ECGS
Expert Corporate
Governance Service

Proxinvest,

6 rue d'UZES

75002 PARIS FRANCE

Re: Canadian CSA 2013 consultation on Proxy Voting Infrastructure

Dear Sirs,

We are writing on behalf of European Corporate Governance Service (ECGS) registered in London and managed in PARIS, to comment on the CSA 2013 consultation on Proxy Voting Infrastructure.

The ECGS is a partnership of independent local market experts which have come together to provide specialist governance research and proxy voting advice, offering institutions access to unrivalled experience on corporate governance and responsible investment issues. The Managing Partner of ECGS is Proxinvest based in Paris.

Other active ECGS Partners are DSW (Düsseldorf), Ethos Services (Geneva), Shareholder Support (Rotterdam), Frontis Governance in Italy and GIR in Montreal.

ECGS acts solely in the interest of all shareholders and insists to act as freely of conflicts of interests as possible in its production and sale of its advisory services.

ECGS congratulates and thanks the Canadian regulator for seizing a complex topic which has been long neglected and even deteriorated by the financial markets. In our knowledge, it was never seriously successfully searched by regulators nor international bodies or trade associations including ICGN and issuers associations such as European Issuers.

The control of companies by their shareholders is the cornerstone for the creation and management of enterprises and the associated equity principle insuring equal treatment to all providers of ordinary capital, a basic root of any efficient funding of our economies.

We see distant voting through proxy voting as an important positive: in line with distant share acquisition and trading for it basically allows enlarging the pool of investors and investee companies. Thereby distant voting reduces overall the cost of capital for issuers by offering better opportunities for good investment to all the savers or pension beneficiaries and to all asset managers acting for these.

We therefore fully support the increased involvement of financial market authorities in encouraging better reliability and efficiency of the currently lagging proxy voting infrastructure.

Please feel free to address any of our ECGS members or its managing partner, Proxinvest in PARIS.

Pierre-Henri LEROY

Managing Partner

ECGS ANSWERS TO THE CSA CONSULTATION ON PROXY VOTING INFRASTRUCTURE

CSA rightfully identified main reconciliation challenges in America which have been witnessed since long years identified from Europe. The default of the "omnibus" infrastructure is however not the only reason for the worldwide failure of efficient voting by Internet. We will present that different European local intermediated holding system have also their shortcomings in all continents, in Europe as in Canada and in the US, the proxy voting infrastructure does not yet adequately address the vote reconciliation challenges and does not allow companies and investors to benefit of Internet for an efficient dialogue and vote. .

1. We will hereunder confirm that efficient vote reconciliation is not properly occurring within the worldwide proxy voting infrastructure, mostly but not only for the voting of shares by non-nationals.

2. Adding as suggested by the CSA an end-to-end vote confirmation system to the proxy voting infrastructure is, in our opinion, the best, universal and most efficient solution to the problem.

We consider first that unless the duty of custodian banks to their securities account holders or shares depositors is not seriously addressed by State regulators no or little change will occur because custodians of shares consider voting facilities and services as an unpaid or poorly paid side-business to be gained from the participation of fewer voting parties. We believe that the current custody service model discourages rather than facilitates voting.

<u>Factors contributing to the complexity of the proxy voting</u>

The CSA consultation suggests four factors contributing to the complexity of the proxy voting:

-the intermediary system of holding securities that supports clearing and settlement
-securities lending
-the use of voting agents by investors (defined as "advisors such as proxy advisory firms and investment managers")
-the right of investors not to disclose their identities to issuers and others

We will hereunder comment and discuss in line with the consultation questions the positive or negative influence of each of these four factors over the proxy voting practice and further suggest that this list possibly missed the most general factor

inhibiting progress toward a fair and efficient proxy voting process, namely the conflicts of interests affecting the securities custody services.

Whatever be the intermediary system of holding securities, even if they were no securities lending and no advisory services to investors, even if investors were universally obliged to disclose their identities to issuers for the vote, the current legal model of securities custody services would not, in our opinion, encourage custodians to contribute to the voting process. Therefore, unless legal changes are undertaken the voting chain will remain at large inefficient, unreliable and even unfair to investors.

