

November 28 , 2013

US Proxies Are Not Without Their Issues

One of the fundamental rights of a shareholder is to vote its shares, and it goes without saying that it is important that each vote cast is given its full weight. However, recent discussion surrounding the proxy voting infrastructure has highlighted that this may not always occur.¹ One wrinkle that may appear when an issuer's shares are held through the US Depository Trust & Clearing Corporation (DTCC). However, simple awareness of the issue can allow a company to take steps to ensure that shareholder voting proceeds as easily and accurately as possible.

Omnibus Proxies and Security Position Reports

In counting votes for a shareholder meeting, it is critical that the proxy tabulator have access to the chain of beneficial ownership so they can record beneficial holder voting instructions against the correct financial intermediary share ownership position.

In Canada, upon the calling of a shareholder meeting, the Canadian Depository for Securities (CDS) will send an omnibus proxy to the issuer's transfer agent (as proxy tabulator and scrutineer) to confirm the voting entitlements of those beneficial holders who own the issuer's securities through each CDS participant. However, when shares are held through members of the DTCC, the omnibus proxy is sent to the issuer and not to the transfer agent. As a result, it is up to the issuer to ensure that the DTCC omnibus proxy and Security Position Report (SPR) are delivered to the transfer agent as soon as possible after they are received. A failure to deliver these documents to the transfer agent may result in validly cast votes being discarded by the meeting tabulator.

What Can You Do to Avoid DTCC Proxy Issues?

- First, determine if DTCC is a registered holder (it will appear as CeDe & Co) or indirect holder (as a participant in CDS) of your shares. Your transfer agent can tell you. Make it part of the meeting notification process.
- If DTCC is a holder of your shares, they will send you the omnibus proxy and SPR. To ensure that process works well for you:
 - Ensure that DTCC has the correct address and contact information for your company by contacting your DTCC relationship manager, or calling the proxy

¹ For a summary of certain issues with the proxy voting infrastructure, see our firm's November 13, 2013 comment letter on CSA Consultation Paper 54-401 *Review of Proxy Voting Infrastructure*, available [here](#).

help line at (212) 855-5191 or sending an e-mail to proxyannouncements@dtcc.com.

- If your address or contact information is incorrect, DTCC will only act on instructions from the issuer contacts they have on file. To make corrections to your address or change contact names, DTCC requires instructions on corporate letterhead or from someone with an e-mail address that includes your company designation (*e.g.*, ContactName@xyzCompany.com).
- If, or once, all contact information is in order, DTCC will send a hard copy (paper) omnibus proxy and SPR to you shortly after your meeting record date. **Be sure to send it to your proxy tabulator immediately upon receipt.** There is no charge for this original omnibus proxy and SPR.
- If you want the omnibus proxy and SPR electronically, or to go directly to your transfer agent, you need to send DTCC an instruction. DTCC will not maintain standing instructions, so you would need to renew these instruction every year.
- If you failed to receive a copy of the omnibus proxy and SPR, you will need to contact DTCC at the above contact points to request a reprint. There is a fee for this service. Fees are at http://www.dtcc.com/products/asset/services/spr_pricing.php. For the item “Extra Copy” you will see the current fee is US\$25.00.
- As noted above, immediately send the omnibus proxy and SPR to your proxy tabulator, so they can recognize votes received from US beneficial holders that hold shares through a DTCC participant.

If you have any questions on comments on the foregoing, please do not hesitate to contact any of the following:

Carol Hansell
(416) 649-8486
chansell@hanselladvisory.com

Frédéric Duguay
(416) 649-8492
fduguay@hanselladvisory.com