

CSA Staff Notice 54-303
Appendix C
Shareholder Meeting Review
Objectives, Scope and Methodology

1. Objectives

The objectives of the Shareholder Meeting Review were to:

- allow the key participants in the proxy voting infrastructure to develop a better understanding of how meeting vote reconciliation *actually* works, i.e. how the various processes that were identified and outlined in the Consultation paper are actually implemented for shareholder meetings, and
- identify and analyze instances of over-reporting and over-voting.

By identifying instances of over-reporting and over-voting, we hoped to identify potential gaps in the proxy voting infrastructure. We were particularly interested in finding out whether over-reporting and over-voting were caused by tabulators not receiving some or all of the documents necessary to correctly establish an intermediary's Official Vote Entitlement, i.e. problems with meeting vote reconciliation. We were also interested in finding out whether there was any evidence that over-voting was caused by intermediaries allocating too many vote entitlements to their client accounts in comparison to the number of shares they held in their accounts with depositories or other intermediaries, i.e. problems with client account vote reconciliation. Some commenters have suggested that over-voting is extremely common and is evidence of large-scale over-allocation of vote entitlements.

We conducted the Shareholder Meeting Review with the assistance of a proxy solicitor. The proxy solicitor helped us to design and conduct the review.¹

2. Scope

Due to resource and timing constraints, we determined that it was not feasible to conduct a review that would provide us with statistically significant findings regarding the causes of over-reporting and over-voting.

We therefore determined that the review would be qualitative in nature.

We selected six reporting issuers from Ontario, Alberta, British Columbia and Quebec. These issuers held an uncontested, uncontentious shareholder meeting in 2014.² Five of the issuers had filed a report of voting results pursuant to section 11.3 of National Instrument 51-102 *Continuous Disclosure Obligations*. The sixth issuer was a venture issuer that was not subject to this requirement.

Our sample included issuers:

¹ References to actions we took in connection with the Shareholder Meeting Review encompass actions taken by the consultant as well.

² The matters considered at each of the shareholder meetings were approved by more than 60% of the shareholders who voted at the meeting.

- that were listed on the Toronto Stock Exchange (TSX) and TSX Venture Exchange,
- that used different meeting tabulators,
- that were listed only in Canada and inter-listed in the U.S.,
- that were closely- and widely-held,³
- that conducted direct NOBO solicitations and that solicited only through intermediaries,
- whose shares were the subject of securities lending activity around the record date,⁴ and
- that operated in different industries.

3. Methodology

Our review had three main components:

1. Review of shareholder meeting documents to identify occurrences of over-reporting and over-voting,
2. Inquiries of meeting tabulators as to specific methods they used to reconcile proxy votes to Official Vote Entitlements (including the process they used to calculate those Official Vote Entitlements), and
3. Further investigation into specific instances of over-reporting and over-voting (including inquiries of specific intermediaries, Broadridge and CDS) to understand their causes, and whether they were isolated or systemic.

1. Document Review to Identify Potential Occurrences of Over-Reporting and Over-Voting

For each shareholder meeting, we obtained the documents that were used by the meeting tabulator to tabulate proxy votes. These included:

- registered holder proxies,
- depository omnibus proxies issued by CDS and DTC,
- intermediary omnibus proxies,
- NOBO omnibus proxies (if applicable),
- the list of registered holders maintained by the transfer agent,
- formal vote reports generated by Broadridge on behalf of intermediaries,
- restricted proxies, and
- the meeting tabulator's list of rejected or uncounted votes.

We reviewed the documents to identify instances of over-reporting and over-voting.⁵

(a) Identification of Over-Reporting – Comparison of Broadridge-Calculated Vote Entitlements and Official Vote Entitlements

³ Based on Capital IQ data on retail ownership and whether the issuer had a single shareholder that held more than 10% of its shares.

⁴ Based on Markit data on the number of shares outstanding on loan.

⁵ We also compared the total number of vote entitlements in depository omnibus proxies with the total number of shares held by the depository in the transfer agent's list of registered holders. We found one instance of a discrepancy involving a very small number of shares the cause of which we have not as yet been able to determine. We found another instance of a discrepancy where the DTC omnibus proxy did not allocate vote entitlements with respect to a very small number of shares in a predecessor class that are reflected on the issuer's share register.

