

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*

March 31, 2016

Table of Contents

1.	Purpose and Overview
2.	Background
3.	Our Work Since the Progress Report
4.	Overview of the Protocols
5.	Next Steps
6.	Request for Comments
7.	Questions
Annex A	Proposed Meeting Vote Reconciliation Protocols

Purpose and Overview

Staff of the Canadian Securities Administrators¹ (the **CSA** or **we**) are publishing this Notice to

- report on our work since we published CSA Staff Notice 54-303 *Progress Report on Review of the Proxy Voting Infrastructure* (the **Progress Report**) in January 2015,
- seek comment on proposed protocols (the **Protocols**) that contain CSA staff guidance on operational processes to tabulate proxy votes for shares held through intermediaries, and
- outline our next steps.

¹ This Notice is being published in all provinces and territories except Saskatchewan. The Financial and Consumer Affairs Authority of Saskatchewan will advise of their approach in this matter after the provincial election in Saskatchewan.

Please provide your comments on the Protocols by **July 15, 2016**. For more information, please refer to the section **Request for Comments**.

Background

Shareholder voting is one of the most important methods by which shareholders can affect governance, communicate preferences and signal confidence or lack of confidence in an issuer's management and oversight. Issuers also rely on shareholder voting to approve corporate governance matters and certain fundamental changes and transactions. Shareholder voting is fundamental to, and enhances the quality and integrity of, our public capital markets.

Shareholder voting in Canada generally occurs through **proxy voting**, whereby management or another individual is given the authority to attend and vote at the meeting on behalf of a shareholder through an instrument known as a **proxy**.

Furthermore, proxy votes typically are submitted by intermediaries and not the actual shareholders. This is because most shareholders are not registered shareholders and hold their shares through intermediaries, which in turn hold their shares with the central depository, the Canadian Depository for Securities Limited (**CDS**). This system of holding shares is known as the **intermediated holding system**.

In order to facilitate proxy voting in the intermediated holding system, a complex, opaque and fragmented **proxy voting infrastructure** has developed. The key entities that operate this infrastructure are CDS, intermediaries, Broadridge Investor Communication Solutions Canada (**Broadridge**) (the main proxy voting agent for intermediaries) and the transfer agents who act as meeting tabulators. These entities implement the processes used to tabulate proxy votes for shares held through intermediaries. We refer to these processes as **meeting vote reconciliation**.

For some time, issuers and investors have expressed concerns that the proxy voting infrastructure and meeting vote reconciliation are inaccurate, unreliable and non-transparent. They pointed to two specific problems as evidence:

- *Over-voting*: Over-voting occurs when an intermediary submits proxy votes and the meeting tabulator cannot establish that the intermediary has any vote entitlements, or the number of proxy votes submitted exceeds the number of vote entitlements for that intermediary as calculated by the tabulator.
- *Missing votes*: Beneficial owners generally have no way of knowing whether a tabulator or meeting chair accepted their intermediary's proxy votes. Investors have identified instances where the voting results suggested their proxy votes were not included in the tabulation and therefore went "missing".

We decided to take a leadership role in addressing these concerns because we were best positioned to investigate, analyze and develop solutions to these issues in a sustained and systematic way. We therefore initiated a review of the proxy voting infrastructure by publishing CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure* in August 2013.

A central objective of our review was to understand how meeting vote reconciliation occurred in practice. We therefore conducted a detailed review of six shareholder meetings (the **Shareholder Meeting Reviews**) with the assistance of a proxy solicitor. Based on our review, we identified a number of problems that could undermine the accuracy, reliability and accountability of meeting vote reconciliation. We reported our findings in the Progress Report published in January 2015.

Through the Shareholder Meeting Reviews, we determined that there were two significant underlying gaps in meeting vote reconciliation.

- *Information gaps*

Meeting tabulators do not always have the accurate and complete vote entitlement information they require to properly establish which intermediaries have vote entitlements for a meeting and how many vote entitlements these intermediaries have. Missing, incomplete or inaccurate vote entitlement information can cause an intermediary that submits proxy votes to be in an over-vote position from the meeting tabulator's perspective. Meeting tabulators use different methods to address over-vote situations. Depending on the tabulator, the same proxy votes could be accepted, rejected or pro-rated. Rejected or pro-rated votes could result in the appearance of missing votes.

- *Communication gaps*

There are no standard communication channels between intermediaries and tabulators. The lack of such communication channels means there is no way to efficiently and accurately

- confirm that all necessary information has been sent and received, or
- detect and resolve information problems that could lead to proxy votes being rejected or pro-rated at a meeting.

Furthermore, intermediaries are not routinely notified if a meeting tabulator rejects or pro-rates their proxy votes due to missing or incomplete vote entitlement information.

We therefore determined that there was a need to develop protocols for meeting vote reconciliation that would enhance accuracy, reliability and accountability of meeting vote reconciliation by

- delineating clear roles and responsibilities for CDS, intermediaries, Broadridge and the meeting tabulator at each stage of meeting vote reconciliation, and
- outlining the operational processes that each of these key entities should implement to fulfil their roles and responsibilities.

Our Work Since the Progress Report

The main focus of our work since publication of the Progress Report has been to develop the Protocols.²

We formed a Protocol Working Group (**PWG**) in Summer 2015 to develop the Protocols. The PWG had representatives from CDS, Broadridge, intermediaries, transfer agents, issuers, investors and proxy solicitors. We also retained the same proxy solicitor that assisted us with the Shareholder Meeting Reviews to act as our technical advisor.