While we see these active conflicts of interests as a more important factor than the four other factors suggested by the CSA; we suggest hereunder a solution to the general problem of proxy voting inefficiencies, a solution happily applicable to both differing American and European intermediary systems of holding securities.

Commenting on the four CSA suggested factors

3.1 Yes, the intermediary system of holding securities does not offer any efficient individual cross-border proxy voting

European and American Intermediated holding systems differ at glance because client assets of American institutions are pooled while European banks distinguish every client holding under each individual client name. This difference is associated with a different attribution of the voting right in both continents. We remind that under US law the registered holder has the right to vote and to transmit it to another holder on the custody chain while, for example in France, by contrast, the voting right is recognized only to the ultimate owner as designated by the intermediaries of the custody chain on the AGM register on a permanent (company nominative registry) or temporary (record date only) period of time.

The American practice of asset pooling allows for some efficiency such as basic computer savings as securities lines are less individualized and detailed references of individual holdings are no longer registered. However it shows its shortcomings when precise identification of the end-shareholder or of the relevant shareowner is needed.
For the identification of shareholders the US and Canadian securities pooling system uses a special survey of non-objecting holders (NOBO) among financial institutions, a survey generally undertaken six weeks before the shareholders meeting at the issuer's request by a service firm. This firm surveys hundreds of financial intermediaries and after a treatment eliminating double counts, it creates a shareholders list for the issuer. Because the American "record date" is set several weeks before the meeting date to allows for this survey, the listing resulting from this "NOBO solicitation" will necessarily be obsolete on the date of the meeting as it will generally offer a voting right to many investors having sold their position, while any

new shareholder buying shares in the weeks before the meeting will have no voting right until the following year. Objecting owners (OBOs) will also be able to vote on the basis of their holding in the books of NOBO intermediaries: the issuer will be able to identify the voting parties submitted by each NOBO.

Because of this lengthy complex process the American survey system was said to experience frequent double voting cases by the same holder notably when a voting right was given to broker's no-votes were allowing them to vote for non-participating accounts holder. Further this pooling method is, rightly or wrongly, associated with practices which appear abusive to Europeans such as the alleged possible use of the clients' shares by the custodian for trading or lending shares for its own account.

European issuers have from their perspective another perception of some of the shortcomings of the US securities pooling system when they hold their AGM : the local registrar or centralizing intermediary will receive only a few days before the meeting from different major American custodian banks, one vote associated to from a handful up to hundreds of identified shareholders. But neither the issuer nor its registrar will receive any other information on these individual votes in addition to the individual number of shares held and voted: no information about the direction of the individual vote cast by each of these final foreign, often important, investors will possibly be given.

This said, European issuers will certainly not blame only the American institutions and their intermediary system for they are not impressed either by their purely internal European experiences. The voting of European shares by US investors because it must rely on third parties agents – the banks and their agents - presents cases every year of different record dates for registered shares, different re-registration procedures, different deadlines, different IT systems in the voting chain as the issuing companies are not in control of the voting sites parameters.

The most recent AGM season 2013 in Germany has even shown the example of an unexpected confusion resulting from a court decision concerning the use of nominee account by omnibus banks within the cross border voting process, forcing them to declare the passing of shareholding thresholds and thereby generating a paralysis of the voting process and the invention of a new re-registration practices. Many investors were finally unable to vote. The German shareholders association and German partner of the ECGS, DSW publicly observed the need for a common agreement and common actions of custodians, issuers, service providers and the institutional investors to eliminate obstacles to cross border voting.

Votes received in Europe from other non-American countries do not offer better efficiency and clarity of voting messages unless the original voting form is received on time. Actually the cross-border voting chain in Europe is also far from being exemplary and no country, even the UK, is today recognized for any very efficient proxy and or voting process.

Besides investors willing to vote in Europe have become subject to heavy services payments form banks while they receive neither any confirmation of their actual registration as valid voting shareholders nor any confirmation of the vote cast when they are cast.

