Charlie Rossi:

- Issuers want to know who owns them and they want the ability to communicate frequently with shareholders
- Transparency is less of a concern for large cap issuers, because so much of their stock is held by large institutional shareholders that are highly visible.
- Transparency is a more pressing issue for mid cap companies because it less clear as to who owns given that they aren't as widely held by institutional investors.
- A recent NYSE Study of the OBO/NOBO statuses found that many shareholders opted to be made NOBOs when they were told that they were OBOs originally.
- The system goes back to the early 80s 'do not call' lists were non-existent, and shareholders didn't want to be called during dinner.

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“It should not be an acceptable practice that shareholders who have loaned their share are still able vote, based on the notion that those who actually have an economic interest might choose not to vote.”

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Beneficial OBO holders also vote at 75+%, far more than that of registered shareholders.”

- Lyell Dampeer
Broadridge Financial Solutions

- There is a big difference between not being called at dinner time and issuers not knowing who you are.
- The STA is on record to support the elimination of NOBO OBO.
- People can retain anonymity through custodial accounts and surveys reveal that most shareholders would prefer to be a NOBO when the differences were explained to them.

Lyell Dampeer:

- As long as short selling exists, you wind up in a situation that, because of contractual rights, results in more shares being held in long in brokerage accounts than there are shares outstanding.
- In the US, there is an idea that people are borrowing shares to obtain voting rights, but that is not happening.
- There are three parties in a short sale: a lender, a short seller and a buyer.
- Voting rights start with entity that lends the shares.
- The short seller only borrows those shares from the lender, and delivers them to the buyer.
- The buyer expects to have long economic rights in those shares.
- Institutional investors always understand that the voting rights leave them and go to the buyer.
- For retail margin accounts, you may or may not know whether your shares are being loaned out because your broker will have handled the transaction.
- This then begs the question of who has the voting rights?
- It is never the borrower because they never take ownership of the shares, so is it the lender, or the buyer?
- The buyer should be held to have the voting rights, since they bought the shares in the open market, have the economic interest in them, and likely expect to have voting rights.
- If you pre-reconcile, you are disenfranchising these beneficial holders who believe, and in fact by way of contract, have economic rights to those shares.
- When you pre-reconcile, you reduce the voting entitlement for people that otherwise have long economic entitlement to those shares.
- Pre-reconciliation would lower the voting enfranchisement of retail shareholders
- Issuers should be concerned about disenfranchising this group because they will typically vote with management.
- Regulations in the US prevent the borrower from ever having voting rights
- As well, custodian banks in the US generally pre-reconcile, while brokers will generally post-reconcile.

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- “You only have a problem if all of your clients were to vote their shares” and because they generally (*in terms of retail holders*) only vote 20% of their shares, there may not be an issue here.
- Any uncertainty surrounding the ownership of voting rights can potentially lead to over voting.
- The primary cause is the inability of the tabulator to identify that a respondent bank actually has voting rights.
- What you end up seeing are economic owners trying to vote through nominees that otherwise hasn't been identified as being given voting rights.

Issue 4: Communication, Integrity and Accuracy

Charlie Rossi:

- Some issuers want to communicate with all shareholders directly, while other are looking to get re-engaged with their shareholder bases.
- Issuers used to communicate a lot more frequently than they do today, and a return to this level of communication should be encouraged.
- Issuers cannot communicate proxy related issue to beneficial owners because of SEC rules.

Lyell Dampeer:

- All US issuers routinely accept the results of the tabulators and those results are filed within 72 hours.
- The idea that voting is inaccurate sounds like a conspiracy among issuers to just accept the results anyway.
- It is important to understand that as long as you have an OBO/NOBO capability or distinction, you need to rely on a 3rd party to determine the accuracy of votes.
- DNT does this in the US by way of quarterly accuracy audits.
- An independent steering committee of Broadridge in the US compares results against metrics they set, and this is also reviewed by DNT.
- Compliant with 27000, and 9000 ISOs
- There are no other processors in the US that have subjected themselves to independent review about the accuracy and controls in their processes, in the same way that this process has.
- Determining whether the vote got from the nominee to the tabulator is the big question.
- There is no oversight of tabulators and the tabulator is a paid agent of the issuer.

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“Transparency is less of a concern for large cap issuers, because so much of their stock is held by large institutional shareholders that are highly visible.

Transparency is a more pressing issue for mid cap companies because it less clear as to who owns given that they aren’t as widely held by institutional investors.

A NYSE study of OBO/NOBO found that many shareholders opted to be made NOBOs when they were told that they were OBOs originally.

The system goes back to the early 80s ‘do not call’ lists were non-existent, and shareholders didn’t want to be called during dinner.”

**- Charlie Rossi,
US Securities Transfer Association**

“In the US, there is an idea that people are borrowing shares to obtain voting rights, but that is not happening.

The buyer should be held to have the voting rights, since they bought the shares in the open market.

If you pre-reconcile, you are disenfranchising these beneficial holders who believe, and in fact by way of contract, have economic rights to those shares.”

**- Lyell Dampeer
Broadridge Financial Solutions**

- Coming out of the University of Delaware Study, Broadridge and others are working on a process to confirm directly back to nominees that their instructions were accepted “as issued” or they were not, and why.
- Until the tabulator confirms back to the issuer that they have counted the votes that came in, we don’t have a complete and accurate picture of votes and how/if they are being counted.

Issue 5: An Open Market for Transfer Agent Fees and Retail Participation

Charlie Rossi:

- The STA wants an open market for transfer agent fees in order to improve innovation and foster competition.
- The existing fee schedule does not reflect what activities are being undertaken in the present and has not been reviewed in 10 years.
- Separately managed account fees should also be eliminated.
- A recent STA study shows that there is a huge potential to reduce costs by opening the market for transfer agent fees:
 - ✓ The STA collected 20 invoices from Broadridge that they received from issuers
 - ✓ These invoices ranged from 110 beneficial owners, to 2 million beneficial owners
 - ✓ The collected information was sent out to top 6 transfer agents who represent 90% of accounts in the country.
 - ✓ After eliminating the cost of managed accounts processing as an assumption, cost reductions of 13% to 80% came back from these transfer agents.
 - ✓ The total original cost of these 20 invoices was \$3.7 million, but when the study’s rates were used, the savings were calculated at \$1.6 million.
 - ✓ Of that \$1.6 million, \$700,000 was associated with separately managed accounts.
 - ✓ Managed account charges have an inordinate amount of charges, ranging from as low as \$1.06 per account to \$1.21.
 - ✓ The issue falls on the broker/dealer, not the issuer to deal with these accounts
 - ✓ So by having a fair market system for the print, mail, distribution, setting to one side the separately managed accounts, they still saved \$1 million overall.

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- A competing study by CompasLexicon (CL) also showed that registered shareholder servicing costs are higher than those for beneficial shareholders.
- Transfer agent pricing is not published anywhere, so CL took the pricing from Broadridge and assumed it was the same as the industry.
- In an unregulated market where prices are competitive, costs are reduced by an average of approximately 45%.
- In order to open the market, the SEC will need to change the rules.
- The data aggregation function needs to be decoupled from the broker print, mail and distribution functions, and it should be regulated separately.
- All communication is driven by how high or low that aggregation price may be.
- If it were decoupled, issuers could pick someone to do the work at a fair market price.
- We need more transparency in terms of the data aggregation pricing and the cost to access such a hub.

Lyell Dampeer:

- The previously noted CompassLexicon Study used 12,000 beneficial shareholder invoices and 1,000 registered shareholder invoices.
- Because cost information for registered fees is not published, CL used the Broadridge registered rate as a proxy for other registered price data in the market.
- Their assumption was that if pricing was much lower than the market, BR would have a much larger market share than they currently do
- Results:
 - ✓ Processing fees average 47 cents for the street to pay for distribution, and three times that much for issuers to pay
 - ✓ If you calculate the total cost, the gap is \$2.50 per position, after incorporating postage and electronic fees.
 - ✓ The increase in savings to issuers, in terms of print and postage, net of fees, is 2X the entire fees paid by the issuers, making this a strong value proposition.
- In the current structure where the record keeper is a nominee, intermediaries and brokers need to play a role in increasing retail participation.
- A data aggregator model would break the relationship that exists between a broker and his clients.
- There are a number of tools that can be leveraged to increase retail participation.

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**- Charlie Rossi,
US Securities Transfer
Association**

“All US issuers routinely accept the results of the tabulators and those results are filed within 72 hours.

The idea that voting is inaccurate sounds like a conspiracy among issuers to just accept the results anyway.

As long as you have an OBO/NOBO capability or distinction, you need to rely on a 3rd party to determine the accuracy of votes.”

**- Lyell Dampeer
Broadridge Financial
Solutions**

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**Lyell Dampeer
Broadridge Financial
Solutions**

- Enhanced internet broker platforms (*investor mailbox*) can get information to investors behind the firewall of their broker site, which is a more natural place for investors to opt to vote.
- They know their brokers, and trust them, and to get them to vote through a broker platform would be instrumental in improving turnout.
- Taking the vote to investors can also be key: mobile voting was successfully test run this year, and 30% of the accounts that voted through mobile voting were accounts that had never voted before.
- Get to people where they ARE, rather than make them come to somewhere else in order to vote
- Streamline the process and make it electronic where possible because this will help to get a wider buy in from retail investors.
- Advanced voting instructions for retail shareholders could also make an impact.
- Allow them to lodge standing voting instructions like institutional shareholders can with their brokers.
- The overall goal is to get retail investors to vote in greater numbers (*especially in the US where there is a key quorum requirement*).

TOPIC 6: Shareholder Engagement

Charlie Rossi:

- The U.S. experience shows that there is a 15-18% engagement rate among retail shareholders.
- Some issuers have said that if the price to communicate with shareholders wasn't so high, they would try to get them re-engaged and hopefully get them to vote.
- Issuers have become increasingly creative to engage their shareholders
- Prudential is an excellent example:
- In 2010, management undertook a substantial engagement campaign.
- Shareholders were all sent a letter stating that if they voted they would get a tree planted on their behalf, or get an eco friendly tote bag.
- 2600 people wrote back and Prudential recorded 68,000 new voters at their meeting.
- In 2011 they repeated the program and they recorded 20,000 additional voters.
- Over two years, they Prudential engaged 100,000 new voters and increased quorum by 10%.
- Re-engagement can come from informal communication between issuers and shareholders.

QUESTIONS FOR THE PANEL:

Sylvia Groves (Comment):

- There are lies, damn lies and statistics.
- Consider lower voting rates when the shareholder is a known registered shareholder.
- This absolutely makes sense because most registered holders are little mom and pop operations.
- We need to make sure we are hearing things in context.

Paul Conn:

- With respect to OBO/NOBO is the notion that the list would be available to 3rd parties the point of that conversation, or should we be focusing on the idea of issuers having the list as the primary concern of OBOs?
- Is this is about protecting shareholder rights or about protecting their privacy from the wider world?

Patricia Rosch (Comment):

- With respect to vote confirmation, Deloitte and Touche inform us of how accurate the system is.
- The parties who use Broadridge’s services want to know the accuracy of the system, and they appear to generally believe that any problem that arises, exists at the transfer agent, presumably because this is what they are being told.
- We need peel back the layers of the entire intermediary system, and try and find where possible chokepoints exist.
- With respect to the University of Delaware Study, there were four recommendations made to move end-to-end confirmation forward.
- Those findings are important because they detail how to improve the process and Broadridge believes that they can move to this end goal in the coming months
- As well, true end-to-end confirmation has been done through ProxyEdge where Broadridge has also done the tabulating (but this means the number of intermediaries has been reduced).

Rick Gant: Securities Lending

- If I am a retail investor with a managed account, are my shares generally available for security lending?

Charlie Rossi:

- This really only happens with a margin account because you don’t actually own the shares in any event.
- The broker is lending from their overall position, not someone’s personal shares because the client does not actually own the shares.
- A lot of clients who sign up for margin accounts may not read the

Q & A

Is the notion on OBO/NOBO about protecting shareholder rights or about protecting their privacy from the wider world?

