

## **Appendix A**

### **Overview of the Shareholder Meeting Process**

This Appendix provides a high-level overview of the shareholder meeting process.

Directors generally are required under most corporate statutes to call an annual meeting of shareholders not later than fifteen months after holding the last preceding annual meeting and, in any case, no later than six months after the end of the issuer's preceding financial year. TSX policies require TSX-listed issuers to hold an annual meeting of shareholders within six months from the end of their fiscal year, or at such earlier time as is required by applicable legislation. TSXV policies have similar requirements. Directors also can call a special meeting at any time.

#### **1. Notice and setting the record date**

Corporate statutes and company articles or bylaws generally require that notice of a meeting be provided at least 21 days but not more than 60 days prior to the date of the shareholder meeting.<sup>66</sup>

In addition, the issuer must set a record date. Under some corporate statutes (e.g., the *Canada Business Corporations Act (CBCA)*), issuers are theoretically able to set two record dates, one for those registered shareholders who are entitled to receive notice of a meeting, and one for those shareholders entitled to vote.<sup>67</sup> In practice, issuers usually set a single date as both the notice record date of the meeting and the voting record date. Otherwise, two sets of meeting materials would have to be sent out, and there would have to be some mechanism in place to identify and discard any proxy votes submitted by registered shareholders as of the notice record date who were no longer registered as of the voting record date.

#### **2. Generating the voter list**

##### **(a) Registered shareholders**

Under corporate law, an issuer identifies its registered shareholders by looking at the share register maintained by its transfer agent, and prepares a list of voters based on that list.<sup>68</sup>

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<sup>66</sup> NI 54-101, s. 2.1 requires the notice record date to be no more than 60 days and no less than 30 days before the meeting date, but all of the corporate statutes specify 21 days (with the exception of Ontario, which specifies 30 days, and the statutes of Nova Scotia, Prince Edward Island and Quebec which do not provide for record dates for notice of the meeting). In addition, NI 54-101 further requires that the record date be set at not less than 40 days before a meeting where notice-and-access is used as a method of sending meeting materials.

<sup>67</sup> CBCA, s. 134(1)(c) and (d).

<sup>68</sup> CBCA, s. 135(1)(a).

**(b) Beneficial owners**

Securities legislation effectively requires intermediaries to generate a list<sup>69</sup> of their beneficial owner clients as at the "**beneficial ownership determination date**"<sup>70</sup> who are entitled to:

- receive the management information circular, and
- have their voting instructions solicited, through receiving a voting instruction form.

At least 20 days before the record date<sup>71</sup>, the transfer agent sends to the "proximate intermediaries" (Broadridge) a "Request for Beneficial Ownership Information".<sup>72</sup>

Within 3 business days of receiving the Request for Beneficial Ownership Information, the proximate intermediaries (Broadridge) are required to provide information regarding the number of sets of meeting materials required (which also reflects the number of materials required by intermediary account holders of the proximate intermediary).

**3. Sending materials and soliciting voting instructions**

**(a) Registered shareholders**

The issuer (through its transfer agent) sends to the registered shareholder the management information circular and the management form of proxy. These materials must be delivered between 21 and 60 days before the meeting date.<sup>73</sup> The transfer agent is required to file and post on SEDAR a certificate of mailing with respect to the registered holders.<sup>74</sup>

**(b) Beneficial owners**

The issuer will decide whether materials will be delivered either by the issuer (through its transfer agent) to NOBOs or only by the intermediaries (Broadridge) to all beneficial owners. Meeting materials must be mailed 21 days before the date of the meeting; however, if the issuer

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<sup>69</sup> The specific mechanics of generating this list are described in Broadridge's *2011 Canadian Intermediary Services Guide*.

<sup>70</sup> This date is typically the record date for both notice of meeting and voting.

<sup>71</sup> NI 54-101, s. 2.5.

<sup>72</sup> Form 54-101F2 *Request for Beneficial Ownership Information*. For purposes of this discussion, a proximate intermediary is a CDS participant.