We confirm that the existing intermediary systems of holding securities in both continents do not offer any efficient individual cross-border proxy voting. However, the intermediary chains however, as they are, if used only for shareholders identification will not prohibit the existence and operation of such efficient process. Further, willing custodians and major service agencies such as Broadridge or Euroclear could easily arrange for an efficient and secure voting within the existing intermediary systems by reforming their methods. The solution exists and will be presented hereunder. But no efficient cross-border voting solution will ever work if custodians are not obliged by regulation to facilitate the voting of shareholders and thereby to allow the system to improve.

We suggest first that, in line with the 2010 Letter to Michel Barnier by ABI, Eurosif and Eumedion (http://eumedion.nl/nl/public/kennisbank/brieven/2010-08-ec-securities-law-directive.pdf) a new legal definition of the duties of the security custody franchise is needed for banking intermediaries to contribute to the voting of shareholders. We then indicate the appropriate universal solution for an efficient, cheap and more secure Internet proxy voting process for the direct voting of the shares, hereunder called ”Direct-voting” solution.

PROPOSAL ONE: new regulation should insure that custody service fees include on a best effort basis all charges associated with the certification of the shareholders identity, its registration as shareholder and eventually the transmission of his voting instructions to the issuer agent for the General Meeting.

The very definition of a share compared to a bond is the annual participation to the vote at the general meeting: a specific original feature of the capital share associated to the dividend right and to the usual rights, common to other financial security, to sell and transfer.

We believe that it is necessary for regulators or the lawmakers to remind the custodian banks that the voting right is a critical defining element of a share. Therefore the possibility to vote the shares should be included in the annual custody service fee, and never any special fee or charges should be levied from the security account holder for having voted shares.

For example, in France, until the beginning of this century and for years the registering of individual or institutional voting shareholder was free of any banking charge. However, since ten years major banks, such as BNP Paribas or Natixis, charge investors from 50 up to 500 € for registering shares abroad for voting and, for the first year, a major retail Natixis 1818 private banking subsidiary charged 30€ from an individual shareholder (Proxinvest) willing to vote one line its shares.

We believe that the voting service should never be a paying option of the custody contract and that the absence of voting possibility is a denaturation of the share as security contract. The voting service should be fully included in the custody charges invoiced for any securities account.

The signatory believe that it belongs precisely to the lawmakers to insure that custody service fees include on a best effort basis all charges associated with the certification of the shareholders identity, its registration as shareholder and eventually the transmission of his voting instructions to the issuer agent for the General Meeting.

PROPOSAL TWO: the voting infrastructure should open from the start a direct link between the companies and the investors

Our subsequent comments to the consultation will refer to a process which could be easily implemented by the major service providers including Broadridge.

Such direct-voting solution[1] offers from the day of the AGM call an open access to the voting site designated by the issuer: it allows from the start a direct link between the companies and the shareholder of the company. Both already registered owners and unknown bearer of shares as any other unknown web user will be able to proceed. This site will allow to the web user to launch and complete a voting session in one shot provided that the custody chain then subsequently confirms his holding of shares. The system will confirm by Internet messages, but only to confirmed real shareholders, the subsequent steps of the voting process including the reception of the registration request by the investor's custodian and reception of voting instructions by the issuer/tabulator, then the successful registration of the shares on record date as validated by the custody chain. Finally the shareholder will receive the final vote cast according to the last voting instructions he has given.

For any voting session completed by the user, identification key is generated by the site and transmitted directly to the tabulator on one side and, in parallel, via the depositary or custodian of the shares to the company. The centralizing agent or tabulator then enters the codes or identification keys received from the chain for the purpose of validating on record date and thereafter executing the decision of the recorded holders.

[1] This Internet direct-voting solution has been inspired by the traditional French voting instruction form: under this traditional process, any shareholder filling a blank voting instruction form for any publicly listed company meeting can participate to the vote provided that the number of shares indicated on the form and presented for registration on record date be validated on the form by the signature of the chain of custodians. In other words, the prior identification of the shareholders can be provided on record date to the issuer, several days after remittance of the vote instructions and not necessarily before the remittance of the vote instructions as it is requested now

This process legally relies on the right of shareholders to request from their depositary the registering of their shares once a year for the general meeting of the listed company. It is assumed that, upon the joint request of the issuer and of the shareholder using the voting site, intermediaries will accept to carry, in addition to the usual names and address of the holder a code or identification key associated to the voting session, such as the 12 digit control number used by Broadridge for its paper voting instruction form. On the other hand while the intermediaries' chain will keep transacting the shareholders identification messages of intermediaries, the individual vote instructions will no longer need to be carried by banks along the intermediaries' pipeline. This will actually reduce the data processing cost of any international cross-border vote.