“We need peel back the layers of the entire intermediary system, and try and find where possible chokepoints exist.

The University of Delaware study made four recommendations to move end-to-end confirmation forward.”

- Patricia Rosch, Broadridge Financial Solutions

“This summit should try to satisfy itself that the only investors’ shares that are used in securities lending are those in margin accounts.”

- Paul Conn, Computershare

“In the US, there tends to be a more contentious relationship between issuers institutions.

In Canada, there is a much more collegial atmosphere, though some shareholder proposals seem to be attracted mostly by banks.”

- Carol Hansell, Davies Ward Phillips & Vineberg LLP

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details of the contract about the lending.

Paul Conn (Comment):

- This summit should try to satisfy itself that the only investors' shares that are used in securities lending are those in margin accounts.
- The issuers are looking for greater transparency and they are looking to ensure that those without an economic interest don't get to vote those shares.
- With respect to fees, this is a well-understood argument.
- If issuers were buy registered processing services in a free market, they are more than smart enough to know what they should be paying for those services, and they wouldn't need a regulator to sit between them and their service providers when there is a direct contractual relationship between them.

CONCLUDING REMARKS:

- There is a real opportunity to speak to the different silos here
- In the US, there tends to be a more contentious relationship between issuers institutions, driven by some of the activist groups in the US and their tactics.
- In Canada, there is a much more collegial atmosphere, though there are definitely some shareholder proposals that seem to be attracted mostly by banks.

9. Day Two – International Markets Panel

PANEL SUMMARY:

This session focused on how international markets have approached shareholder democracy. The panel compared and contrasted processes and outcomes in Europe, Australia and Canada, and suggested lessons that might guide Canadian reforms. Specific topics included record dates and voting cutoffs, the absence of OBO and NOBO designations in international markets, and electronic voting and shareholder communications.

PANEL MODERATOR: Robert Pouliot - Managing Partner, FidRisk Investors Services. Mr. Pouliot has been engaged in financial risk evaluation since 1982. His experience covers the credit rating of banks in emerging markets, the training of correspondent banking teams in Europe, and the build-up of methodology to rate micro-finance institutions for the World Bank and the Inter-American Development Bank. He developed the concept of fiduciary risk and its measurement over the period of 1995 to 2000 and helped build the fiduciary risk measurement of various asset class management (public and private equity funds, venture capital funds, fixed income funds). He co-founded the Centre for Fiduciary Excellence (CEFEX) in 2005, based in Toronto and Pittsburgh, the Coalition for the Protection of Investors in 2006, based in Montreal, and is board member of Fair Canada, an independent foundation for the advancement of investors' rights, since June 2009. He is lecturer in fiduciary risk to post graduate students in finance at the Université du Québec à Montréal Business School and to the College des administrateurs de sociétés, a directors' Institute affiliated to Université Laval, based in Québec city.

PANELISTS:

Sarah Wilson – Chief Executive Officer, Manifest Information Services Ltd., based in London. Ms. Wilson is the founder and Chief Executive Officer of Manifest, which provides high quality proxy voting and governance research support services to institutional investors and professional advisors. Manifest's client base includes local government pension schemes, institutional investors, academics, professional advisors, and governments of various jurisdictions.

Laurens Vis – Managing Director KAS Bank UK. Headquartered in Amsterdam (?) Mr. Vis is the Managing Director of KAS Bank UK, based in London, an independent European specialist in securities services. In addition to steering KAS Bank's strategy in the UK market, he holds overall responsibility for UK sales and acquisition, relationship management, and product and market development. During his 26 year career at KAS Bank, Mr. Vis has held a number of director-level positions.

Jean-Paul Valuet – Secrétaire Général, Association Nationale des Sociétés par Actions (ANSA). He has been with ANSA since 1986. Prior to joining ANSA, he was with the French association of employers (Conseil National du Patronat Français – CNPF) where he was their representative to the National Prices Committee. During his career, he has been

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entrusted with reviewing issues such as the French Company Law (1995), the organization of general meetings (2005, 2011), stock lending and empty voting (2007).

Jane Ambachtsheer – Partner and Global Head of Responsible Investment, Mercer, based in Toronto. Ms. Ambachtsheer leads Mercer’s global responsible investment business. She consults to pension funds and other institutional investors in North America, Europe and Asia Pacific on a range of topics relating to responsible investment and active ownership. Prior to joining Mercer, Ms. Ambachtsheer worked for the pension-benchmarking firm CEM, in Amsterdam and Toronto. In 2005, she acted as consultant to the United Nations on the development of the Principles for Responsible Investment, which have now been supported by more than 900 investors worldwide.

DISCUSSION: _____

Setting the Stage for the Panel (Robert Pouliot)

This panel must be considered against the background of interconnected global markets and populations. We need to consider the freedom with which many nationalities are able to travel without passports (EU, Asia-Pacific areas) and be mindful that money and capital moves in that same unencumbered manner.

First Panelist: The UK Perspective (Sarah Wilson)

1) Manifest Information Services Ltd.

- Manifest is an integrated proxy research and vote agency that only works for shareholders, typically institutional investors around the Commonwealth.
- Its objective is to facilitate ownership in the client’s name, not in Manifest’s name.
- Manifest does not take positions on companies in the press and its research contains no voting recommendations, because every client has a custom voting policy.
- It will, however, take positions on issues, particularly on straight-through voting.
- Where possible, Manifest votes directly and delivers ballots to tabulators.
- Additionally, Manifest created the first ISO standard for electronic vote messaging, well before SWIFT messaging.

2) The Focus Of Today – Straight Through Voting

- The market for trading has overtaken the market for ownership (*the relationship between the issuer and its owners*).
- The great majority of shares are owned by pension funds and insurance funds that have a long term interest.
- These institutional shareholders want to be genuinely involved with their portfolio issuers, and are concerned about governance matters as part of their long term investment horizon.
- In the past though, tinkering with the plumbing by inexperienced plumbers has led to breakdowns.
- The current proxy system is complex, and there is a need to unwind this system that has developed in various pieces over the last 100 years.

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- A long held assumption was that problems with proxy votes occurred with the tabulators, and so there was no need to address the plumbing in the middle of the system.
- Those who have mapped the system have drawn “flow charts of daunting complexity” because the system is far from simple.
- Those who have mapped the system include Carol Hansell in her recent paper “*The Quality of the Shareholder Vote in Canada*”² and David C. Donald in his paper “*Heart Of Darkness: The Problem At The Core Of The U.S. Proxy System And Its Solution*”³
- A symptom of that complexity is that each of the players only sees a narrow slice of the overall voting pie that is closest to them.
- We need to start clean from the beginning; proxy voting should be simple and straightforward.
- Straight through proxies should be the answer, but at present, all the parties in the middle of the system have a vested interest in keeping the process muddled and complex

Straight Through Voting:

- The basic premise is that we need to bypass unnecessary intermediaries and connect owners and companies in as few steps as possible.
- This requires unbundling the process so that clients deal directly with service providers, thereby spurring higher service standards.
- It’s not about breaking legal systems to make them fit business systems; we want to use corporate law as it was intended.
- Manifest has created an open source model of straight through voting for the UK market.
- Fund managers have to deal with too many counterparties in the UK system.

“*The market for trading has overtaken the market for ownership*

...Majority of shares are owned by pension funds and insurance funds that have a long term interest.

We need to bypass unnecessary intermediaries and connect owners and companies in as few steps as possible.

The assumption was that problems with proxy votes occurred with the tabulators. So there was no need to address the plumbing in the middle of the system.”

**- Sarah Wilson,
Manifest**

² *The Quality of the Shareholder Vote in Canada* » a research lead by Carol Hansell, managing partner in corporate finance and securities, governance, mergers and acquisitions, Davies Ward Phillips & Vineberg LLP, Toronto, Chair, Corporate Governance Committee, American Bar Association, Canadian Foundation for Governance Research, director, Bank of Canada, Toronto East General Hospital, Investment PSP, member, consultative committee, corporate directors, Institute of Canadian Chartered Accountants (ICCA); Mark Q. Connelly, partner, corporate and commercial law, corporate finance and securities, mergers and acquisitions, Davies Ward Phillips & Vineberg LLP, Toronto; Michael Disney, partner, corporate finance and securities, financial restructuring and solvency, mergers and acquisitions, structured finance, Davies Ward Phillips & Vineberg LLP, Toronto ; Gillian Stacey, partner, corporate and commercial law, corporate finance and securities, mergers and acquisitions, technology, private equity and energy, communication and media, Davies Ward Phillips & Vineberg LLP, Toronto ; Tim Baron, partner, corporate finance and securities, structured finance, Davies Ward Phillips & Vineberg LLP, Toronto ; Adam E. Fanaki, partner, competition, foreign investment review and litigation, Davies Ward Phillips & Vineberg LLP, Toronto ; Richard Fridman, partners, corporate and commercial law, corporate finance and securities, financial restructuring and solvency, mergers and acquisitions, Davies Ward Phillips & Vineberg LLP, Toronto. October 22, 2010

³ « *Heart of Darkness : The Problem at the Core of the US Proxy System and Its Solution* » by David C. Donald, Professor of law, Faculty of Law, Western Teaching Complex, Chinese University of Hong-Kong, director, Centre for Financial Regulation and Economic Development, *Virginia Law & Business Review*, Vol. 6, No. 1, Spring 2011. This research completes a previous one, « *Regulatory Failures in the Design of Securities Settlement Infrastructure* », August 2010

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- Manifest links in automatically to the custodians, who automatically reconcile on a daily basis, so share lending can be accounted for.
- Manifest doesn't wait for meeting information to appear on a ProxyEdge-type service.
- They go to the issuer and pull together 5,000+ announcements into a "Golden Ballot" that goes into the system once.
 - Clients then review the positions they hold, and decide how they want to vote.
 - By virtue of Manifest having power of attorney, they can send ballots to the tabulator, in the name of the shareholder; this provides additional certainty to the shareholders that their shares have been voted, and allows the client to retain control over their votes.
 - They get accurate and timely confirmation that votes have been received, but not complete end-to-end confirmation because of the continued use of 'show of hands' voting

“In many jurisdictions, shareholders prefer to attend meetings, but UK investors do not.

Proxy solicitors spend so much time trying to figure out who the shareholder is that they can't engage in an effective dialogue with them.

Fewer problems with over voting, like that seen in North America.

Most voters know 21 days in advance of the meeting what will be on the agenda, except in Germany where resolutions can be added at the meeting itself.”

**- Sarah Wilson,
Manifest**

3) The UK and the EEA

Contrast/Compare with the EU

- In many jurisdictions, shareholders prefer to attend meetings, but UK investors do not.
- Shareholder identification is poor: proxy solicitors spend so much time trying to figure out who the shareholder is that they can't engage in an effective dialogue with them.
- Most voters know 21 days in advance of the meeting what will be on the agenda, except in Germany where resolutions can be added at the meeting itself.
- The European Commission is trying to encourage competition, where issuers and shareholders can communicate directly.

Key UK Features

- Notice periods of 21 days, record dates of 2 days before the meeting and vote cutoffs of 2 days.
- Fewer problems with over voting, like that seen in North America.
- The voter ID system is generally good, but confusion often results from pooled nominees.
- The markets is technology and the format, agnostic; it is left to its own devices for information processing and that encourages innovation.
- There is no mandate for an intermediary, and no Broadridge equivalent in the UK market.

4) Where Problems Arise

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- But it goes wrong with too many parties getting involved sharing potential anticompetitive behaviors.
- Pooled nominee accounts create a complete lack of transparency.
- Commercial service providers become soft regulators trying to impose operating models on top of company law.
- Market players sometimes demonstrate anticompetitive antitrust issues and create a hostile environment to open standards (like those that govern the internet).
- However, there is a major problem with custodians in the UK, and they appear to be gumming up the system
- Proxy voting has been exported from custodians to third parties in the UK, and that causes problems as well.
- We all need better systems to pass the information between issuers and shareholders as quickly, and clearly as possible.