<sup>73</sup> *Canada Business Corporations Regulations*, 2001, S.O.R./2001-512, s. 44; National Instrument 51-102 *Continuous Disclosure Obligations*, s. 9.2.

<sup>74</sup> Transfer agents will often also deliver to their clients an Affidavit or Declaration of Mailing, to provide them with sworn assurance that the meeting has been properly constituted.

is using notice-and-access, the materials must be sent at least 30 days before the meeting.<sup>75</sup> NI 54-101 sets out timelines for when issuers must provide proximate intermediaries (Broadridge) with appropriate sets of materials, and when intermediaries (Broadridge) must send out the materials.

#### **4. Collecting voting instructions**

##### **(a) Registered shareholders**

Registered shareholders execute and return the management form of proxy that is sent to them. Shareholders must provide these voting instructions in writing.<sup>76</sup> The majority of registered shareholders submit their proxy votes in paper form.

##### **(b) Beneficial owners**

Beneficial owners most commonly return their voting instructions electronically (by telephone, fax, Internet, or through the relevant electronic platform). These instructions are submitted to either the intermediary (Broadridge) or the transfer agent (as applicable). Voting is controlled in electronic systems by providing to the investor a unique control number.

#### **5. Transmitting proxy votes/voting instructions**

##### **(a) Registered shareholders**

Under many Canadian corporate statutes, an issuer can set a proxy cut-off; however, a proxy cut-off generally must be no more than 48 hours (excluding Saturdays, Sundays and holidays) preceding the commencement of the meeting in respect of which the proxy relates. Some issuers take advantage of the full 48-hour proxy cut-off; others provide for a 24-hour proxy cut-off.

Typically, the transfer agent is responsible for tabulating the proxies submitted by registered shareholders.<sup>77</sup>

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<sup>75</sup> NI 54-101, s. 2.9. Note that if one intermediary receives meetings materials from another intermediary, it is required to send those materials on to its investor clients within one business day of receipt. However, this step is skipped since Broadridge delivers proxy materials on behalf of virtually all of the intermediaries.

<sup>76</sup> See CBCA, s. 153. However, under National Policy 11-201 *Electronic Delivery of Documents*, the "in writing" requirement for voting instructions can be satisfied by electronic delivery of a document, including telephone delivery, so long as the electronic format ensures the integrity of the information in the document and enables the recipient to maintain a permanent record of the information.

<sup>77</sup> The transfer agent will do the same for voting instructions received from NOBOs if the transfer agent has done the NOBO mailing on behalf of the issuer.

**(b) Beneficial owners**

Broadridge compiles voting instructions into a tabulation report aggregated by intermediary and then electronically delivers the tabulation report to the official tabulator.<sup>78</sup>

Broadridge recommends voting instructions to be received by it at least one business day before the proxy cut-off date (to enable the preparation of the tabulation report prior to the proxy cut-off time).

If the issuer has sent meeting materials to, and solicited voting instructions directly from NOBOs, the NOBOs will return their voting instructions directly to the transfer agent.

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<sup>78</sup> Broadridge issues tabulation reports on behalf of its intermediaries based on the schedule below:

- 15-day Vote Report - if material is mailed 25 or more calendar days prior to the meeting, the first vote report will be issued 15 calendar days prior to the meeting.
- 10-day Vote Report - if material is mailed 15 to 25 calendar days prior to the meeting, the first vote report will be issued 10 calendar days prior to the meeting.
- Daily Vote Reports - beginning on the 9th calendar day prior to the meeting, daily reports will be issued up to and including the meeting day.
- Day before Meeting - a vote report will be generated about 7:00 p.m. (Eastern Time) the evening prior to the meeting.
- Day of Meeting - a vote report will be generated the morning of the meeting.

The first vote report Broadridge issues will be cumulative. It will show all the votes returned up to that time. Any supplemental vote reports will show only newly-returned votes, which must be added to the first votes reported. See *Broadridge Canadian Intermediary Services Guide 2011*, *supra* note 45 at 13.