

1.1.3 OSC Staff Notice 54-701 – Regulatory Developments Regarding Shareholder Democracy Issues

OSC STAFF NOTICE 54-701 REGULATORY DEVELOPMENTS REGARDING SHAREHOLDER DEMOCRACY ISSUES

The Ontario Securities Commission's 2010-2011 Statement of Priorities included a commitment to review protections for shareholders' rights and corporate governance. In addition, the Standing Committee on Government Agencies (SCOGA) March 2010 report on the Ontario Securities Commission (the OSC) recommended that the province of Ontario institute a formal review of democracy in corporate governance in Ontario. The OSC's submissions to SCOGA noted that the OSC was in the process of a significant review of shareholder democracy.

This Notice provides an update from OSC staff on the current status of our work in the area of shareholder democracy issues. We have identified the following issues as requiring additional review at this time and, potentially, the development of regulatory proposals for reporting issuers:

- slate voting and majority voting for uncontested director elections,
- shareholder advisory votes on executive compensation, and
- the effectiveness of the proxy voting system.

We may identify additional issues as a result of our continued review and developments in the capital markets.

Slate voting and majority voting for uncontested director elections

Slate voting refers to a voting practice by which shareholders are able only to vote in respect of the entire slate of director nominees presented by management. Slate voting is in contrast to individual director voting, where shareholders are able to vote in respect of individual director nominees. Ontario securities legislation does not currently prohibit or restrict slate voting at shareholder meetings, through proxy requirements or otherwise. The dominant voting standard in Ontario is plurality voting, which permits directors to be elected without receiving a majority of votes in their favour.

We are assessing whether reforms to securities law are appropriate to facilitate individual director voting and majority voting for director elections of reporting issuers.

Mandated shareholder advisory votes on executive compensation

The issue of whether shareholders should have a separate advisory vote on executive compensation and "golden parachute" payments (Say-on-Pay) has recently been receiving increased attention from various stakeholders.

Legislation in the United Kingdom, Australia and some European countries already requires public companies to give shareholders a Say-on-Pay, and the United States is expected to impose a similar obligation. In particular, the Dodd-Frank Act requires every public company in the United States to include in the proxy for its first shareholder meeting held on or after January 21, 2011 an advisory Say-on-Pay vote on executive compensation, as well as a separate vote to determine whether subsequent Say-on-Pay votes will be held annually, or at intervals of two or three years. The Dodd-Frank Act also requires any public company seeking shareholder approval of a merger or acquisition at a meeting held on or after January 21, 2011 to include in its proxy an advisory vote on certain "golden parachute" payments to its executive officers in accordance with SEC regulations. On October 18, 2010, the SEC proposed rules to implement the various Say-on-Pay votes required by the Dodd-Frank Act.

While a number of large public companies are voluntarily giving their shareholders a Say-on-Pay, there is no current initiative to implement a mandatory Say-on-Pay regime for all reporting issuers.

Over the past few years, securities regulators have focused on improving executive compensation disclosure to provide shareholders with meaningful information to exercise their voting rights. However, we have also been monitoring international developments in respect of Say-on-Pay and are considering whether securities regulators should consider introducing mandatory Say-on-Pay.

Effectiveness of proxy voting system

We recognize the need for an effective proxy voting system that allows shareholders to make informed voting decisions and ensures that their votes are counted at shareholder meetings. In addition to the issues being considered by the Canadian Securities Administrators (CSA) in relation to its proposed amendments to National Instrument 54-101 *Communications with*

Beneficial Owners of Securities of a Reporting Issuer, OSC staff are generally reviewing the proxy voting system to determine whether there is a need for additional reforms and to what extent securities law should address these matters.

Next steps

We intend to coordinate our review and the development of regulatory proposals relating to this review with other members of the CSA.

We also anticipate additional consultations with interested stakeholders on the appropriate scope of any regulatory proposals, their impact on investor protection and the implications for the role of the board of directors.

At this time, we would be pleased to receive any comments on whether it is desirable that staff develop proposals in these areas and the appropriate scope of such proposals. Please send your comments to the address below by **March 31, 2011**. If you are sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

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