Second Panelist: The EU Perspective (Laurens Vis)

1) The Current State of Europe

- Europe has a larger GDP than North America, with 200 million more people
- Market capitalization is roughly the same as North America, with markets trailing 4% from the start of the year
- Long holdings have dropped from 8 years to 1 year, and from 1 year to 3 months
- Investors now vote with their feet more than ever and no one seems to be investing for the long term
- Pooled investments are in, and segregated investments are out.
- However, it should be noted that in some cases, custodians will do a look through of the pooled investments to see what the investment managers are investing in.
- Depression is looming in the distance for Europe and the world.
- In Europe, we are looking to see if there is a major shift from sovereign risk to governance risk; if and when this happens, we may see a full-blown return to depression.
- Despite the looming macroeconomic threat, EU issuers are increasingly becoming Pan-European issuers.
- EU issuers are also becoming increasingly concerned about knowing who their shareholders are, and there is a noticeably thickening chain of intermediaries developing.

2) Three Major Issues to Bear in Mind

1. The growth in socially responsible investing in Europe is being driven by two main factors:

- ✓ First, the countervailing power of financial journalism has resulted in issuers and

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“Europe’s market capitalization is roughly the same as North America

Long holdings have dropped from 8 years to 1 year, and from 1 year to 3 months

Investors now vote with their feet more than ever and no one seems to be investing for the long term

EU issuers are increasingly concerned about knowing who their shareholders are, and there is a noticeably thickening chain of intermediaries developing

**- Laurens Vis,
Kas Bank UK**

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- institutional investors placing greater emphasis on reputational risk.
- ✓ Second, socially responsible issuers perform better in the long run over other firms.

2. The Fragmentation of the European Markets:

- ✓ Multilateral trading platforms have replaced the traditional markets and exchanges
- ✓ These are private companies, as opposed to traditional exchanges

3. The question of ownership:

- 24 central counterparty (CSD) institutions to take care of the exchange of ownership between trading platforms and central clearing counterparties, and central securities depositories (*which actually work with bank licenses*)

3) EU Shareholder Visibility:

- There are a slew of intermediaries that exist between issuers and shareholders
- Between the UK and the Netherlands, the CSD is a major hinge between shareholders and issuers
- In Europe CSD takes center stage between shareholders and investors
- Issuers need shareholders visible to them and they don't want anonymous shareholders creeping up on them
- Notably, in the UK market there is a major use of cash settlement instruments
- But the counterparties to these derivatives contracts must then reveal their ownership in given securities.
- Also notable in the UK is the development of the UK Stewardship Code.
- The code encourages institutional investors away from shareholder meetings and towards informal dialogue with their portfolio companies

Third panelist: Shareholder Democracy in France (Jean-Paul Valuet)

1) Summary of Reforms in France

- Major reforms in 2002 were designed to streamline and modernize the share voting system, and better enable proxyholders to vote their holdings at general meetings of French listed companies, especially for non-resident shareholders
- Non-residents hold a large and rising percentage of shares (*42% of the market capitalization of the Paris Stock Exchange by 2010*) – 42% of the listed companies of the CAC 40
- Institutional investors own 70% of the Paris Exchange as well
- Shareholders had said in recent years that outmoded provisions of French law made it difficult for non-resident shareholders to take part in voting

“Reforms established record dates as D-3, with only real owners entitled to vote.”

The number of shares you own must be corrected up to D-3. If you sell or buy after D-3, there is no correction because ownership changes after 3 days (after the meeting).

...A 2010 regulation on share lending ensures that loaned shares are disclosed before the record date to prevent over voting.”

- Jean-Paul Valuet,
ANSA, France

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The complaints centered on 3 main issues:

1. The Law did not recognize right of global custodians and other intermediaries to vote shares of non-resident shareholders.
2. Shares were blocked from trading for a certain period before the shareholder meeting.
3. Electronic voting was not permitted under the law.
 - Under the current system, a global custodian known as a registered intermediary is expressly allowed to vote shares.
 - This depends on the ultimate shareholder agreeing to be identified if the issuer so requests.
 - Blocking has been abolished since 2002.
 - Since December 2006, record dates occur on D-3 (3 days prior to meeting)
 - This stems from the idea that only the real owners are meant to vote their shares
 - Internet voting has been allowed since May 15, 2001
 - As of 2010, France had complied with the European directive regarding proxy voting, and removed limitations from their system

2) Specific Timeline of Major Reforms

A. Dematerialized Securities:

- Securities are no longer represented by paper instruments.
- The securities of listed companies are entered into accounts of EuroClear France, the central depository in the name of each account keeper, issuing company or financial institution.
- Intermediaries registered on behalf of non-residents have been given the authority to cast votes on behalf of those shareholders.
- The only condition is that the global custodian has to be registered as an official intermediary in France.
- A registered intermediary is eligible to cast votes on behalf of beneficial owners.
- If they do not register, an intermediary can be considered as an apparent owner, but problems may arise afterwards.
- The responsibility of the custodian stems from an obligation of means, and not of results (definition of fiduciary).
- ANSA holds, as a result, that the issuers cannot complain against the intermediary that cannot deliver the identity of the OBO owners the represent.

B. Retirement of the Blocking System (2002):

- Many French companies required shareholders wishing to vote, to have their shares blocked from trading for up to 5 days before a meeting.

“ *...French Reforms in 2002 were designed to modernize share voting and help proxyholders vote their holdings at general meetings.* ”

Non-residents hold 42% of the market capitalization of the Paris Stock Exchange in 2010. Institutional investors own 70% of the Paris Exchange as well.

EU issuers are increasingly concerned about knowing who their shareholders are, with a noticeably thickening chain of intermediaries developing.

Securities are no longer represented by paper instruments.”

**- Jean-Paul Valuet,
ANSA, France**

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- You may now sell all or part of your shares at any time before the meeting.

C. Record Date Reform (2006):

- Reforms established record dates as D-3, with only the real owners entitled to vote.
- The number of shares you own must be corrected up to D-3, and if you sell or buy after D-3, there is no correction because ownership only transfers after 3 days (or after the meeting as a result).
- This was followed by a 2010 regulation with respect to share lending, to ensure that loaned shares are disclosed before the record date to prevent over voting.

3) Identifying Shareholders:

- Issuers want to be able to properly identify shareholders to ascertain that only shareholders take part in the ballot and to ensure that those shareholders only exercise the number of votes that they actually hold.
- Statutory rights are reserved for a number of shareholders who need to prove their positions (*i.e. multiple voting rights, dual class structures, etc.*).
- Issuers also wish to communicate directly with their shareholders.
- Shareholders may also want to identify other shareholders, namely the other principal shareholders.
- Identification depends mainly on the type of holding, however.
- Non-Residents have found it simpler to hold shares in the names of nominees or through registered custodians using bearing shares.
- Share lending presents fewer problems because ownership transfers to the borrower and, as of 2010, regulations requires lenders to declare the securities they have lent out before the general meeting, in order to prevent over voting and other related problems.

4) Appointing Proxies and Proxy Voting:

- By 2010, France had complied with the July 11, 2007 European directive requiring the removal of existing limitations on proxy voting.
- Prior to the reform, shareholders could only appoint other shareholders as proxies.
- Shareholders can now appoint any person or physical entity to vote for them.
- The 2010 legislation contains safeguards to prevent abuses of this system including:
 - ✓ The proxyholder to comply with the instructions they received from the shareholder.
 - ✓ A shareholder, who can force a proxy to retire under a conflict of interest.
 - ✓ Issuers, who may send proxy materials directly to shareholders and must do so under certain circumstances.
 - ✓ A proxyholder, who should also publish in advance the position he intends to vote on each resolution, although this remains a matter of dispute

5) Proxy Advisory Firms

- Recent recommendation of the AMF, nbr 2011-06, is meant to regulate proxy advisory firms.
- They must disclose their voting policies, and explain why the firm delivers a given recommendation.

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- Advisors are bound to communicate to the issuers, sufficiently in advance of the general meetings, its determinations and recommendation.
- They must disclose information about their practices and its potential conflicts of interest to clients as well.

Fourth panelist: Australian Markets (Jane Ambachtsheer)

1) The Current State of Shareholder Democracy in Australia

- Small and Medium funds don't always pay attention to proxy voting
- Governance is alive and well in Australia.
- In 2007 a non-binding remuneration vote was introduced.
- Controversially, the 2 strikes legislation was introduced as well, wherein a 25% vote against remuneration two years in a row results in the entire board going up for election within 90 days.
- There is no OBO/NOBO distinction in Australia.
- The state of ESG issues are similar to Europe: they are more advanced and prevalent in the discussion as compared to Canada.
- There are twice as many Australian signatories to the UN responsible investment principles than in Canada, with capital markets of roughly the same size.

2) Mercer Study: Exploring the Links Between Directors, Institutional Shareholders and Proxy Advisors

The study, conducted for the Australian Institute of Company Directors (AICD)⁴, looked to explore Australian institutional share voting from a nuts and bolts perspective, and to determine how decisions are actually made among various actors.

A. Methodology:

1. Desk studies:
 - Previous academic studies and parliamentary papers were drawn upon for reaching the determinations at the end of the study
 - Existing research in the form of surveys of ASX 200 company directors were drawn upon as well
2. Surveys:
 - 35-40 question surveys were sent to market stakeholders
 - 50 direct 1 on 1 interviews were conducted with different principals

“ ”

“There is no OBO /NOBO distinction in Australia. ESG issues are similar to Europe. There are twice as many Australian signatories to the UN responsible investment principles than in Canada, with capital markets of roughly the same size.

38% of Superannuation funds vote directly in Australia, with a similar in Canada. Pensions tend to vote for themselves instead of having someone vote for them

High quality voting decisions can take 21 days to make. The voting platform cutoff is 5 days, and 3 days to get back to the tabulator with the votes

80% of all voting decisions and votes cast in Australia occur within a 6-8 week period. ”

**- Jane Ambachtsheer,
Mercer**

⁴ « *Institutional share Voting and engagement: Exploring the links between directors, institutional shareholders and proxy advisers* », by John H C Colvin, managing director and CEO, Australian Institute of Company Directors, from a survey of directors of corporations listed on the ASX200 index, pension funds and investment management firms conducted by Dr Richard Fuller, Senior Responsible Investment Specialist, Mercer (Australia) Pty Ltd. with Elga Virgden, Mercer (Australia) Pty Ltd., September 2011

and agents throughout the chain in Australia

B. Key Findings:

1) Institutional Investor Trends

- Institutional investors are becoming more activist and willing to vote against management’s recommendations
- Superannuation funds are doing more of their own voting and less likely to simply let managers vote on their behalf
- 38% of Superannuation funds vote directly in Australia. This same trend exists among Canadian pension funds as well. Pensions, especially larger ones, have tended to vote for themselves instead of having someone vote for them
- Many fund managers are saying that they know the companies they are buying on a regular basis, and they feel that they should have the right to vote as a result.
- But this is to be discouraged because having different managers voting in different ways for portfolio companies they hold for different clients can end up with split votes.
- Asset owners are increasingly wanting to take a long horizon view on what is best for the in their long-term economic interest.
- Several factors contribute to communication difficulties between issuers and institutional shareholders:
 - ✓ High quality voting decisions can take upwards of 21 days to make.
 - ✓ The voting platform cutoff is 5 days, and institutional shareholders have 3 days to get back to the tabulator with the votes
 - ✓ As well, 80% of all of all voting decisions and votes cast in Australia occur within a 6-8 week period in a given year
 - ✓ This time crunch impacts ability to make high quality decisions; high quality voting decisions require time and resources that cannot be completely utilized in a compressed timeframe.
 - ✓ As a step towards remedying these communication problems, communication should be targeted to occur earlier in to avoid

the busy proxy season where shareholders are being bombarded with information from issuers.