The greatest benefit of this solution is the large time span offered for the vote of the shares and the lengthy inter-banking transfer of all identification items. Because of the postponement of the identification process, the voting window will be open as soon the issuer has tabled his resolutions. Because of the isolation of the vote identification process via the custody chain parallel to the vote instructions flow, the investor will be able to review and modify the initial voting instructions until closing date, even after short record dates such the British or French record dates when this record date is set by law two or three days before the meeting date. The unpleasant 20-25 days cut-off dates before the meeting as currently imposed by the custody chain will no longer be needed.

An interesting benefit is that willing shareholder will be able, when they consider it appropriate, to disclose to the issuer their voting instructions even before closing date, even weeks before the record date, and this should develop the appropriate dialogue between issuers and investor prior to the final voting.

A very strong benefit expected by the issuers from this solution is also to receive the individual vote instructions of every investor having voted shares held through omnibus banking accounts. Currently issuers and shareholders attending the meeting are unable to precisely attribute the individual vote included in an omnibus vote carrying dozens or hundreds of identified foreign shareholders.

Another important benefit of this solution is better confidentiality: the voting orientations of any voting session will no longer transit through the banking system to which it does not belong; will go directly and immediately from the investor to the issuer. There is here a very critical confidentiality benefit of direct-voting which at the time of the NSA scandal following the Snowden revelations will be priced by any protector of privacy.

The direct-voting process remains associated with the holding confirmation by the holding chain. However it will greatly improve the confidentiality of the voting orientations of the investor as this information will no longer be included in the custody chain confirmation messages and registration processing. For instance, while custodian will likely keep using SWIFT messaging to transfer the registration

process, they will no longer pass any vote orientations through the inter-banking messaging channel for voting instructions.
The adoption of the direct-voting process would thereby greatly simplify the custodian job by withdrawing any responsibility on the transfer of voting instructions as these confidential instructions would be from the beginning given directly by the investor, the issuer or its agent. Custodians would be focused on the shareholding confirmation for the registration of the voting session.
The suggested solution allows also for a feedback control of the proper treatment of registration requests by the custody chain, for example, when the shareholding is not received as confirmed by the system one day before record date.

3.2 Share lending is not a factor of malfunctioning of the voting process

We fully support the description of share lending operations given by the CSA: share lending results in investors retaining economic exposure to lent shares without corresponding voting rights and the investor may still be noted as an "owner" in the intermediary's records. Some of the signatory officers have been early associated to the ICGN attempts to reduce the negative impact of share lending over the voting practices of major institutional investors. For instance we actively proposed and support that the voting of borrowed shares should be made illegal as a market abuse associated with a forgery, unless the shares are voted according to the instructions of the long-term owner or at least holders of the shares.

Some measures are now recommended to institutional investors to mitigate the consequences of losing the voting right by lending the shares and avoiding the risk of abusing use of borrowed shares in creeping take-over attempts. A most general negative impact of share lending is a lower participation of investors to the vote, but shares lending is not in itself a malfunctioning of the voting process, but a misleading behavior and a factor of lower active voting participation. We believe that the share lending issue is more and more properly treated by professionals and that it is not leading to the main solution to the poor functioning of the voting process.

