

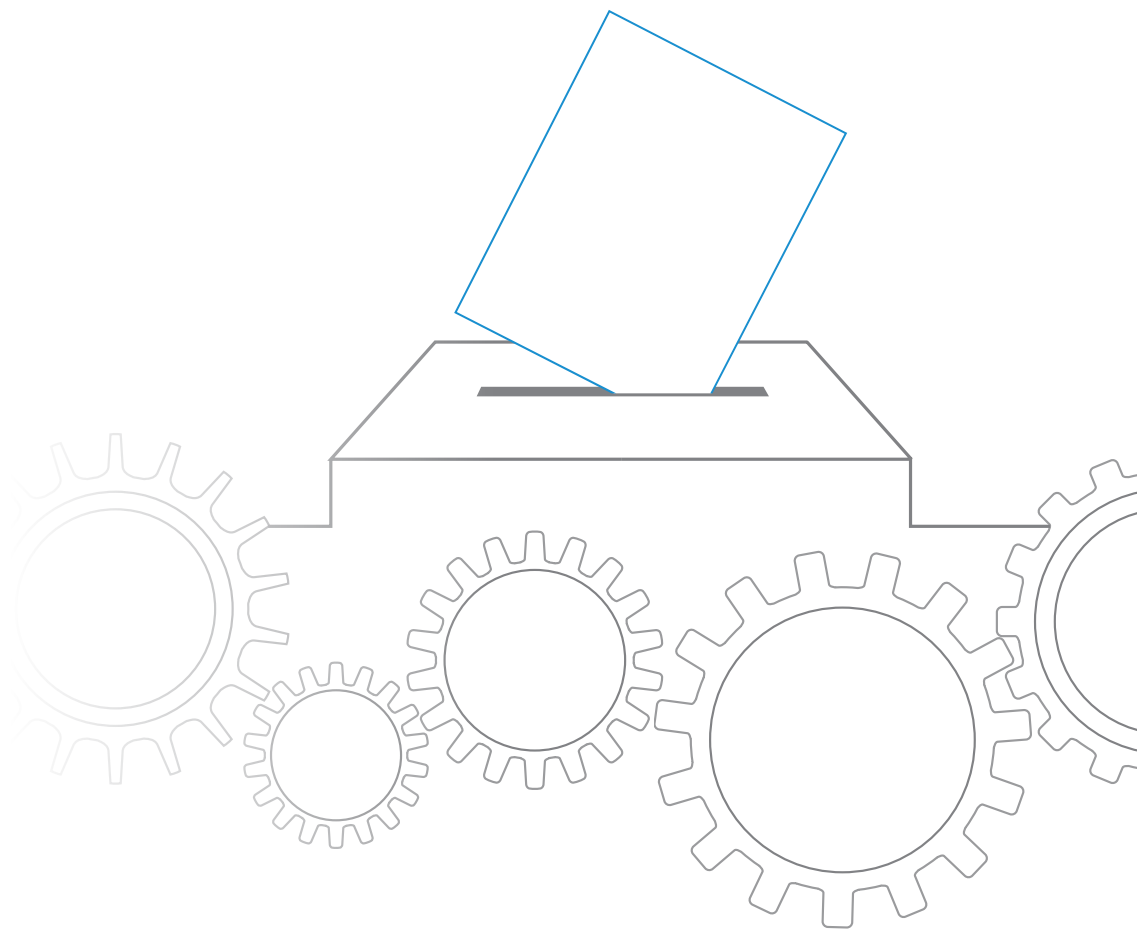


**RBC DEXIA**  
INVESTOR SERVICES

# A case for change

## Shareholder voting symposium summary report

October 2011



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# Overview

Shareholder voting and issues surrounding the Canadian proxy voting system continue to prompt concern and widespread industry debate. RBC Dexia Investor Services has been at the forefront of industry discussions in this area. In March this year we published an article *“Making each vote count”*, which provided an overview of the process complexities identified in the groundbreaking research paper issued by Davies Ward Phillips & Vineberg LLP, *“The Quality of the Shareholder Vote in Canada”*.

The article concluded that a large number of market participants were expressing both concern and interest in the current proxy voting process. But it also noted that while there is an expectation of change the question of who would take up that challenge remained open to debate.

