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Closing the Loop: Voluntary Meeting Vote Reconciliation Protocols Proposed for 2017 Proxy Season

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The Canadian Securities Administrators (CSA), in aiming to improve the accuracy, reliability and accountability of the system by which votes are counted at shareholders' meetings, has proposed and is seeking comment on a set of voluntary meeting vote reconciliation protocols. Four protocols are proposed, including one that partially closes the shareholder feedback loop by providing that shareholders be notified if their votes are rejected or prorated.

Background

Shareholders of Canadian public companies generally vote at shareholders' meetings by way of proxy. Voting by proxy involves a shareholder authorizing a person to attend and vote at a meeting on its behalf in accordance with its instructions.

Proxy voting is complicated by the fact that shareholders generally hold their shares through the intermediated holding system. That is, most shareholders are not registered shareholders but are beneficial owners of shares and hold their shares through banks and brokerage firms (*i.e.*, intermediaries) that, in turn, hold their shares through a central depository such as the Canadian Depository for Securities Limited (CDS). When it is time to vote at a meeting, CDS, as the registered shareholder, will grant a proxy to the intermediary that will then seek instructions from the beneficial owner and submit a proxy on behalf of the beneficial owner. Multiple tiers of intermediaries and share lending transactions, among other things, tend to complicate the system, frequently causing mismatches between voting instructions provided by the ultimate beneficial owners and the proxies submitted on behalf of intermediaries.

In response to concerns regarding the lack of accuracy, reliability and transparency of Canada's proxy voting infrastructure and the meeting vote reconciliation process, the CSA initiated a review in 2013, which included reviewing six shareholder meetings with the assistance of a proxy solicitor. As part of this process, the CSA identified two significant gaps in the meeting vote reconciliation process: information gaps and communication gaps. Information gaps arise because meeting tabulators do not always have complete and accurate information to establish which intermediaries hold voting entitlements (*i.e.*, the shares for which they have authority to vote) and how many voting entitlements such intermediaries hold. Communication gaps arise because there are no standard communication channels between intermediaries and meeting tabulators. In the summer of 2015, the CSA formed a protocol working group consisting of industry participants to assist with the development of proposed protocols to address these gaps.

Proposed Protocols

The proposed protocols delineate the roles and responsibilities for the key entities involved in the meeting vote reconciliation process and the operational processes that key entities should implement to fulfill those roles and responsibilities.

Of particular note is a new protocol that provides for feedback from meeting tabulators to intermediaries and beneficial owners whose voting entitlements are rejected or prorated. When discrepancies arise in the meeting vote reconciliation process, the meeting tabulator may reject or prorate votes submitted by an intermediary because the meeting tabulator cannot establish that the intermediary has any vote entitlements or because the proxies submitted exceed the intermediary's vote entitlement. Under this new protocol, any such rejection or proration must be reported first to the intermediary and then to the beneficial owners whose votes have been compromised. This feedback would provide intermediaries and ultimate beneficial owners with more visibility into the impact of flawed vote reconciliation on voting rights. This process is likely to increase pressure on intermediaries and other key entities in the proxy voting system to achieve more accurate meeting vote reconciliation and minimize instances of overvoting. Although this new protocol does not

mandate “real time” end-to-end voting confirmation that would enable a beneficial owner to know if its vote has been accepted, the new protocol does encourage meeting tabulators, intermediaries and other key entities to work together to develop such confirmation.

Next Steps

Comments on the proposed protocols are due by July 15, 2016, following which the CSA intends to hold roundtables in the fall to discuss significant issues or concerns raised by commentators. The CSA intends to publish final protocols at the end of 2016, in time for the 2017 proxy season. Although compliance with the protocols would not be framed as mandatory, they will serve to establish the CSA's expectations. Over the course of the 2017 proxy season, the CSA will monitor voluntary implementation of the protocols by key entities and measure the impact of the protocols on meeting vote reconciliation. If the protocols are effective, but voluntary implementation is low, we may see the CSA take steps to bring all key entities within the ambit of its jurisdiction and implement the proposed protocols as rules.

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