3.3 The use of voting agents is not a factor of malfunctioning of the voting process

We believe that the use of voting agents is a natural development of professional efficiency and certainly not a factor of malfunctioning of the voting process. As these voting agents generally tend to find the most efficient solutions to insure a vote cast for their clients, only poorly educated servants of the established powers can defend that the use of specialists freely selected and paid by investors could create some real malfunction in the voting process. The European Securities and Markets Authority ("ESMA") reporting in 2012 on its review of the proxy advisory industry in Europe and the role of the industry in the shareholder voting process, concluded that "it has not been provided with clear evidence of market failure in relation to how proxy advisors interact with investors and issuers. "

It is clear that small portfolios managed by professional investment managers will not often be voted but this is more a result not a cause of the malfunctioning of the voting process as we have shown that voting has become more and more expensive due to unjustified charges levied by custodians.

It is true however that there is no mechanism in place to confirm that it is the advisor, and not the investor, who is solicited for voting instructions but we consider as not inappropriate that delegated investment management includes the voting of the shares as voting can reasonably be associated to the mission to buy or to sell these shares. Besides, we will see further that a modernized voting process could easily include such accessory information if need be and if the shareowner duly accepts to provide this information.

3.4 The American OBO-NOBO concept is not a factor of malfunctioning of the voting process

An OBO (or “objecting beneficial owner”) is a beneficial owner of shares in the intermediated holding system who objects to the intermediary disclosing his name, contact information and securities holdings. A NOBO (or “non-objecting beneficial owner”) is a beneficial owner who does not object to disclosure of the above information.

Certain investors may wish to keep their investment or their broader investment strategies confidential. Investors may also have concerns that an issuer’s management would have knowledge of the investment or that third parties would attempt to replicate particular investment strategies by obtaining information regarding the holdings of a particular issuer. We do not see that.

Some participants have suggested that eliminating the OBO-NOBO concept and permitting direct communication and solicitation in all cases can make the proxy voting system more reliable. Permitting direct communication is a must but it can, in our opinion, be undertaken despite the differing regimes.
We also acknowledge that elimination of the OBO-NOBO concept would implicate other considerations of importance.

Part 4 – Overview of the proxy voting infrastructure

The Canadian proxy voting infrastructure is not differing from most other current proxy voting regimes for it starts with
1. A heavy and cumbersome effort to identify the entities who, for the purposes of a meeting, have the right (broadly-defined) to submit voting instructions
2. Then delivering the appropriate materials to these entities and soliciting voting instructions; and

3. Then collecting the voting instructions and executing them by transmitting proxy votes to the official tabulator, with the documentation to establishing the authority to vote.

American financial intermediaries have contracted with a single service provider to perform these functions, a powerful company with strong ties with the custody industry and their common representatives or solutions (SWIFT). For understandable conservative business reasons these actors have not yet retained the direct communication between issuer and investors as a feature of the proxy voting infrastructure they promote.

4.1 Generating the voters list: we believe that while a list of potential voters is a useful tool, identifying shareholders should not be a prerequisite of the voting process but only a prerequisite of the final vote casting:

The identification process should extend until the day of the general meeting and be undertaken in parallel but not prior to the two other steps mentioned above: delivering the materials and soliciting voting instructions.

Actually, for publicly listed companies, which as such invite anybody of the general public to become a shareholder, the voting materials should be made publicly available as soon as disclosed, and the public should be invited to vote subject to the later confirmation of their shareholding on record date.

The existence of Internet creates a fantastic capacity to offer free, fast and easy downloading of the voting material and companies should no longer be under the costly obligation to prepare and send paper voting material for non-identified shareholders such as OBOs provided that they offer easy downloading and Internet voting.

The signatory believes that companies should be and are in many jurisdictions entitled to receive from investor an information on their holding above a critical threshold such as 5% under many market rules and as low as 1% under some statutory rules. Failure to do so in due time and prior to the general meeting is a case for deprivation of the voting right and even, in some jurisdictions such as France, for additional penalties (voting right suppression for one or two years, even in some extreme cases deprivation of dividend payment…).

The signatory believes that while sanctions for failing to declare shareholding should not be extreme, it is certainly legitimate that any sizable shareholder holding 1% or more should never be entitled to vote when they have not informed the company of this shareholding in a reasonable delay before the general meeting. Such compulsory identification process, at the cost of the investor, is in our opinion an excellent process as concerns the critical needs for information of companies and their management.