- ✓ Communication should also be occurring more broadly between issuers and institutions.

2) Proxy Advisors

The survey results yielded the following information:

Question 1: What level of experience, expertise and knowledge do proxy advisory firms have in understanding what drives shareholder value in companies?

“ “ ” ”

“60% of ASX 200 directors stated that proxy advisors have insufficient experience. 22% of managed funds gave the same response. Only 5% of superannuation funds held the same belief, and 38% of Superannuation Funds stated that they believed proxy advisors had a high degree of experience.

ASX 200 directors believe that they should be speaking to high level persons on key issues: 28% said the CEO should be the point of contact and 46% said the Chief Investment Officer (CIO) should be the contact person. 46% of managed funds stated that persons outside the C-Suite should be the point of contact.”

- Jane Ambachtsheer, Mercer

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- 60% of ASX 200 directors stated that proxy advisors have insufficient experience.
- 22% of managed funds gave the same response.
- Only 5% of superannuation funds held the same belief, and 38% of Superannuation Funds stated that they believed proxy advisors had a high degree of experience.

Question 2: Who, within share owners, should companies try to engage with on significant issues?

- ASX 200 directors believe that they should be speaking to high level persons: 28% said the CEO should be the point of contact and 46% said the Chief Investment Officer (CIO) should be the contact person.
- 46% of managed funds stated that persons outside the C-Suite should be the point of contact
- Superannuation funds believe it is more important to speak with the people actually engaging in the research, but were evenly spread among who they believe that person is (*Chair: 24%, CEO: 19%, CIO: 19%, Governance Manager: 19%, Other: 19%*)

Question 3: How influential is the advice provided by proxy advisory firms to institutional shareholders?

- 49% of ASX 200 directors believe they are influential.
- 60% of those same directors thought that proxy advisors had no knowledge or expertise.
- This is what is being picked up in the Australian Financial post because directors are sounding the alarm about the level of influence relative to perceived lack of experience.
- By comparison, the majority (52%) of superannuation funds believe proxy advisors are only somewhat influential and 54% of fund managers said the same.
- Essentially, superannuation funds and managed funds are saying that the advisors aren't completely influential, but that they want to hire additional help to get them through the 6-8 week period that represents proxy season.

3) Measuring the influence of Proxy Advisors

It is important to briefly touch on measurement of influence, principally to address the commonly held assumption that if share owners vote mostly in line with proxy adviser recommendations, then it is evidence of influence.

- One theme that did clearly emerge from the interviews is captured in the following quote from a managed fund:
- "Yes, they [proxy advisory firms] are influential, but far less than companies think."
- If this view is correct, company directors overstate the influence of proxy advisory firms.
- Influence is not so easily measured by a lack of variability in the votes of proxy advisers and institutional investors.

“*Proxy advisory firms are influential, but far less than we think*”

✓ *61% of AMP Capital's votes matched adviser recommendations*

✓ *21% were voted "more strongly" (either abstain or "against", rather than "for")*

✓ *18% were voted "more loosely" (e.g. in favour rather than "against", and usually based on further discussions held with companies).*

✓ *There is little comparable evidence. What there is suggests that a variability rate of nearly 40% might be unusual. However, the industry-wide level of variation is unknown.*”

- **Jane Ambachtsheer, Mercer**

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- It is worth looking at ways to measure the degree of proxy advisory firms' influence. AMP has taken a direct approach to this matter in what is probably unique research published in Australia.
- A comparison between votes cast by AMP Capital and proxy advice shows:
 - ✓ 61% of AMP Capital's votes matched adviser recommendations
 - ✓ 21% were voted "more strongly" (*either abstain or "against", rather than "for"*)
 - ✓ 18% were voted "more loosely" (*e.g. in favour rather than "against", and usually based on further discussions held with companies*).
 - ✓ There is very little comparable evidence, and what there is would suggest that a variability rate of nearly 40% might be unusual, however, the industry-wide level of variation is unknown.
- Mercer conducted a separate but similar study for an unnamed client who wanted to know the about similar variability rates, and that study found a 5% variance in a similar situation.

4) Disclosure of Share Voting by Share Owners

- During the course of 1 on 1 interviews, the following potential unexpected ramifications of disclosure were noted.
 - ✓ It will make the 'outsource to multiple decision makers model' (*i.e. let you fund managers vote for you*) less desirable.
 - ✓ It may reflect poorly on fund managers because of inconsistent voting on a number of companies based on clients instructions or otherwise.
 - ✓ Could release more pressure to find additional advisors to cope with the intense and stressful 6-8 week period
 - ✓ There may be an increase in the degree of conservatism because those voting don't want to be caught away from the voting norms and have to explain their actions.
- These results potentially run counter to the movement for shareholder democracy.

5) Electronic Voting

- Electronic voting systems are in place in Australia, but not all custodians are on those systems.
- The real issue is about how far the issuer is obligated to communicate down the chain.
- Under Australian company law, the issuer is obligated to communicate down to the registered shareholder, and this is routinely done well.
- The registered holder can vote those shares electronically right up until the cutoff date.
- Institutions that hold their shares in the Chest system in their own name, or in a designated holding will get those benefits.
- But a pooled retail holder will not get those benefits because they are not a registered shareholder of the company, and the company is not obligated to communicate with them.
- The lack of an electronic system to go back to tabulators from custodians is also problematic; 80% of these communications are still faxed in Australia.

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- A recent AMP study examined the potential problems with the current system:
 - ✓ Found that 4% of their votes were lost in the process.
 - ✓ As an example of the potential impact of losing 4% of votes, an unnamed corporation held a board meeting where the board stated that, in the shadow of the two strikes rule, the board it did not have 25% voted against its remuneration report.
 - ✓ The board was asked “What was the exact vote?” but the board would not disclose.
 - ✓ The vote was later discovered to be was 24.57%.
 - ✓ 4% is not an insignificant amount.
- Overall, there needs to be an end to end reconciliation system, but the big question is who will bear the cost, and provide a system at the point where the intermediaries and issuers meet?

6) Pooled vs. Segregated Holdings

- The direct benefits of segregated securities held by shareholders in Australia outweigh the pooled holding strategy.
- Issuers can better reach shareholders and voting is better facilitated.
- Pooled holdings are the norm, but this has not always been true.
- Until the early 1990s in the UK and Australia, designated holdings were the norm, but with the arrival and growth of US banks to both countries, pooled holdings become predominant.

NOTE: Sarah Wilson (Manifest) instructs institutional clients, when they are looking at custody, to get quoted on two prices: one for designated holdings, and one for pooled and to make a deliberate decision based on the costs and benefits of the designations.

QUESTIONS FOR THE PANEL:

1. David Masse: How can a market achieve a record date of D-3?

Paul Conn:

- You can get a closer record date / cut off date if you have a central electronic clearing system that automatically reports intra day and a more transparent system with fewer layers.
- However, in Australia the custodians push the date back to 5 days resulting in a custodian date of 5 days and a record date of 2 days.

Sarah Wilson:

- Institutional investors rely exclusively on electronic balloting and information distribution now.
- Services like Manifest, ECGS, provide concentrator services that ensures a reconciliation of the holdings.
- In the UK, there is a 48 hour record date cut off.

“ ”

“Disclosure of share voting could run counter to shareholder democracy by:

- ✓ *Making the ‘outsource to multiple decision makers model’ less desirable.*
- ✓ *Reflecting poorly on fund managers because of apparent inconsistent voting on a number of companies*
- ✓ *Releasing more pressure to find additional advisors to cope with and intense and voting period*
- ✓ *Increasing me-too effect because voters don’t want to be caught away from the voting norms and have to explain their actions.”*

**- Jane Ambachtsheer,
Mercer**

- Custodians are bumping it back arbitrarily, but it is unnecessary because the registrars know on an intra day basis who owns what, and in what quantities.

David Masse (Follow Up Question):

- Does that mean that the paper process doesn't exist? If you have a record date of two days, clearly you are not mailing anything out.
- **Sarah Wilson:** Some private clients may use paper, and the UK system accommodates both paper and electronic files like EPAs (*Encrypted electronic proxy –blank- files*)
- A shorter record date window also makes it easier to recall: In the UK shareholders have nearly a month to recall because of the 48 hour cutoff and the 21 day notice period.

2. Sylvia Groves: How does the notice go out with a record date of D-3?

Sarah Wilson:

- There is still paper in the system in the UK.
- In the UK there is a requirement to make information about meetings available by multiple means at least 21 days ahead of a meeting (mailing cut off date).
- In some systems it will go into central print media like newspapers, in other cases people will elect to receive electronically.
- When you have a bearer share situation, where you don't know the shareholder, you may run into some trouble though.
- Manifest scours the market for meeting info, and they have constantly updated position information, and they put two and two together to determine where a voting entitlement exists.
- Manifest can then reach out to the shareholders to vote.
- In the UK, there are still mailings in addition to the other forms of media where notice is given, but mailings go to the registered holder only.
- As long as the mailing reaches them by the mailing cut off date, then that's all that is needed; everyone else can find the information in the alternate areas.

Jean-Paul Valuet:

- In France, meeting information must be sent out 35 days prior to the meeting date (*but in practice, most large companies do this 45-60 beforehand*).
- Obligations by Internet are the same as they are by paper in France.
- Paper is an option, but the digital media is the default minimum delivery.
- New regulation allows the vote authorization sent by a shareholder to be communicated by email, and up until recently this had to be by paper.

Q & A

How does the notice go out with a record date of D-3?

“In the UK there is a requirement to make information about meetings available by multiple means at least 21 days ahead of a meeting (mailing cut off date)”.

- Sarah Wilson,
Manifest

“In France, meeting information must be sent out 35 days prior to the meeting date (*but in practice, most large companies do this 45-60 beforehand*)”.

- Jean-Paul Valuet,
ANSA, France

“We should all note that, as it stands now, there is a country-by-country series of securities laws, but this will all be changing in the next several years with the passage of a European securities law.”

- Laurens Vis,
Kas Bank UK

Laurens Vis:

- We should all note that, as it stands now, there is a country-by-country series of securities laws, but this will all be changing in the next several years with the passage of a European securities law.
- This will make it irrelevant as to where the stock is being held, and the big focus will be the account where that stock is held, and where that account resides.
- This will be introduced hopefully within 4 to 7 years.

3. Carol McNamara: Comment Regarding Determining Shareholder Identities

- There are significant problems with pooled funds especially in Australia, because issuers can't look behind them and see who the shareholders are, and if they even exist.
- When going through an international transaction, you can't see behind pooled funds and in such situations, an issuer won't be able to know how many, if any, shareholders exist within the pooled fund.
- You need to be able to do this when undertaking large international transactions because of possible tax consequences.

Sarah Wilson:

- Each country has different tax exemption guidelines
- Section 793 of the companies Act in the UK allows companies to request the ID of shareholders and the same legal right exists in Australia

Kathy Byles:

- RBC, as custodian often receive the 212 forms (*request for ID forms*).
 - The general process is to tell clients that they as custodians have received these legal requests, and that RBC will comply unless the client comes back and specifically directs them not to.
 - In refusing, shareholders have to acknowledge the risks that they are taking and the possibility that the issuer will impose sanctions.
 - But to the best of Kathy's knowledge, they have never had a client who has refused be subsequently penalized for not disclosing
-

CONCLUDING REMARKS:

Q & A

Key differences between Canada and the rest of the world?

“There is a requirement in the UK to make information about meetings available by multiple means at least 21 days ahead of a meeting (mailing cut off date)”.

- Sarah Wilson, Manifest.

“De-materialization was critical to improving shareholder democracy in France and remains very advanced relative to Canada”

- Jean-Paul Valuet, ANSA, France

“The share borrower becomes the owner as long as they own the shares for the purposes of voting rights, in short positions. This is a very clear in Europe, namely in the Netherlands and France. A European lender keeps the economic entitlement and loses ownership and right to vote”

- Laurens Vis, Kas Bank UK

Notable Differences between Canada and the Rest of the World:

1. No OBO NOBO distinctions or designations
2. No voting through a show of hands, except in the UK
3. Fewer instances of over voting
4. Closer cut off dates and compressed timelines

Jean-Paul Valuet:

- De-materialization was critical to improving shareholder democracy in France and remains very advanced relative to Canada.