Over-reporting occurs at phase two of vote reconciliation and consists of a discrepancy between the vote entitlements that an intermediary (or its service provider Broadridge) has calculated and the Official Vote Entitlement as calculated by the meeting tabulator.

The meeting tabulator calculates the Official Vote Entitlement for an intermediary using the information in the depository omnibus proxies and intermediary omnibus proxies it has received. The depositories and Broadridge provide vote entitlement information in electronic form through data feeds as well; however, not all tabulators access all of these feeds. Furthermore, tabulators generally will not rely solely on electronic data to support an Official Vote Entitlement but will require a stamped or validly-executed paper form⁶ of omnibus proxy.

We:

- identified the Broadridge-Calculated Vote Entitlement for each intermediary using the “Position” field for each intermediary in the formal vote report generated by Broadridge,⁷
- calculated the Official Vote Entitlement for each intermediary using the relevant depository omnibus proxies and intermediary omnibus proxies, and
- compared the Broadridge-Calculated Vote Entitlement⁸ to the Official Vote Entitlement to identify any discrepancies.

Where the issuer conducted a NOBO solicitation, we also:

- compared the total number of vote entitlements in the NOBO list to the number of vote entitlements in the NOBO omnibus proxy, and
- identified the vote entitlements allocated by each intermediary in the NOBO omnibus proxy and confirmed that the vote entitlements allocated by the intermediary in the NOBO omnibus proxy did not exceed the positions contained in the depository omnibus proxies and intermediary omnibus proxies for that intermediary (i.e., each intermediary had sufficient entitlements to allocate the number of vote entitlements in the NOBO omnibus proxy).

(b) Identification of Over-Voting – Comparison of Proxy Votes and Official Vote Entitlements

We reviewed the documents as outlined below to identify instances of over-voting.

Meeting tabulators receive proxy votes through paper formal vote reports generated by Broadridge on behalf of its client intermediaries. In addition, Broadridge also provides an electronic data feed whereby proxy votes are submitted electronically. Only some meeting tabulators access the electronic data feed.

Intermediaries can also submit a vote directly to the tabulator by using a document known as a **restricted proxy**, although this is rarely done.

⁶ This includes an omnibus proxy that is transmitted electronically in .pdf format, so long as it is stamped or validly executed.

⁷ If an intermediary did not subscribe to the Over-Reporting Prevention Service, the share position field for that intermediary in the formal vote report contains the intermediary’s “long” position in its record date file that it uploaded onto Broadridge’s system.

⁸ See footnote 7.

Where an issuer conducts a NOBO solicitation, the issuer's management will submit proxy votes on behalf of NOBOs in accordance with instructions provided by the NOBOs to management. In the meetings reviewed, the meeting tabulator used the NOBO voting instruction forms (VIFs) to tabulate NOBO votes.

We:

- calculated the total number of proxy votes submitted by each intermediary using Broadridge's paper formal vote reports⁹ and restricted proxies,
- identified the number of proxy votes rejected by the tabulator as over-votes using the list of rejected or uncounted votes, and
- compared the number of proxy votes submitted by each intermediary to the Official Vote Entitlement that the consultant calculated.

We also reviewed the list of rejected or uncounted votes provided by the tabulator to determine on what basis a tabulator rejected a vote.

2. Further inquiries of issuers and meeting tabulators

After the completion of the document review, we sent follow-up questions to issuers and meeting tabulators. In particular, we asked for clarification about how tabulators reconciled proxy votes to Official Vote Entitlements in the following instances:

- the meeting tabulator appeared to have accepted an intermediary's proxy votes although the documentation seemed to indicate that there was an over-vote;
- the meeting tabulator rejected or pro-rated an intermediary's proxy votes although the documentation seemed to indicate that the intermediary's Official Vote Entitlement was sufficient.

3. Detailed review of specific instances of over-reporting and over-voting

We identified specific cases of over-reporting and over-voting to investigate further. We organized meetings with two transfer agents, several Canadian intermediaries, Broadridge and CDS to further review two of the shareholder meetings. We reviewed the cases of over-reporting and over-voting and the various attendees shared information to explain why and how these cases occurred.

⁹ We did not have access to any votes received electronically by the meeting tabulator.