The current diligence to create a list of identified holder accounts prior to the AGMs is certainly a useful service for the issuer willing to know early who will be some of the future voting shareholders. However, at the time of Internet, this should no longer be

a paralyzing prerequisite. No efficient share voting by Internet will exist as long as the shareholders identification is a prerequisite of the voting process.

1. The issuer might instead further notify its agent such as Broadridge of a shareholder meeting and the record date for notice for the meeting; but it should immediately, possibly through an agent, open on a web site with an invitation of the company to vote and the appropriate voting grid, this made available to any unknown web user.

2. The agent should further notify the intermediaries of the shareholder meeting immediately and not wait for the evening of the record date.

3. Willing intermediaries can further send Broadridge their back office files, which contain details of client accounts holding the issuer's shares as of the record date and this agent can further process these data to generate a list of potential identified shareholders.

4. However, as we will develop hereunder, the real formal identification should be produced at a later date:

- either on a free paper proxy form signed by the holder and transmitted by the member of the custody chain to the company registrar along the custody chain, the lengthy traditional paper process,

- or it should better result from the electronic request for registration transmitted by the holder using the agent/issuer website to his custodian along by the custody chain to the company registrar, this request carrying a code reference to the earlier electronic voting session and above mentioned voting grid remitted by Internet by the web user to the issuer or its registrar.

4.2 Sending the materials and soliciting voting instructions should no longer be a prerequisite of the shareholder voting.

Willing issuer might and should certainly be well inspired to send voting materials directly to investors. Similarly they should be encouraged to solicit voting instructions from the non-objecting investors on the Broadridge list in America or from the lastingly registered investors in Europe on their list of "pre-identified shareholders.

However, the right to access to the voting site designated by the issuer should not be restricted to identified shareholders ("actionnaires au nominatif" in France).

We certainly consider as normal that issuers pay fees to the intermediaries if they use intermediaries to send meeting materials to, and solicit voting instructions from these "pre-identified shareholders". It is also understandable but not necessarily appropriate that issuers are not required to pay fees to intermediaries in respect of other shareholders (OBOS in America, temporarily registered shareholders in Europe such as "actionnaires au porteur" in France) having voted through the custody chain.

The issuer's decision not to pay for the material distribution does often result, in Europe as in America, in these investors not receiving the materials and not being solicited for voting instructions.

We do not see any solution to this issue when issuers do not want to invest in any publicity or solicitation other than legally required. However the wide opening of an efficient web proxy voting process and the natural publicity given to this free AGM site should counterbalance this issue.

The issuer might want to know whether the voting account is a managed account. European specialists tend to agree on the idea that the last intermediary on the chain designating the final owner is a satisfactory solution for providing the identity of the final owner. Under our solution the web voting site paid by the issuer can certainly question the final voting Internet user to indicate whether he acts as a manager, as a proxy holder or as a shareowner at risk.

As concerns the Aggregation of shares in managed account, we read that Broadridge will aggregate shares for the investment manager who has voting authority over those shares as required to support managed account processing. European law at this stage does not require asset managers to name the holders of its managed accounts and we see this as reasonable.

We see similarly the Aggregation of shares by intermediary omnibus proxy processing as acceptable provided however that they notify the tabulator of the name of the voting accounts and number of shares held and voted by each securities account.

We also read in the consultation that for pre-identified retail investors of its lists, Broadridge will also generate the request for voting instructions required by NI 54-101 (known as a voting instruction form) for inclusion in the meeting materials. The paper voting instruction form will have a 12-digit control number printed on it that enables an investor to vote by internet. "Where an email is sent, the control number is embedded as a hyperlink".

We therefore question why they have not opened the same process to any Internet user willing to vote and check only after its vote and before the AGM whether or not this vote is validated by a valid holding as confirmed by the chain of intermediaries or by the list of pre-identified or lastingly registered shareholders.

4.3 Collecting voting instructions and transmitting proxy votes to the official tabulator by Broadridge and by European intermediaries is taking unjustified delays.