The full PWG met twice during Fall 2015. In addition, a sub-group of the PWG (the **PWG Sub-Group**) comprising representatives from CDS, Broadridge, intermediaries and transfer agents met 9 times. CSA staff chaired the PWG meetings and served as project manager for the protocol development process.

The initial aim was for the Protocols to be drafted by the industry members of the PWG. As work progressed, it became apparent that while all members of the PWG agreed that there were significant problems with meeting vote reconciliation, there was not always consensus on how to address these problems and who should be responsible for fixing them. CSA staff therefore took responsibility for drafting the Protocols with the assistance of our technical advisor.

We found the PWG and the PWG Sub-Group meetings to be extremely valuable for obtaining information and feedback. The PWG was also valuable because it provided a forum for the key entities, which often operate in silos, to share information and identify areas where they needed to work together. We would like to thank all members of the PWG for their past and ongoing commitment and contributions to improving proxy voting in Canada.

Overview of the Protocols

The Protocols contain CSA staff expectations on the roles and responsibilities of the key entities and guidance on the kinds of operational processes that they should implement to support accurate, reliable and accountable meeting vote reconciliation. The Protocols have been developed taking into account existing operational processes, and in our view should not require a major technological overhaul of existing systems.

The chart below provides illustrative examples of the type of expectations and guidance contained in the Protocols that are relevant to the information and communication gaps we identified in our review.

² We also conducted a review of a proxy contest with the assistance of the same proxy solicitor that had assisted us previously to see if there were any meeting vote reconciliation issues unique to proxy contests. We did not find any new issues that were unique to proxy contests.

Type of gap	Expectation/Guidance in Protocols
Information	<ul style="list-style-type: none"> • Guidance on the vote entitlement information intermediaries should provide to the tabulator and how to generate this information • Guidance on how the tabulator should use this information to establish which intermediaries are entitled to vote, and how many proxy votes they can submit • Guidance on how the tabulator can match proxy votes to vote entitlement positions • Guidance on what the tabulator should do if it appears that depositories or intermediaries have not provided necessary vote entitlement information
Communication	<ul style="list-style-type: none"> • Expectation that tabulators, intermediaries and Broadridge should develop appropriate mechanisms to confirm that all votes submitted by Broadridge on behalf of intermediary clients have been received by the tabulator and guidance on appropriate mechanisms • Guidance on steps the tabulator should take to obtain any missing vote entitlement information if the intermediary appears to the tabulator to be in an over-vote position • Guidance on how parties should communicate with each other where proxy votes from an intermediary were rejected, uncounted or pro-rated to enable beneficial owners to know if proxy votes submitted in respect of their shares were not accepted at a meeting and the reason why

The Protocols are attached as Annex A to the Notice.

Next Steps

Establish a technical committee to support the implementation of improvements to meeting vote reconciliation

Some intermediaries, Broadridge and transfer agents have indicated to us that they are planning to make some improvements for the current proxy season. In order to support the implementation of these and other future improvements to meeting vote reconciliation, we plan to establish a technical committee (the **Technical Committee**) that has the same representation as the PWG Sub-Group. The Technical Committee will also be a forum for the key entities to continue sharing information and discussing solutions.

Furthermore, in our view, the Protocols lay the foundation for the key entities to work collectively to

- eliminate paper and move to electronic transmission of vote entitlement and proxy vote information, and
- develop end-to-end vote confirmation capability that would allow beneficial owners, if they wish, to receive confirmation that their voting instructions have been received by their intermediary and submitted as proxy votes, and that those proxy votes have been received and accepted by the tabulator.

We strongly encourage and intend to monitor industry initiatives in these areas through the Technical Committee.

Hold one or more roundtables in Fall 2016

We plan to hold one or more roundtables with market participants in Fall 2016 to discuss significant issues or concerns that are raised in the comment letters. We expect that one of the issues for discussion will be the cost impact on affected stakeholders of implementing the information and communication improvements.

Publish the final Protocols as a CSA staff notice at the end of 2016 in time for the 2017 proxy season

We intend to finalize the Protocols with the benefit of feedback from the comment letters, the roundtable(s) and the Technical Committee and publish them as a CSA staff notice at the end of 2016. This would enable the final Protocols to be published in time for the 2017 proxy season.

Monitor voluntary implementation of the Protocols for the 2017 proxy season and consider proposed new rules and guidance

We intend to discuss with the Technical Committee the timing for implementing the improvements contemplated by the final Protocols. We also intend to monitor the voluntary implementation of the improvements contemplated by the Protocols in the 2017 proxy season and measure their impact on improving the accuracy, reliability and accountability of meeting vote reconciliation.

We have also begun considering what kinds of additional rules and policy guidance may be required.

Request for Comments

We are requesting comment on the Protocols. We note that it is not our usual practice to seek comment on CSA staff guidance. However, the Protocols are different from typical CSA staff guidance because of the extensive and detailed discussion of operational processes. We therefore think it is appropriate to seek comment before they are issued in final form.

In addition to any general comments you have, we would particularly appreciate comments on the following issues:

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?
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?
3. What is a reasonable timeframe for implementing the information and communication improvements contemplated in the Protocols?
4. Which aspects of the Protocols (if any) should be codified as securities legislation, and which as CSA policy or CSA staff guidance?
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?

Please provide your comments in writing by **July 15, 2016**. If you are not sending your comments by e-mail, please send a CD or USB drive containing the submissions (in Microsoft Word format). We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the *Autorité des marchés financiers* at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission

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

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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