Laurens Vis:

- With respect to share lending, the borrower becomes the owner as long as they own the shares for the purposes of voting rights, in short positions.
- This is a very clear rule in Europe, especially in the Netherlands and France
- A lender, in Europe, keeps the economic entitlement, but loses ownership and right to vote.
- Additionally, Europe is moving toward fully registered holdings in a book entry system, with full disclosure of shares being endorsed into the book entry system.

Sarah Wilson:

- Australia and the UK have more permissive corporate laws.
- Corporate law changed to focus on de-materialized securities to facilitate this entire process.
- The UK has fewer intermediaries, fewer points of failure in the voting process, a heavier focus on technology, and a leaner voting model overall.
- Australia, the UK, the Netherlands and France all have investment industry management models that are comparable to Canada’s model: many smaller brokerages and a small number of large brokerages
- The rest of Europe is highly concentrated, and this distinction is important for understanding the workings of the plumbing in this system in these jurisdictions.

Robert Pouliot:

- By engaging more with shareholders, you reduce costs
- Take Michelin as an example:
 - ✓ They have actively engaged shareholders by using extra dividends to encourage voter participation.
 - ✓ They have developed their own register of shareholders as a result and subsequently reduced costs.

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- In Germany, which is not part of the European issuers commission, large companies such as Deutsche Börse, Allianz, etc., are pooling together their share registries to reduce cost and gain significant shareholder reach.

10. Day Two – Regulators Panel

PANEL SUMMARY:

This session focused on the role of regulators in facilitating shareholder voting. The panelists discussed regulatory agendas, short and long term objectives, strengths and weaknesses of current regulations and opportunities for renewal. Specific topics of discussion included the state of NI 54-101 and NP11-201, the current status of beneficial shareholders under existing legislation and whether regulators can best aid improvements in the system by taking the lead in reforming the proxy voting system, or by playing a more supportive role.

PANEL MODERATOR: Mihkel Voore - Partner, Stikeman Elliott LLP. As Co-chair of Stikeman's Securities Law Group and head of the Toronto Corporate Finance Group, Mr. Voore's practice focuses on corporate finance, M&A, corporate reorganizations and contested shareholder meetings. He is the leading Canadian authority on corporate meetings and related matters and has acted as a legal advisor to the Expert Panel on Securities Regulation and as a consultant to Industry Canada on revisions to the regulations under the Canada Business Corporations Act.

PANELISTS:

Winnie Sanjoto – Senior Legal Counsel, Ontario Securities Commission (OSC). Ms. Sanjoto has extensive policy experience in the area of shareholder voting, including recent work on proposed amendments to permit a “notice-and-access” method of delivering proxy-related materials to registered and beneficial shareholders of Canadian public companies. Prior to joining the OSC, she was an associate at a large Toronto law firm.

Lucie Roy – Senior Policy Advisor, Autorité des marchés financiers (AMF). Ms. Roy represents the AMF on many regulatory committees of the Canadian Securities Administrators (CSA), and chairs the committee on corporate governance. Before joining the AMF, Ms. Roy practised securities and business law, and advised issuers and dealers on corporate financings and take-over bids. She also developed an international expertise and advised governmental agencies on regulation of financial markets.

David Masse – Senior Legal Counsel and Assistant Corporate Secretary, CGI Group. Based in Montreal, Mr. Masse is responsible for corporate and securities law matters as well as related compliance activities in more than 90 jurisdictions worldwide and manages the day to day affairs of the CGI board of directors and its standing committees. He is also the Chairman of the Board of the Canadian Society of Corporate Secretaries and Chair of the CSCS Shareholder Democracy Summit Organizing Committee.

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DISCUSSION:

Warning: The views stated here are not necessarily those of the Securities commissions (OSC and AMF) as a whole.

The OSC State of the Nation (Winnie Sanjoto)

1) Proposed Amendments to NI 54-101

There are two main features that have been proposed for enactment in time for the 2013 proxy season:

1) Adoption of a voluntary “**Notice and Access**” model, which would be significantly different compared to the model developed by the SEC

- In proposing this system, the OSC has noted that there is an educational gap for some retail investors and smaller issuers about how the current proxy system functions, and with respect to how a proposed “*notice and access*” system would operate.
- The first contact with the current system for many of these stakeholders is when something goes wrong with a given vote.
- Standardized educational materials are being created to facilitate a less negative initial experience with the proxy system.
- These will be similar to SEC proxy education material, but in more simplified language
- These materials also aim to stave off the problem of retail beneficial shareholders showing up to meetings and not being able to vote by explaining the various designations of shareholders under current regulations.

2) Amendments to simplify the process by which a beneficial owner can request to attend and vote at a meeting.

- These amendments would remove the legal proxy as the only means by which a beneficial owner could attend,
- It would replace the legal proxy with an appointee system, and would offer increased flexibility to ensure that vote execution for a beneficial owner is properly undertaken.

2) Additional Areas of Focus for the OSC

The OSC is currently examining the following areas:

1. The Early Warning System, and potentially proposing amendments to reduce the threshold ownership level to 5% from its current level of 10%.
2. Proxy Advisory Firms and their role in the shareholder voting system.
3. The issue of ‘hidden ownership’ and how it should be reported in order for there to be better transparency about economic aggregation of interests and share ownership.
4. Majority voting for directors.
5. Say on Pay votes at shareholder meetings.
6. Proxy plumbing as a general issue.

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- Items 1 and 2 are being examined by the CSA as well, and items 4, 5 and 6 were specifically outlined in the OSC's Shareholder Democracy staff notice, published in January 2011, with a deadline for comments set for March 31, 2011.
- Additionally, the OSC is interested to hear whether the participants of this summit believe that there is a role for the OSC to play in terms of an analysis of the system as it exists today.
- Moreover, how would that study be designed, what would its intention be, and what would such a study seek to achieve?

The Current and Proposed State of NP 11-201 (Lucie Roy)

- A revised National Policy 11-201 (*Electronic Delivery of Materials*) will be published in final form soon.
- The AMF reviewed the current policy and fine tuned the policy to remove guidance on consent to electronic delivery as well as the form of consent itself; consent will be treated as a matter of fact.
- This was done to avoid duplicating other legal frameworks, namely existing statutes on electronic transfer and delivery.
- Expect a streamlined policy, but remember that it is only meant as guidance and not as a rule.

Canadian Business Corporation Act Developments (Mihkel Voore)

1) The CBCA's Place in Canadian Corporate Law

- The CBCA is the leading corporate legislation in Canada, and laid the groundwork for provincial statutes, FI statutes, and regulators.
- There are a large number of CBCA registered companies relative to provincially registered companies.
- CBCA tends to lead of reforms, though this has slowed in recent years

2) The 2001 CBCA Amendments

- As early as 1995, a consultation process was initiated with respect to shareholder communication and proxy solicitation rules.
- The subject matter of that process included many of the issues we are still talking about today.
- This paper was followed by a 2000 parliamentary research branch note about whether intermediaries should have to provide issuers with beneficial owner lists and also addressed the question of broadening out the proxy solicitation rules to allow more communication among shareholders, and between issuers and shareholders.
- This process culminated in the enactment of Bill S-11, and the 2001 amendments to the CBCA.

3) After The 2001 Amendments

- Parliament moved into another consultative process in 2004 and 2007, which dealt with corporate governance and securities transfer legislation.

“The OSC is interested to hear whether the participants of this summit believe that there is a role for the OSC to play in terms of an analysis of the system as it exists today.”

- Winnie

Sanjoto Ontario
Securities Commission

A revised National Policy 11-201 (*Electronic Delivery of Materials*) will be published in final form soon.

- Lucie Roy
Autorité des marchés
financiers

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- On those two fronts, after consultations, it was felt that there wasn't sufficient interest for regulation on the federal front.
- Industry Canada and Parliament felt it was best left to the provinces.
- One change that was never implemented (from Bill S-19), was who should be entitled to vote borrowed share and so we continue to grapple with the issue today.

4) 2010 Statutory Review and Public Consultation

- A statutory review of CBCA was undertaken by the Standing Committee on Science, Industry and Technology
- S-11 mandated review of CBCA within 5 years, and that review was delayed until it was finally undertaken in 2009
- Industry Canada witnesses to parliament stated that in their view, the CBCA was generally well functioning, responsive, flexible, and few substantive demands for amendments
- They noted however, that shareholder rights and issues were highlighted as an area of concern, specifically shareholder rights and elections of directors (CCGG and SHARE both made submissions on these points)
- A number of issues and proposals were presented throughout the statutory review and public consultations:
 - ✓ An amendment to require that voting on all non-procedural resolutions be conducted by ballots.
 - ✓ Mandating individual director elections and prohibiting slate voting.
 - ✓ Amending the CBCA to eliminate terms of more than 1 year for directors and require majority voting for directors.
 - ✓ Concerns were also raised as to the appropriateness of electronic meetings in the case of public companies, so this was put out for further public consultation.
 - ✓ Further concerns were raised as to the dating of shareholder proposals and the ability of shareholder proponents to speak at meetings where their proposals were being put forward.
 - ✓ The CCGG put forward a proposal regarding the instituting of proxy access in Canada, which was interesting because the SEC's efforts on this front had been stopped by a successful court challenge.
 - ✓ The CCGG also raised the issue of whether the CBCA works entirely for purposes of facilitating notice and access.
 - ✓ This was only in the case of registered shareholders, as opposed to beneficial shareholders, who are governed by securities legislation in the provinces.

5) Potential Issues to be addressed in Future Amendments:

- The fundamental differences between the rights and entitlements of beneficial and registered shareholders, even though under the CBCA beneficial holders can make proposals, they cannot requisition meetings, have direct descent rights or initiate election reviews.

“ ”

“ One change that was never implemented (from Bill S-19), was who should be entitled to vote borrowed share and so we continue to grapple with the issue today.”

S-11 (and 2001 amendments) mandated review of CBCA within 5 years, and that review was delayed until it was finally undertaken in 2009 in the middle of the system.”

Shareholder rights and issues are areas of concern, specifically shareholder rights and elections of directors (CCGG and SHARE both made submissions on these points)

**- Mihkel Voore
Stikeman Elliott LLP**

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- Issuers cleave to the register because the statute provides them with the exclusive right to vote and exercise all other rights.
 - Corporations aren't currently required to look into third party beneficial rights.
 - Interested parties haven't been silent on the issue of recognition for beneficial owners and there will be more attention called to this issue moving forward.
 - Carol Hansell's paper touches on the question of issuer control over meetings and outcomes, but this hasn't been touched on much outside of that paper.
 - The statute specifically states that the chair's declaration of voting outcomes is determinative absent a court challenge
 - The 48-hour cutoff is in the hands of the board as well, though management often waives this deadline
 - Limitations on electronic communications: the requirement for consent may limit the ability to use notice and access by corporations wishing to incorporate that for registered owners.

“The basic difference between rights and entitlements of beneficial and registered shareholders, is that even if beneficial holders can make proposals, they cannot requisition meetings, have direct descent rights or initiate election reviews.

Interested parties haven't been silent on the issue of recognition for beneficial owners and there will be more attention called to this issue moving forward.”

- Mihkel Voore
Stikeman Elliott LLP

CSCS White Paper on Issuer Recognition of Beneficial Shareholders (David Masse)

- The paper⁵ was a proposal for an amendment to the CBCA, and the various provincial statutes to allow issuers to treat beneficial shareholders the same way they treat registered shareholders.
- This proposal was based on the theory that the information on beneficial shareholders is no less reliable than the register
- The intent was not to impose on issuers, but to allow issuers who are comfortable with their beneficial shareholder base, to communicate with beneficial shareholders and treat them shareholders on the same footing as registered shareholders.
- This would allow a beneficial holder to show up at a meeting and be recognized as a shareholder rather than a guest of management.
- Beneficial shareholders aren't made aware of their status at many shareholder meetings.