The voting process of institutional or retail investors under existing American and European infrastructure appears inefficient for it covers a small part of potentially

voting shareholders and it takes unjustified delays while remaining generally costly as any quasi monopolistic process.
Undue delays are taken by the lengthy process of identifying shareholders before “soliciting vote instructions” or plainly opening the possibility to vote on a web site. Undue delays are requested from institutional or retail investors using these platforms for international vote as the identification and the voting instructions are transferred along the chain of intermediaries up to the company registrar or tabulator.

Besides we do not see the benefit nor the legitimacy for any agent to aggregate the retail votes received by intermediaries. By contrast, the appropriate process should allow the issuer as well as any shareholder making such request to check individual vote resolution by resolution of individual voting accounts, be their retail or institutional accounts.

We incidentally observe here that Broadridge also offers an Over Reporting Prevention Service and an Overvote Pending Report which demonstrates that the agency and the intermediaries have a practice to adjust the vote to the number of shares held by intermediaries’ days after the production of the original voters list…

We observe as well that direct internet voting is partially possible in America for preregistered shareholders or NOBOs read that when the issuer has opened a third voting web site namely, Computershare Investor Services (Computershare) offering online voting at www.investorvote.com, telephone voting, these votes will not be included in the tabulation reports submitted by Broadridge, and are submitted directly to the tabulator. This process is likely allowing for a faster reception of the vote by the issuer.

4.4 Fairness of the vote tabulation should be insured

In America, like in Europe, generally a bank or a transfer agent is appointed by the issuer to act as an official tabulator for a meeting to review the proxy votes it receives and assess whether these are valid votes that should be counted for the meeting. The meeting chair is keeping considerable discretion over whether a particular proxy vote as tabulated by the official tabulator, should be accepted or not and can overrule the STAC Proxy Protocol presumption.

In France for example a bank will be in charge of this task and a handful of major deposit banks are competing for this service associated with the organization of the physical general meeting of shareholders as concerns the physical voting operations of attending shareholders.

On the basis of ECGS experience in France we consider and have several times reported to the French AMF that the conflict of interests resulting from the issuer carrying generally important banking business with the tabulator was resulting in critical bias. Several cases of gross negligence or even forgery have been observed in the last years, including a famous Wyser-Pratte v.Lagardère 2011 court case.

It can be said that the tabulator is in 95% of the cases a major house bank and that the other investment and commercial banking services paid to these banking group by the issuer exceed on average more than ten times the fees collected for the tabulator or central registrar services.

We consider that such bias should be avoided and that the other business of the official tabulator's banking group with the issuer should not exceed three times the amount of fees agents collected from the issuer.

ANSWERS TO OTHER CSA QUESTIONS

5.1 Vote reconciliation

We believe that reconciliation issues are in large related to the US or Canadian process where deposit banks appear not to associate the individual shares held with any individual holder of securities.

As mentioned above we understand that this issue is related to the difficulties of the complex survey process used for the production of the shareholders list generation which might also result in situations of multiple voting and postpones the opening of the Internet voting.

5.1.1 Impact of share lending on generating the voter lists

We understand that the lending of shares creates additional disturbances to the listing generation process and that, similarly the share lending practices in Europe, it does "falsifies" the list of entitled shareholders.

However we consider that the appropriate answer to this falsification of the voting shareowners identity should rather be opposed by a legal prohibition of the voting of shares committed for sale or resale.

There is a need for further national and international regulation in this area as shares lending proceeds from generally hidden private and confidential arrangements and cannot be reasonably addressed through the existing regulatory framework: only the lender keeping the long term risk on the shares should have the right to vote in case of share lending transaction. Under the appropriate legal prohibition made for shares committed for resale, the borrower should either remit a proxy to the original owner, or remit a proxy to a truly independent party but never be allowed to vote himself the shares.

5.1.2 Omnibus proxies and restricted proxies

The consultation indicates that missing or incomplete omnibus proxy documentation can create reconciliation challenges for tabulators that could result in proxy votes being discarded or otherwise adjusted downward. European issuers complain that the omnibus proxy documentation fails to indicate the individual investors vote orientations resolution by resolution.

