

**CSA Staff Notice 54-303  
Appendix B  
Summary of Comments**

## **1. General**

The commenters generally acknowledged the importance of the proxy voting infrastructure in the capital markets. Through the comment process, a number of commenters, including institutional investors and issuers, expressed a lack of confidence in the accuracy and integrity of the proxy voting system. They viewed over-reporting and over-voting as evidence that accurate vote reconciliation is not occurring within the proxy voting infrastructure. While there was no consensus on the prevalence of over-reporting and over-voting in Canada, some commenters were under the impression that over-reporting and over-voting were not uncommon. STAC provided statistics that, for its members who tracked over-reporting and over-voting, approximately 51% of meetings in 2013 had occurrences of over-reporting and over-voting.

These commenters said that the opacity and complexity of the proxy voting system make it very difficult to understand and assess the infrastructure as a whole. They were concerned that they have no assurance as to whether the votes are received and counted as instructed by the investors.

Intermediaries and their service provider on the other hand emphasized that the proxy voting system is generally well functioning and is not “broken”.

Despite these differing views, commenters generally agreed that improvements could be made, and supported securities regulators becoming involved in reviewing the proxy voting infrastructure.

There was no consensus as to the causes or specific solutions to the problem. Some commenters supported improvements to the system that are incremental and take into account the existing structure and improvements that have already been made to it, after a cost-benefit analysis. The solutions proposed by these commenters included ways to improve communication and collaboration between various participants in the system and the development of industry protocols. Others asked the securities regulators to impose prescriptive rules and to audit the entire system. Some commenters encouraged us to take a big picture approach and consider a re-design of the proxy voting system, such as establishing an entity that performs a clearing and settlement function for votes much like the depositories.

## **2. Meeting Vote Reconciliation**

Several commenters, including the institutional investors, transfer agents, intermediaries and proxy solicitation firms, indicated that reconciliation challenges are caused in part by missing documentation. In particular, STAC indicated that for its members who tracked over-reporting and over-voting, approximately 22% of the meetings in 2013 had reconciliation issues caused by missing or incomplete omnibus proxies.

According to the commenters, missing documentation can be a result of:

- incorrect information provided by intermediaries to their service provider (e.g. Broadridge) for the purpose of generating intermediary omnibus proxies,

- reliance on paper omnibus proxies, and
- DTC omnibus proxy sent by DTC to the issuer not received by the transfer agent/meeting tabulator.

Intermediaries also noted reconciliation challenges where shares were held in both CDS and DTC. They indicated that they had difficulty reconciling their positions with the vote entitlement information on Broadridge's system because certain DTC positions did not appear to have been reflected in the electronic feeds that Broadridge received.

Some commenters observed that direct NOBO solicitations by issuers, while in and of themselves are not a cause of reconciliation issues, often highlight the phenomena of over-reporting and over-voting.

We were further informed by some institutional investors, intermediaries and transfer agents that, while rarely used, restricted proxies could be a source of reconciliation discrepancies.

We have also received comments regarding the practices transfer agents use to tabulate proxy votes. Intermediaries, institutional investors and proxy solicitation firms would like more transparency surrounding the methods that meeting tabulators use to tabulate proxy votes. They believe that meeting tabulators should communicate to intermediaries whether votes are accepted, pro-rated or rejected. They suggested that most instances of over-voting can be resolved if there is better communication between intermediaries and meeting tabulators.

The commenters generally supported an end-to-end confirmation system that will allow investors to receive confirmation that their votes have been received by the meeting tabulator and voted correctly.

### **3. Client Account Vote Reconciliation**

Transfer agents suggested to us that over-voting was caused by intermediaries not properly allocating vote entitlement to their client accounts. They viewed over-voting as evidence that these intermediaries were reallocating vote entitlements to client accounts that significantly exceeded the intermediary's vote entitlement for that meeting. Some investors and issuers raised a similar concern. They questioned why vote entitlements are not tracked or reconciled to the same extent as dividend entitlements and wanted us to review whether some intermediary back-office systems allowed double or multiple voting.

The main area where concerns about double or multiple voting have arisen appears to be securities lending. We were informed that institutional lending programs do not appear to give rise to double or multiple voting because custodians use the pre-record date reconciliation method, i.e. they reconcile vote entitlements of lent shares prior to the record date. However, retail margin account lending appears to pose a risk of double or multiple voting because investment dealers use the post-record date reconciliation method, i.e. they allocate vote entitlement to all lent shares and only make adjustments post record date if there is an over-vote situation.

These commenters suggested that intermediaries should be required to adopt pre-record date reconciliation. Institutional investors, in particular, called for one-for-one vote reconciliation, i.e. for each outstanding issuer share, there would be a single entity identified as having authority to provide voting instructions.

Intermediaries, however, queried whether it is practical or feasible to implement one-for-one reconciliation due to the fungible nature of securities, the complexities of the intermediated holding system and the massive operational infrastructure that is required to support one-for-one reconciliation.

We have also received comments regarding who (the lender or the borrower) should have the right to vote in a securities lending transaction. There was no consensus on this issue.

#### **4. Other Issues**

##### ***NOBO-OBO Concept***

There was no consensus on the impact of the NOBO-OBO concept on the integrity of the proxy voting system. A number of issuers posited that the NOBO-OBO concept is an impediment to communication between issuers and shareholders and reduces transparency in the proxy voting system. They suggested that the NOBO-OBO concept be eliminated, or alternatively, that there at least be a mechanism to temporarily lift the OBO status to enable issuers and meeting tabulators to identify the OBOs.

Institutional investors and intermediaries, on the other hand, believed that the OBO-NOBO concept in and of itself does not compromise the integrity of the proxy voting system. They said that the elimination of the NOBO-OBO concept will not significantly reduce the complexity of the proxy voting system because the complexity is in large part due to the holding of securities through intermediaries. They further submitted that any reform to the NOBO-OBO concept should recognize investors' legitimate preference to maintain anonymity. Some proxy advisory firms raised the same concern about the impact of any reform on the ability of investors to vote confidentially.

##### ***Managed Account Information***

We have received comments from certain commenters regarding whether there are gaps in managed account information that would result in the inability of investment managers to vote. Intermediaries and their service provider indicated that they were not aware of issues relating to managed account processing. However, certain commenters suggested that there are issues that could arise and warrant further research, including incorrect [account] set-up between intermediaries.

##### ***Accountability of Service Providers***

Commenters noted that the activities of a number of service providers to support proxy voting are not currently regulated. They further noted the lack of documented process and accountability with respect to some of these activities. Some institutional investors suggested that all major service providers within the proxy voting system should be designated as "market participants" under securities law in order to promote accountability. Intermediaries on the other hand believed that market mechanisms and the existing framework have worked well to support accountability, and indicated that participants in the system have changed their practices in response to the market. They therefore supported an industry developed solution and would only seek guidance from securities regulators if industry is not complying with its own standards.