QUESTIONS FOR THE PANEL:

1. Mihkel Voore: What will it take for an issuer to feel comfortable to reach out to their beneficial shareholders?

David Masse:

⁵ « *Proposal to reform the laws, regulations, policies and rules governing shareholder communication in Canada* » a white paper outlining effective reform proposals to ensure equality, fairness, simplicity and clarity for all shareholders of Canadian companies, by Me David Masse, assistant corporate secretary, Group CGI Inc, chairman, CSCS, member of the board, L.R. Wilson Chair on information technology and electronic commerce, Centre de recherche en droit public, Faculté de droit, de l'Université de Montréal août 2008

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- The amendment proposed by CSCS would facilitate better communication with beneficial holders, but it may also result in disputes and so the court challenge provision is built right in.
- There are always contentious votes and you need to provide people with an exit door to use in those contentious moments, and that door needs to open right into a superior court of justice
- For those issuers who do a NOBO mailing, they should be entitled to assume that NOBO information is accurate and reach out on that basis.
- That would be just like allowing issuers to assume their registers are correct.

A. The OBO/NOBO distinction may prove to be a red herring:

- There has been, to date, nothing compelling to demonstrate that the OBO designation is all that important to those who insist on it.
- Ideally we should let those with a strong view on maintaining the current system put their cards on the table and explain their position.
- If it turns out that they are attached to the idea because it makes it easier to vote, then that is not a transparency issue it's a plumbing issue.
- We need to get the investment managers in on this discussion, and to a lesser extent the broker/dealers because they will be able to present a viewpoint that is missing from the current discussion.
- Some shareholders have stated that they do not want to disclose their ownership because they believe that there may be third parties trolling NOBO lists as part of client prospecting.
- The experience of many summit participants indicates that such a situation would be unusual.
- There is a legitimate concern that an institution that elects to be an OBO can easily vote their shares, but if they are a NOBO, it becomes difficult to do so.
- There are significant OBO/NOBO decisions made in the retail spheres during the 'know your client phase' when a brokerage or planning account is set up, and the process is not totally clear for retail investors.
- Brokers are not trying to perpetuate this idea, but the choice of OBO or NOBO is buried among dozens of other important decisions a retail investor needs to make when seeking to open an account.
- Most retail investors don't really care because that is not why they come to see a broker.
- Whether a shareholder is an OBO or a NOBO, shareholders can still mask themselves behind a nominee.
- The same is true in other legal contexts, specifically land registries, and isn't unusual.
- In the UK, shareholders can hide behind nominee companies but issuers have a right to get behind the nominee names because issuers are concerned about oppressive regimes investing in sensitive companies.
- Even Swiss banks have opened their kimonos to the British tax authorities.
- Why not develop one dashboard through which all shareholders could vote the same way?

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“Some shareholders have stated that they do not want to disclose their ownership because they believe that there may be third parties trolling NOBO lists as part of client prospecting.”

There are significant OBO/NOBO decisions made in the retail market during the 'know your client phase'. The process is not really clear for retail investors. Brokers are not trying to perpetuate this idea, but the choice of OBO or NOBO is buried among dozens of other important decisions a retail investor needs to make when seeking to open an account.”

-David Masse, CSCS

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- That would mean aggregating data in a single/multiple hubs using data sharing and could open the possibility of a D-3 record date.

B. The Early Warning System presents a different context for considering ownership:

- When you get into that threshold, then you really do need to dig into the ultimate beneficial ownership.
- The EWS is supposed to be informative about takeovers, not about knowing who owns your stock on a non-takeover basis.
- On the share disclosure of ownership side, a preliminary view is that we should remove the OBO/NOBO designations and let people move behind nominee companies.
- The new definition of beneficial owner, if it were for that purpose, would be to remove registrants and simply leave beneficial owners as a designation.
- You want to get to the legal entity that is entitled to vote, and the issuer would be better able to communicate with that person.
- Even if a shareholder hid their ownership behind a nominee company, an issuer can at least reach out to the nominee company, which has contact information and someone to speak with; OBO doesn't even provide that.

Sylvia Groves (Comment):

- A clear line of communications with shareholders helps to ensure that votes do not get lost, and allows for a constructive dialogue on contentious issues and votes.
- So if you have a nominee company, are issuers really going to be making contact with the right person?
- There is a line of thinking, that runs counter to the idea of a dialogue, that says beneficial owners have little interest in talking to issuers.
- That seems odd when juxtaposed with important votes: shareholders don't want to engage with issuers, except for Say on Pay and Compensation votes?
- If the dialogue is being demanded it has to go both ways, or it is not a dialogue.
- The model needs to be one where there is a clearer path between issuers and beneficial shareholders.
- The designation of OBO would not present any problems if there was some way to confirm issuer materials got to shareholders, and both issuers and shareholders could confirm that their votes came in.

- Whether this dialogue is legislated or not is somewhat irrelevant; it is what is happening right in formal and informal ways between issuers and shareholders right now.

Robert Pouliot (Comment):

- The OBO designation does not exist in the rest of the world, so why not eliminate it?

“There is a line of thinking, that runs counter to the idea of a dialogue, that says beneficial owners have little interest in talking to issuers. That seems odd when juxtaposed with important votes: shareholders don't want to engage with issuers, except for Say on Pay and Compensation votes?

- Sylvia Groves,
GG Consulting

“Many institutional investors in Europe are much larger and prominent than any we have in Canada. Yet, they don't appear to care about being known as shareholders.”

- Robert Pouliot,
Université du Québec à
Montréal

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- Canada is converging with Europe, so why not follow their lead, and as a temporary measure, get rid of the OBO designation?
- Start with calling for public consultations on OBO/NOBO and request that proponents of the system demonstrate the need for the system to remain in place.
- Many institutional investors in Europe are much larger and more prominent than any we have in Canada, and they don't appear to care about being known as shareholders.
- A possible intermediary step would be to move to nominees, but the ultimate end goal would be for complete transparency and a removal of the OBO designation.

2. Question: To what extent are the CSAs sensitive to the issues that have been raised at this summit, what kind of thought has been given to the issues up until now, and what kind of regulatory action can we expect?

Winnie Sanjoto:

- Without being able to comment on the CSA, the OSC staff and many members of the commission are very interested in these issues.
- A chief problem inhibiting regulatory action is that the data that the OSC receives is somewhat scattered.
- To date, a substantial amount of feedback has come from entities with clear interests in particular activities in the proxy voting system.
- No forensic audit or examination of how a contested vote happens from start to finish has ever been undertaken.
- And if a forensic audit took place, there would need to be a number of lawyers involved because there would be a number of significant economic interests at stake.
- Beyond the difficulty of obtaining hard economic data is the problem of defining very precise terms.
- Take 'over voting' as an example:
 - ✓ Does this mean that a dozen votes had to be pro-rated?
 - ✓ Does that mean that somewhere in the 18 days between materials being distributed and the cutoff date, there was a position that was over-reported by 2 million shares?
 - ✓ As well, how often does it happen?
 - ✓ In a previous panel, the summit was informed that there are problems 90% of the time, but does that mean that 90% of the time there was a problem and it was fixed, or that 90% of problems remain outstanding?
- There need to be common terms of reference, common outcomes and a larger picture in order for there to be proper regulatory action; regulators cannot do it on their own
- Regulators cannot move forward without accurate empirical data to make an informed decision because their decisions as regulators will have both intended and unintended consequences.
- The regulators have an obligation to not make decisions that will have real market and cost implications, until they can do so on the basis of sound empirical data.

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No forensic audit or examination of how a contested vote happens from start to finish has ever been undertaken.

Beyond the difficulty of obtaining hard economic data is the problem of defining very precise terms. Take 'over voting' as an example.”

*- Winnie Sanjoto
Ontario Securities
Commission*

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- The OSC is hopeful that summits like this one can result in common terms of reference for what needs to be achieved; the industry needs to drive the data generation and analysis before regulators can act.

Lucie Roy:

- Regulators cannot make policy decisions without assuring themselves that they are making the correct policy changes to fix the right problems.
 - That can't be done without hard data to back up the decisions.

Q & A

What difficulties are regulators facing in terms of getting the hard data they need?

“Regulators cannot make policy decisions without assuring themselves that they are making the correct policy changes to fix the right problems. That can't be done without hard data to back up the decisions.”

-Lucie Roy, Autorité des marchés financiers

“Regulators prefer avoiding the regulatory hammer to force information out. It is blunt and outcomes can be unpredictable. We might rush in with rules that have unintended consequences.”

- Winnie Sanjoto Ontario Securities Commission

David Masse:

- Many problems are process related, so it may be useful to create an industry committee that is responsible for creating a large-scale process map of the proxy system.
- It may be useful to impose audit trails and internal controls for assurance purposes, and to begin to develop a useful pool of hard data.

3. Carol Hansell: What data are Regulators in need of?

Carol Hansell (Comment):

- What difficulties are regulators facing in terms of getting the hard data they need, given that they have statutory authority over the market players with said information?
- Regulators should be using their statutory authority to guide this process.
- This is a group of sophisticated market players, who compete with one another, and the idea that they can simply be locked in a room together and they will come up with a solution is sidestepping the point.

Paul Conn (Question):

- Do you know what data you want, or are missing and what segment of the market is not supplying it to you?
- Do you have a list of data that you are missing so we can provide it to you?

Winnie Sanjoto (Response):

- The fact that this meeting is even happening would have been unheard of ten years ago because no one would have cared enough

for it to happen.

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- Market players are sharing pieces of information, and that is a testament to the fact that things can change.
- These parties have not always been willing to work together to implement changes.
- Despite that, regulators prefer to avoid using a regulatory hammer to force information out, or cajole stakeholders to work together.
- The regulatory hammer is blunt and outcomes can be unpredictable
- As well, regulators are reluctant to rush in and make rules that have unintended consequences.
- That they have not created rules already does not mean they do not want to, but they want to have a sound empirical base to work from.
- Regulators are not experts in infrastructure design and audit; they are policy makers
- Hypothetically, regulators need to gather the various stakeholders in a room with a facilitator to determine how to design a study to pull out all the information needed to understand where the stress points in the system are, and the policy tools to deal with those stress points.
- Regulators will require the assistance of the summit participants and they will also need their own consultant to help gain a full understanding of these market issues.

Eric Pau (Follow Up Response):

- While it is not represented on the panel, the BCSC takes these issues very seriously.
- Data problems are not a question of receiving data from market participants; regulators have no trouble obtaining data from market participants.
- The problem stems from inconsistencies in the data, as between the regulators and the market participants, and as between market participants themselves.
- If regulators are to introduce new rules, they need to have consistent empirical data to back it up before bringing out the regulatory hammer.
- Auditing the system to ensure the data is not conflicting will be important, because regulators do not act in a vacuum, and they cannot act effectively until they can gather non-conflicting information.

Celeste Evancio (Follow Up Response):

Q & A

Do you know what data you want?

“Regulators are not experts in infrastructure design and audit; they are policy makers. Regulators need to gather the various stakeholders to determine how to design a study to pull out all the information needed to understand where the stress points in the system are, and the policy tools to deal with those stress points.”

*- Winnie Sanjoto
Ontario Securities Commission*

“Regulators have no trouble obtaining data from market participants. The problem stems from inconsistencies in the data, between regulators and market participants, and between participants. If regulators are to introduce new rules, they need consistent empirical data to back it up before bringing out the regulatory hammer.”

*Eric Pau,
BC Securities Commission*

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- The Alberta Securities commission, though not represented on the panel, is interested in these issues and will remain involved in the process to better understand the issues.

4. Kathy Byles (Comment): Doing away with the OBO designation

- It is critical to engage investment managers and retail broker firms on this issue.
- It is also crucial to make a distinction as to what the issuers are trying to accomplish, and how often.