We consider that the above described solution remedies to this issue by requesting only one additional information to be transferred with the registration request of voting investors carrying the number of shares validly held to be voted: this information is precisely the above mentioned “control number” or “control code” associated with each voting session for shares validly identified by the custody chain.
The only needed regulation in this area would strengthen the custodians’ duties toward depositors ordering them to facilitate the voting process for account holders willing to vote.

5.1.3 Over-reporting and over-voting

The above described process would in large reduce cases where an intermediary returns more votes than are reflected in the intermediary’s CDS participant account for a vote decision on a certain number of shares is taken before the checking of the final vote and should never exceed actual position of each the intermediary on the custody chain.

5.2 End-to-end vote confirmation is a major market need

Currently, investors do not have the ability to confirm that voting instructions they submit to their intermediaries have ultimately been received and counted.
The benefit of an Internet voting process run by the issuer’s agent or tabulator is that it allows easy end-to-end vote confirmation. Twenty years after the creation of the World Wide Web it is astonishing that obtaining such confirmation be not possible. We confirm that such lack of confirmation becomes more problematic as meetings become more contested.

Under the direct-voting solution several confirmation messages are automatically send to the voting investor.

Once a shareholder has voted, a first feedback communication will confirm that his voting instructions have been received by the tabulator and that his request to register for voting on record date has been received by his custodian and will be further transmitted along the custody chain.

Hours or days after this voting session, depending of the structure of the custody chain and the country-(ies) involved, but no later than the record date for the meeting, a second feedback communication from the tabulator will:

- Either confirm that a number x of company shares have been validly registered for this meeting with the tabulator and that unless modified before the closing date the voting instruction will be cast.

- Or indicate that no confirmation of his registration request has been received by the registrar and that his custodian is kindly requested to check for the earlier request for registration.
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Later, on the closing date an additional message will:

- either confirm the vote cast can be easily to the voting shareholder
- or indicate that no confirmation of his registration request has been received by the registrar/tabulator and no vote was accordingly remitted to the company for tabulation.
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Finally on the general meeting date an additional message can be sent to validly voting shareholders confirming that

- the vote was entered as finally instructed and cast,
- the final vote outcome of each resolution of the AGM.

We believe that because of the current role of omnibus shareholding within the international custody chain, it will be difficult for Broadridge to deliver any end-to-end vote confirmation functionality unless it obtains from the intermediaries the transmission of individual “control numbers” or “control codes” associated to individual voting sessions of individual shareholding accounts.

6. Other issues

6.2 The inability of investment managers to vote is not only due to gaps in managed account information

We consider that generally investment managers have not developed sufficient efforts in order to facilitate the voting of the shares held and more generally to protect the value of the portfolios. This has been often the case when conflict of interests might affect their mother company or other companies of their group. Universal banking having allowed major financial groups to develop investment banking services along with credit and deposit services including securities custody and tabulator-registrar functions, the short term benefits of investment banking fees might negatively impact the objective service of many shareholding accounts.

As mentioned above the very definition of a share compared to other securities is the annual participation to the vote at the general meeting. We consider that any regulated activity related to the management or the custody of equity securities should be reminded of their duties to protect the shareholders rights and to foster the voting of the shares in the interest of the end owner.

6.3 Greater accountability of service providers should be imposed

We believe that mechanisms are missing so that established service providers and primarily custodians are accountable for their roles in the proxy voting infrastructure.

No serious mechanism is in place to mitigate the conflicts of interest of custodians and issuers banks acting as tabulator.

The responsibility of custodians should be focused on the registration process, i.e. the shareholding confirmation: the adoption of the direct-voting process would withdraw any responsibility on the transfer of voting instructions as these confidential instructions would be from the beginning given directly by the investor the issuer or its agent.

No serious mechanism is in place to insure any accountability of the intermediaries of the custody chain and their diligence in facilitating proxy voting and serving depositor's needs in this area.

There is clearly a need for further regulation in this area: we insist again on the necessity to remind custodians that the voting right is the elementary substance of a stock. The service allowing the voting of the shares should be included in the custody service fee and no special fee or charge should be levied from the securities account holder when he wants to vote the shares. As mentioned above the voting service should be fully prepaid and include in the custody charges invoiced for any securities account.

November 12th 2013