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July 15, 2016

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

To the attention of:

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M[e] Anne-Marie Beaudoin, Corporate Secretary
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Re: **CSA Multilateral Staff Notice 54-304 – Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols**

Dear Sirs, Mesdames,

The *Canadian Society of Corporate Secretaries* ("CSCS") is a national not-for-profit organization representing the interests of corporate secretaries and governance professionals in Canada.

The Society has been seeking fundamental changes in the way shareholder voting is regulated and administered for a long time now.

Our first initiative in 2008 was a white paper suggesting how Canada's leading corporation statutes might be amended to ensure that all shareholders benefit from equal rights.

Our second, bolder initiative, was in 2011 when the Society devoted considerable financial and material resources and convened all stakeholders, including issuers, institutional shareholders, federal and provincial regulators, transfer agents, intermediaries, proxy agents, and proxy solicitors to a national *Shareholder Democracy Summit* conference held in Toronto in the fall of 2011 (the "Summit").

Since then, the Society has met with the CSA, participated in CSA roundtables in Toronto and Calgary, and provided regular updates on the state of proxy voting in Canada at its annual national governance conference and at various regional events during in the course of each year.

The Summit was extremely revealing.

It confirmed that substantial dysfunction exists in the processes used to administer shareholder voting when shares are held beneficially. Beneficial shareholders make up a very large majority of the shareholder base for public companies. That fact alone more than justifies prompt and compelling regulatory action to address the dysfunction.

Though the proximate causes of the symptoms of dysfunction are many and varied, in the end they are all rooted in the necessary system of intermediated shareholding.

Intermediation became necessary as a result of the exponential growth in the volume and pace of transactions in the securities markets. The root cause of the dysfunction that plagues proxy voting is that the shareholder's right to vote wasn't adequately addressed when the book-based ownership and settlement system required to facilitate other shareholder rights was put in place. The result is a system where information concerning shareholder voting entitlements doesn't flow efficiently, or accurately.

The securities regulators candidly stated at the Summit that they felt is would be imprudent to undertake take any regulatory reform when the shareholder voting processes in place were poorly understood and too opaque for all concerned.

The five-year anniversary of the Summit is approaching this fall.

Here is the timeline of the regulatory response to the Summit:

- August 15, 2013 - CSA Consultation Paper 54-401 – Review of the proxy voting infrastructure;
- October 31, 2013 - CSA Staff Notice 54-302 - Update on CSA Consultation Paper 54-401 Review of the Proxy Voting Infrastructure;
- January 29, 2014 - CSA holds the first roundtable discussions in Toronto;
- January 29, 2015 - CSA Staff Notice 54-303 - Progress Report on Review of the Proxy Voting Infrastructure;
- March 31, 2016 - CSA Staff Notice 54-304 - Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols.

One thread that unites all these initiatives is the CSA's consistent and oft-expressed view that shareholder voting is not only a key shareholder right, it is a right that is vitally important to the health of the Canadian capital markets. It is the key element in the foundation supporting the right of investors to influence, and ultimately control, the fate of the enterprises to which they entrust their savings. Regulators and shareholders alike have expressed in clear unambiguous terms the growing importance of ensuring that shareholders are able to exercise their right to vote in a meaningful, efficient, timely, and accurate way.

The Society feels that the CSA have spent a lot of time, and considerable resources, in an attempt to shore up a ponderous system that is fundamentally at odds with the objective of ensuring that shareholder voting is meaningful, efficient, timely, and accurate.

The root cause of the dysfunction is the multitude of disparate processes, essentially paper borne, managed in silos, among a broad array of agents, that in the aggregate fail to deal efficiently with the pace and volume of securities transactions, and the very tight timetable on which shareholder voting must take place.

The protocols that the CSA have elaborated in the course of their work to date amount to little more than a minor and temporary stop gap measure. The protocols may succeed in propping up the mind-boggling complex teetering edifice of proxy voting bureaucracy, but nothing more. In the near term, the protocols will increase costs for the agents and those costs will surely get passed along to the issuer community, without delivering much, if anything, in the way of real improvement.

The path to a robust solution is clear, and has been clear from the beginning.

The time has come to apply the very same solutions to shareholder voting as have long been applied, with astonishing success, to the exercise of the shareholder's other rights: the right to own and dispose of shares, and the right to receive dividends.