Q & A

Do you know what data you want?

“The question for issuers is “Do you want to know the name of the pension fund who has invested, or do you want to know who has the voting discretion?”

- Kathy Byles
RBC Dexia

“OBO and NOBO have become loaded terms, and they carry different associations for different stakeholders. It means:”

- ✓ For a domestic institution/shareholder, that they received materials in their mailroom and aren’t able to vote.
- ✓ For a foreign institutional shareholder, that the issuer decided not to pay to forward the materials to sub custodians, so they will not be able to vote.
- ✓ For a retail holder, that “I’m not going to get a whole bunch of paper clogging my mailbox while I’m on vacation.”

- Winnie Sanjoto
Ontario Securities Commission

- Under the European model, there are few times where there is a legal request to determine the beneficial owner.
- The question for issuers is “Do you want to know the name of the pension fund who has invested, or do you want to know who has the voting discretion?”
- RBC will always tell their client that they are releasing their information, unless the client requests otherwise, and only rarely will beneficial holders stay behind the nominee name.
- These requests come in on an as needed basis, not on a regular basis.

Winnie Sanjoto:

- OBO and NOBO have become loaded terms, and they carry different associations for different stakeholders
- For a domestic institution/shareholder who dealt with the transition from direct mailing to NOBO in 2000, to them it means that they received materials in their mailroom and aren’t able to vote.
- To a foreign institutional shareholder, it means the issuer decided not to pay to forward the materials to sub-custodians, so they will not be able to vote.
- For a retail holder, it means “I’m not going to get a whole bunch of paper clogging my mailbox while I’m on vacation.”
- The policy objective of OBO/NOBO needs to be properly unpacked: Is it to preserve confidentiality, or to streamline the process?
- The differences between retail and institutional investors also need to be observed, because institutions face public/media scrutiny while retail investors do not.
- Retail investors are more likely to see themselves as consumers of a good, and so privacy concerns for retail investors are not the same as they are for institutions.

Rick Gant:

- If the summit were to conduct a survey on OBO and NOBO it would likely discover that a large number of shareholders are not aware of the designations.
- Two years down the road CSCS wants to be making recommendations as to what to do to improve the proxy voting system.
- There are some quick fixes like straight-through processing and basic communication issues, but there will be longer complex processes that stakeholders will need to work through as well.

Dawn Moss:

- Custodians often get calls from shareholders asking, “Why don’t you know who I am, why am I not on your list, why can’t you find me?”
- Trying to determine who shareholders are, and what shares they own, have bought or disposed of, costs time and resources for custodians and issuers.
- The purchaser put the responsibility on the issuers to know this information, but shareholders sometimes come to the custodians as their first point of contact.

Laurens Vis:

- To what level can you effectively hide under the cover of the OBO/NOBO?
- In addition, as far as an orderly market is concerned, depending on the level at which you must disclose, is it a desirable outcome that shareholders can remain anonymous up to 10%?
- How does this dovetail with an open and transparent country?

Robert Pouliot:

- OBO/NOBO is more related to trading issues than investment issues
- We are currently in a position where proponents of the OBO/NOBO system need to demonstrate its ongoing value, and demonstrate why it should be kept in place.
- Investment managers and broker/dealers should demonstrate that if we abandon OBO/NOBO there will be adverse consequences, like demonstrable harm to liquidity, for example.

Lucie Roy:

- Presenting a concept paper on the OBO/NOBO issue would likely encourage the principal stakeholders to demonstrate the continued need for the current system.

5. Approaches to Fixing the System: Patching, or Overhaul?

Q & A

Do you know what data you want?

“If the summit were to conduct a survey on OBO and NOBO it would likely discover that a large number of shareholders are not aware of the designations.”

*- Rick Gant
RBC Dexia*

“Custodians often get calls from shareholders asking, “Why don’t you know who I am, why am I not on your list, why can’t you find me?”

Trying to determine who shareholders are, and what shares they own, have bought or disposed of, costs time and resources for custodians and issuers.

*- Dawn Moss
Eldorado Gold Corp.*

“As far as an orderly market is concerned, is it a desirable outcome that shareholders can remain anonymous up to 10%.”

*- Laurens Vis
Kas Bank UK*

Comment:

- We have a system that has been built to accommodate trading and not necessarily with voting in mind as a result.
- Every time we drill down, we may need to realize that this is more of a problem that can be managed by drilling because there are so many moving parts and complexities.

Q & A

To what level can you effectively hide under the cover of the OBO/NOBO?

“OBO/NOBO is more related to trading issues than investment issues. Investment managers and broker/dealers should demonstrate that if we abandon OBO/NOBO there will be adverse consequences, like demonstrable harm to liquidity, for example.”

*- Robert Pouliot
Université du Québec à Montréal*

“Presenting a concept paper on the OBO/NOBO issue would likely encourage the principal stakeholders to demonstrate the continued need for the current system.”

*- Lucie Roy
Autorité des marchés financiers*

- From a corporate governance point of view, we need to look at the system as a whole and try to answer the question, “What is the system that best enables voting?”
- The market players need to determine what the proxy voting system is meant to accomplish, and whether or not the current system accomplishes that.
- The stakeholders also need to assess whether the problems in the system are too large to be drilled down into as we look to find useable information.
- There are historical reasons and crises that guided the development of the current system, and any holistic examination of the current system needs to bear those historical factors in mind.
- But the market players must also be willing to consider whether or not the system should be scrapped, especially if it is not the best system for enabling voting.

Chris Makuch:

- We as stakeholders must look at the current system, with an eye to what want the system to look like in 30 years.
- Based on a CSA conference in May 2011, the pace and volume in the capital markets is projected to increase 200% in the next two years
- This is an exponential curve, and there is no looking back, so a lot of progress needs to be made and it needs to be made now.

Winnie Sanjoto:

- Any solution has to acknowledge the historical context that birthed the current system
- There was a very real crisis and the current system may not have been the best solution, but it is the solution we have for now.

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- For any system with this many moving parts and hardware costs, market participants must be mindful of the way problems are addressed before deciding to rip out the guts of the system.
- Market players need to determine the end goal of any possible changes or reforms, before regulators can move, and there is no consensus as to what that goal is as of now.

David Masse:

- Regulators are sensitive to these issues and will not just swing the hammer and accept the unintended consequences.
- This summit is producing a great deal of information that needs to be distilled down, but within a year, the gaps in the regulation should become clearer and it will be easier to determine which avenues for reform are available.
- Some issues will be relatively easy, while the more complex issues may require working groups to resolve them.

6. Moving like Dividends

Sarah Wilson:

- When examining the proxy system, also consider how corporate actions work.
- Treasury departments of issuers move a great deal of money around the world every day and the system works quickly and efficiently.
- When considering corporate actions, we should ask, “What is it that makes that system work? And what is the difference between the plumbing system and the system behind corporate actions?”

David Masse (Example):

- As part of a CGI takeover, the company acquired an Employee Benefit Fund that was going to disburse to employees on the Friday immediately following the closing of the deal on a Wednesday afternoon.
- A substantial sum had to be deposited into DTC and it was disbursed to the fund in an hour.
- This begs the question, “How can corporate actions happen so quickly? And why does the proxy voting system not move with the same speed and efficiency?”
- Consider the fact that DTC and its owners have no interest in DTC developing a reputation for failing to deliver large sums of money
- The same is true of the system that delivers dividends to shareholders.
- It will be worthwhile to look at the movement of dividends between the same issuers and shareholders that also operate in the proxy voting system, in order to gain some insight into an efficient movement of transactions.

Q & A

“What is the system that best enables voting?”

“Based on a CSA conference in May 2011, the pace and volume in the capital markets is projected to increase 200% in the next two years. This is an exponential curve, so a lot of progress needs to be made and it needs to be made now.”

- Chris Makuch
Georgeson Inc.

“Market players need to determine the end goal of any possible changes or reforms, before regulators can move, and there is no consensus as to what that goal is as of now.”

- Winnie Sanjoto
Ontario Securities Commission

“...Within a year, the gaps in the regulation should become clearer and it will be easier to determine which avenues for reform are available.”

-David Masse,
CSCS

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- In the dividend system, each stakeholder's interests are well understood, and various doors and exit points are closed to prevent deviations.
- "When votes become as important as money, this all won't be a problem"
- Votes have become increasingly important, but they have only become very prominent in the last three or four years.

7. Electronic Delivery:

Q & A

"How can corporate actions happen so quickly? And why does the proxy voting system not move with the same speed and efficiency?"

"When votes become as important as money, this all won't be a problem"

Votes have become increasingly important, but they have only become very prominent in the last three or four year."

- David Masse,
CSCS

Comment:

- Under current electronic delivery regulations, when the issuer's agent receives a NOBO file to distribute proxies, custodians don't get the consents that flow through to receive an email delivery.
- Is there anything in the policy that will fix the problem of email consent?
- The current wording on the consent form simply gives the consent to the intermediary and their agent.
- Could it not be worded in such a way that, with the intermediary's consent, that information would flow through to the issuer's agent?
- They would get the issuer's consent on that form that, if they wanted electronic distribution and they were a NOBO, the email would be forwarded to either the issuer's agent/intermediary's agent

Lucie Roy:

- Keep in mind that brokers are typically responsible for consent, and that NP 11-201 only provides guidelines, not rules.
- When someone is giving consent to electronic delivery or by courier, technically it should be acknowledged and respected by whoever it is addressed to.

Winnie Sanjoto:

- Try to consider what the reasonable expectation of the investor is.
- It appears that the reasonable expectation of the investor, with respect to a NOBO mailing is that it be electronic, even though consent is given to the dealer.
- Dealers, however, indicate otherwise and state that their clients would be very upset if they knew that their email address was given away.
- Dealers also report that investors don't understand NOBO mailings as a general concept.
- For every issue, what seems to be a simple answer has a lot of consequences based on the party giving the information.

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- Legally, all it would take is the OSC changing the rules for the consent to include another intermediary, but this is not a question of can, it's a question of whether or not the OSC should make such a change, and what the consequences would be.
- Bear in mind that retail investors hold 20% of outstanding shares in the market, but regulators rely on service providers to tell them what those retail investors want.
- Regulators need to do a better job of working on that educational piece rather than rely on the broker dealers/service providers.

Paul Conn:

- There has been a lot of discussion about how many retail investors are set up as OBOs without really understanding the ramifications of that designation
- One would assume that if someone is a NOBO, they don't have a problem with issuers knowing their information and who they are.
- Isn't it reasonable to say that if that NOBO's preference is to have electronic communication that that should extend to the corporate communications to that investor? And if the person doesn't want the communication from the issuer, shouldn't they just be an OBO?

CONCLUDING REMARKS:

Curtis Wennberg (Question):

- What are the next steps we as a summit should be considering?
- Options include:
 - ✓ Reforming the OBO and NOBO designations
 - ✓ Data Hub questions to streamline and centralize the voting process
- But we need to be mindful of the following considerations and questions as we move forward with any proposals for reform.
- We need to ensure we clearly articulate our end goals.
- Is it to get votes to move like dividends?
- Is the data we are relying on good in the first place?
- Right now, we appear to have a lot of inconsistent data, or gaps that require additional data, but we are building towards the useful information.
- As a final consideration, when building working groups, ensure the right people are in the room.

David Masse:

- It may be worth examining the potential for a stewardship code in Canada.

Q & A

“Is there anything in the policy that will fix the problem of email consent?”

“When someone is giving consent to electronic delivery or by courier, technically it should be acknowledged and respected by whoever it is addressed to.”

*- Lucie Roy,
Autorité des marchés financiers*

“Bear in mind that retail investors hold 20% of outstanding shares in the market, but regulators rely on service providers to tell them what those retail investors want. Regulators need to do a better job of working on that educational piece rather than rely on the broker dealers/service providers.”

*- Winnie Sanjoto
Ontario Securities Commission*

“Isn't it reasonable to say that if that NOBO's preference is to have electronic communication that that should extend to the corporate communications to that investor? And if the person doesn't want the communication from the issuer, shouldn't they just be an OBO?”