Digital technology, including information technology, normalized data flows, and open networks, that succeed in managing millions of customer accounts, and hundreds of millions of financial transactions daily, must be applied to the exercise of shareholder voting.

It's that simple.

It's that compelling.

It is long, long, overdue.

The apology for the current moribund system is that "it's complicated".

The reality is that our society is complicated. Air travel is complicated. Banking is complicated. Securities markets are complicated.

Normalized machine-managed data flows exist to make extremely complex environments and processes effective, timely and efficient. Machines can do very well in a fraction of a second what humans armed with telephones, fax machines, and reams of paper take weeks to accomplish in a flawed inefficient way. We know this. Complex machine-run processes are not news. They are a mature approach that has the proven and tested ability to tame complexity.

In close to five years of concerted work the CSA are proposing a suite of protocols that the Staff Notice describes as essentially a step in right direction, while expressing a vague hope that the system will heal itself, given enough time.

It will not heal itself.

Here are the steps the Society recommends as a clear path to an effective long-term solution to these persistent issues.

These steps form a program that ought to be implemented immediately, without further delay.

- Forming a regulators' task force (year 1):
    - Concerned regulators meet to strike a multi-jurisdictional and multi-disciplinary task force managed by a steering committee;
        - Corporations Canada (corporate law concerns relating to shareholder rights);
        - Canadian Securities Administrators (governance and oversight of market participants, protection of investor interests);
        - Bank of Canada (governance of market settlement. Share voting rights are a vital component in market settlement);
    - Setting the objective: to establish a transparent, cost-effective, efficient, machine-based proxy voting infrastructure that accomplishes the following:
        - Votes may be cast in accordance with voting entitlements as at the record date;
        - Votes that are cast are accurately tabulated;
        - Beneficial shareholders enjoy the same rights as registered shareholders;
- Information gathering (years 1, 2, and 3);
    - All agents involved in the shareholder voting process participate in a mandatory process mapping exercise under the direction of the task force steering committee;
    - The objective of the process mapping step is to create a normalized process map as a foundation for the development of normalized data flows;

  - Publishing a normalized process map and normalized data fields to support machine-based proxy voting data exchange;

- Policy and rules formulation (year 4);
  - Exploring policy options and the regulatory changes needed to support the normalized process map;
  - Formulating, publishing and promoting the resulting changes to shareholder voting processes as well as corporate and securities legislation required to support the new processes;
- Implementing the changes in the shareholder voting processes (year 5);
  - Communicating the changes that will take place;
  - Monitoring developments.

Based on the Society's views and recommendations, the Society responds to the specific requests for comments put forward by the CSA as follows:

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

Based on the Society's views and recommendations expressed above, the guidance fails to achieve the stated objective and the Society advocates the alternative approach set out above.

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

The Society anticipates that the Protocols will increase the costs incurred by transfer agents, tabulators, the proxy agent, and intermediaries and that those costs will most likely be passed on to issuers. The Society believes that the resulting improvements will be marginal in terms of addressing the fundamental issues relating to shareholder voting. No only will the benefits not justify the costs, the process of refining and implementing the Protocols will distract from and substantially delay, possibly impeding in the long term, the implementation of an efficient process.

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

The Society believes that the Protocols, to the extent that they will be effective in reducing dysfunction in the current shareholder voting processes, ought to be implemented without delay.

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

> The Society's view is that there are substantial and unacceptable agency costs in the current shareholder voting processes that stand in the way of investors exercising their right to vote and participate effectively in the governance of the enterprises they invest in. It is a core mission of the Canadian Securities Administrators to ensure that investors' rights are protected and that agency costs are monitored and controlled. CSA policy and CSA staff guidance are effective tools to clarify rules and support compliance where the existing rules provide a strong framework for the achievement of regulatory objectives. That framework needs to rest on a sound regulatory foundation. The Society's view is that a sound regulatory foundation does not exist at this time.

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

> There is at least one significant regulatory gap in the oversight of shareholder voting processes. The securities dealers have for a very long time outsourced their regulatory responsibilities related to shareholder voting to a proxy agent. That agent plays a central and key role and it operates in a regulatory vacuum, not to mention in a monopoly position without meaningful controls or oversight. It is difficult to understand why the regulators have tolerated that situation for so long, particularly so where, as here, there is long-acknowledged dysfunction that is treading on investor rights.

The Society thanks the CSA for this opportunity to comment in relation to this important initiative.

Please contact the undersigned if you wish to discuss our comments.

Sincerely,

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