*- Paul Conn,
Computershare*

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- There has been a lot of talk about the role of investment managers and broker dealers, but we also need to look at pension funds and endowment funds, and possibly disclosure requirements for those owners.
- Small investment organization struggle sometimes to really be active or as active as they could be, so some encouragement for them would fit into this area as well.
- This could also be brought up in tandem with a discussion of OBO/NOBO.

11. Day Two – Call to Action Panel

PANEL SUMMARY:

This session focused on the next steps that should be taken after the conclusion of the summit. The panelists discussed what areas they believe the summit participants must focus on as a group, in order to create meaningful change in the proxy system. The panel also served as a call to action for participants, who were requested to take the lessons learned over the two day period back to their respective areas of the market, and encourage discussion among other professionals about which directions to focus their collective energies in.

PANEL MODERATOR - David Masse – Senior Legal Counsel and Assistant Corporate Secretary, CGI Group. Based in Montreal, Mr. Masse is responsible for corporate and securities law matters as well as related compliance activities in more than 90 jurisdictions worldwide and manages the day to day affairs of the CGI board of directors and its standing committees. He is also the Chairman of the Board of the Canadian Society of Corporate Secretaries (CSCS).

PANELISTS:

Carol Hansell – Senior Partner, Davies Ward Phillips & Vineberg LLP. As a senior partner in the Capital Markets, Corporate Governance and Mergers & Acquisitions practices, Ms. Hansell has acted for both private and public corporations and for governments on a variety of matters, including acquisitions, financings and reorganizations. She has extensive involvement in the development of public policy in Canada, working closely with securities regulators and the TSX and is the past chair of the Securities Advisory Committee.

Sylvia Groves – Principal, GG Consulting. Ms. Groves is a governance solutions provider focused on “Getting Corporate Secretaries Home in Time for Dinner” and “Adding Value for Boards”. She is a past chair of the Canadian Society of Corporate Secretaries (CSCS) and was Chief Governance Advisor at Nexen. Her experience and client work covers governance for domestic and international private companies, US and Canadian listed issuers, crown corporations, and not-for-profit and charitable organizations.

William (Bill) Mackenzie – Senior Advisor, Hermes Equity Ownership Services. Prior to joining Hermes as a Senior Advisor, Bill was Director of Special Projects with the Canadian Coalition for Good Governance (CCGG). Prior to working with CCGG, he spent most of his career serving as the president of governance for ISS Canada.

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Tom Enright – President and CEO, Canadian Investor Relations Institute (CIRI). Prior to joining CIRI in 2008, Mr. Enright was the President and CEO of CNW Group, a global leader in news and information distribution services, where he led the organization through a major expansion of electronic communication services for public companies. He also served as an independent director of the CNW board, and in the role of Deputy Chairman until March 2011.

Robert Pouliot – Managing Partner FidRisk Investor Services. Mr. Pouliot has been engaged in financial risk evaluation since 1982. His experience covers the credit rating of banks in emerging markets, the training of correspondent banking teams in Europe, and the build-up of methodology to rate micro-finance institutions for the World Bank and the Inter-American Development Bank. He co-founded the Centre for Fiduciary Excellence (CEFEX) in 2005, based in Toronto and Pittsburgh, the Coalition for the Protection of Investors in 2006, and is board member of Fair Canada, an independent foundation for the advancement of investors' rights, since June 2009

Rick Gant –Regional Head, Western Canada RBC Dexia. Mr. Gant is responsible for managing RBC Dexia's business in Western Canada from their two branches in Calgary and Vancouver. He has been in financial services for 22 years, 20 of those years with RBC Dexia. Mr. Gant held numerous management positions in Toronto before moving to Halifax as Director of Relationship Management in 1998 and then to Vancouver in 2006.

DISCUSSION: _____

1. Where do we go from here?

David Masse:

- This summit was meant to be a first step in terms of tearing down the silos that currently define the proxy system, and first step in sharing information between market participants.
- A lot of good information has been shared over the last two days, and a lot of gaps have been identified.
- Stakeholders now need to comb through the materials and continue to gather data and further information.
- Second step is going to be organized differently and will examine new solutions and concepts, organized by topic rather than by stakeholder.
- This will be a very public and very transparent process, and a Wiki or discussion forum should be set up as soon as possible to allow stakeholders to bring information or commentary forward for discussion.
- With respect to the role of the regulators in the next step, if they are not inclined to put the next steps together, we in the industry can start putting things together.
- It remains to be seen if we can do it without the stick of the regulators.
- The regulators are committed to the process, but it is a question of how we use their 'stick' to motivate stakeholders to be a part of, and advance the process.

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- This would fill the acknowledged gaps (*i.e. succeed in getting retail investor representatives, pension funds, broker dealers, asset managers, all to come to the table*)
- An additional key issue for consideration is the question of moving record dates as close as possible to the meeting date
- This has been successfully undertaken in Europe, and even in the U.S. where companies can now separate the record date and voting date.
- This should be a major area of focus moving forward.

Carol Hansell :

- This summit has been a great success, what we will be searching for in our next steps will be difficult to achieve.
- Key stakeholders need to continue forward with working groups and the various service providers should ensure that they are speaking to each other.
- For the same reason that the regulators do not have the information that they need, the service providers must be the parties to the solution.
- The regulators will need to get their hammers out in order to ensure that the next steps move towards viable solutions.
- These are very specialized areas, so we can't expect that the regulators have an expert command of the subject matter in order to get a handle on the proxy voting system,
- The regulators should set up an expert panel of 7-10 individuals that could dive deeper into the issues and surface the information and the analysis that is necessary as to what needs to be done by the private sector and what needs to be done by the regulators
- Service providers would not be part of the panel, but the regulators would use them as resources.
- The panel would also need to consult with various subject matter experts who are relatively senior people in areas like Information Technology.
- The panel would need the mantle of authority of a regulator (*TSX, OSC, CSA*) to be bestowed upon it, and an aggressive but reasonable timeframe to achieve the goals of the group.

Sylvia Groves :

- The crux of everything is the issuer-investor relationship, and we need to always be asking ourselves, "Does voting work between the issuer and investor?"
- Everything about the current system should be regarded as being on the table for examining as we move forward.
- Everyone has a role to play in the current system, but it should be remembered that the issues begin when the investor opens the account and it is a random series of interrelated problems from there.
- Shareholder democracy is moving in a direction where it is possible that shareholders are making decisions that used to be in the purview of the board, and at that point you begin to attach liability
- If shareholder democracy moves beyond that point (*i.e. moving beyond an advisory Say on Pay vote and enacting a binding vote on pay*) shareholders shouldn't be able to hide behind a designation

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“Regulators are committed to the process, but it is a question of how we use their ‘stick’ to motivate stakeholders to be a part of, and advance the process.

- *David Masse, CSCS*

Service providers must be the parties to the solution and regulators will need to get their hammers out in order to ensure that the next steps move towards viable solutions

- *Carol Hansell, Davies Ward Phillips & Vineberg LLP*

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- If shareholders want more play and more say, where does that impact and how do we ensure that we won't have to be fixing an almost identical set of problems 10 years from now in a different context?

Bill Mackenzie:

- OBO is a sacred cow that may need to be given up.
- It will be up to the institutional investor to demonstrate why the designation remains important
- Many panels at the summit indicated that changes to the OBO status for beneficial shareholders are not necessary to successfully address the proxy plumbing system.
- However, there is also broad feeling that we can fix the plumbing without touching OBO.
- When talking about transparency, the market is deserving of reasons why OBO status is important and so brokers, pensions, and issuers need to show why this remains so important to maintain.
- There are ways for issuers and investors to reach out and have discussions about close votes: CCGG members who voted against say on pay, for example, would call with an explanation.
- Stock lending presented itself as another important issue.
- A few investors have stopped doing it on corporate governance grounds and the possibility of naked voting and other voting tactics, but that is more representative of the institutional investor community.
- Short selling and stock lending does benefit the market in terms of pricing of securities and therefore it's healthy, on balance.
- It may be that standardizing stock lending agreements could serve as a viable solution, because it would clarify where the vote goes when a share is lent out, and it would help set expectations on this issue.

2. Action Items for Summit Participants

David Masse

- A number of problems have been reasonably well identified:
 1. How do we move record date?
 2. How do we recognize beneficial shareholders?
 3. How do we split vote from the security when shares are loaned?
 4. What would a distributed open source data system look like for beneficial shareholder information and voting systems?

Carol Hansell:

- Issuers need to tell the OSC, TSX, and CSA that these issues matter for them.
- Whether through CSCS or individually, issuers need to organize and deliver that message to the regulators so these issues can be treated as a higher priority.

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“We need to always be asking ourselves, “Does voting work between the issuer and investor?”

*- Sylvia Groves,
GG Consulting*

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A standard stock lending agreement could serve as a viable solution, because it would clarify where the vote goes when a share is lent out, and it would help set expectations on this issue.”

*- Bill Mackenzie,
Hermes Equity
Ownership Services*

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Sylvia Groves:

- Summit participants need to bring the information gleaned here back to their organizations
- The more these issues are understood, the more we create the tipping point that ensures the problems we have discussed receive the attention that they need.
- Issuers, take this information to your directors and the C-Suite.
- Transfer agents, take this information to your colleague and managers.
- As well, summit participants should think about voluntarily adopting standards for share lending and require the development of regulations. This isn't low hanging fruit, this is a key and significant issue and addressing it without the intervention of regulators makes it much simpler than the alternative.

Bill Mackenzie:

- There should be a warning flag on the OBO issue to be brought to institutional investors and the CCGG to see if it is a sacred cow or not.
- The issuer community is effectively putting the question to the institutional community and saying, "Tell us what you think of this."

Robert Pouliot:

- We have a lot on our plates and there is still more to be done, so we cannot get complacent about all of this
- Brokers and investment managers need to be a part of this process moving forward.
- Canada has no investment management association, so we may have to do our own survey to get their thoughts on all the issues raised here, in order to reinforce our position.
- Small and medium shareholders also have few groups or associations to speak of, and any associations that exist have no mandate to consult consumer associations
- We should also consult the consumer advisory panel of the OSC on these matters as well.

Tom Enright:

- When the regulators come out with a staff notice about any shareholder democracy issue, we need to respond that the issue needs to be dealt with as part of the overall purview of the shareholder democracy problem.
- For example, the TSX came out with slate vs. individual voting and CIRI commented on the issue but also made a point to say that we can't necessarily fix this without addressing the entire system.

“Summit participants should think about adopting standards for share lending and require the development of regulations. This is a key and significant issue and addressing it without the intervention of regulators makes it much simpler than the alternative.”
- Sylvia Groves,
GG Consulting

“Brokers and investment managers need to be a part of this process moving forward. Canada has no investment management association, so we may have to do our own survey to get their thoughts on all the issues raised here.”
- Robert Pouliot,
Université du Québec à Montréal

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“When the regulators come out with a staff notice about and shareholder democracy issue, we need to respond that the issue needs to be dealt with as part of the overall purview of the shareholder democracy problem.”

*- Tom Enright,
CIRI*

“Someone needs to drive this effort, but no one has really stood up to be the owner in order to take accountability for this. It should be CSCS.”

*- Rick Gant,
RBC Dexia*

- People want to reach for the low hanging fruit, but it may not be the best fruit to grab because they may not get us any closer to the bigger systemic issues that always need to be addressed.
- We also need to keep the OSC CDAC in mind because membership of this committee is public and several issuers have representatives on that committee.
- The OSC is the only securities regulator with such a committee, and it is already looking at these issues prior to them coming out for public comment.
- We need to communicate with the members of this committee and get them to continue to drive these issues forward on that committee.

Rick Gant:

- Someone needs to drive this effort, but no one has really stood up to be the owner in order to take accountability for this.
- It should be CSCS, but we will need some regulatory sticks to get all parties (*including retail*) to the table.

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