In an effort to accelerate discussion of this important issue, RBC Dexia joined with British Columbia Investment Management Corporation (bcIMC) and the Canadian Coalition for Good Governance (CCGG) to host a symposium in Toronto—to bring together some of the country’s most influential parties in the proxy voting system for an exchange of information and insight.

The symposium, held on June 15, 2011, was co-hosted by RBC Dexia chief executive officer José Placido and bcIMC chief executive officer/chief investment officer Doug Pearce. The objective of the session was not to dispute the findings in the Davies report but to illuminate the issues most relevant to institutional investors. Stakeholders from the legal, regulatory, issuer and intermediary communities met in Toronto to clarify their roles, air their views and build consensus on logical next steps in improving the process.

Participants in the symposium and panel session included:

- **Kathy Byles**, Director, Compliance Americas, RBC Dexia Investor Services
- **Susan Enefer**, Manager, Shareholder Engagement (former), BC Investment Management Corporation
- **Eleanor Farrell**, Director, Corporate Governance and Legal, Canadian Pension Plan Investment Board
- **Rick Gant**, Director, Western Canada, RBC Dexia Investor Services
- **Stephen Griggs**, Chairman, Investeco Capital Corp/ Canadian Coalition for Good Governance
- **David Masse**, Senior Legal Counsel and Assistant Corporate Secretary, CGI Group Inc/ Canadian Society of Corporate Secretaries
- **Alex Moore**, Partner, Davies Ward Phillips & Vineberg LLP
- **Patricia Rosch**, President, Broadridge
- **Winnie Sanjoto**, Senior Legal Counsel, Ontario Securities Commission
- **Paul Schneider**, Senior Investment Associate, Corporate Governance, Ontario Teachers’ Pension Plan
- **Bill Speirs**, Director, Compliance and Risk, Canadian Stock Transfer Company, Inc
- **Amrita Williams**, Director, Business Development, CDS Innovations Inc
- **Edward J. Waitzer**, Partner, Stikeman Elliott

# Shareholder expectations and industry objectives

Opening the event, both José Placido and Doug Pearce stressed that in an era of growing shareholder democracy, shareholders have an expectation that their vote matters and can make a difference. Increasingly, share owners are exercising their influence in areas such as director selection and “say on pay” and are often using shareholder proposals as a means to effect change in the companies in which they have invested. As a basic principle of good governance, they need to be assured that they have voted the correct number of shares and that their vote has been received, acknowledged and tabulated.

Speaking at the event, Alex Moore, partner at Davies Ward Phillips & Vineberg, expanded on the views of the original Davies report and outlined ideal objectives of a proxy voting system. According to Moore:

1. Investors must be in a position to make an informed decision about how to vote and to direct that their votes be exercised. They must also have adequate time to review meeting materials.
2. They must be able to cast their vote or provide instructions in accordance with rules that are clearly explained, impartially applied and practical to follow.
3. These votes must be given their full weight at the shareholder meeting.
4. Votes attached to the securities of an issuer should be cast by those investors who hold the economic interest associated with those securities.
5. There must be sufficient transparency in the voting system to enable both issuers and investors to be confident the system works.

## Key issues and concerns

The original Davies report asserted that certain features of the current proxy voting system can lead it to fall short of these ideals, including the potential for over voting, a lack of transparency in the system and limited regulatory oversight. The report also highlighted the fact that the system doesn't lend itself to vote confirmation, with no mechanism in place to provide specific feedback to voters following a meeting.

Part of the challenge involves the **current regulatory environment** governing proxy voting in Canada and the US. For example, investors can elect to be "Objecting Beneficial Owners" (OBOs), which means their identities cannot be disclosed to the issuer. While this is an acceptable and legal practice, it limits the ability of issuers to communicate directly with these shareholders and results in a less reliable system of communication than that used to contact Non-Objecting Beneficial Owners (NOBOs). In fact, Broadridge, Canada's major distributor of proxy information, has acknowledged that the risk of OBOs failing to receive the materials they need to take part in the voting process is one of its top-level concerns.

There is also a **multiplicity of laws** governing the process, most of which pre-date and are not particularly sensitive to technology. These include corporate, securities, privacy and tax laws, all of which can be barriers to effective and comprehensive reform.

The situation is made more complex by the fact that **Canadian capital markets interact with markets around the globe**, many of which are dealing with similar challenges in terms of shareholder voting. Major public companies in Canada are owned by people from around the world and many companies listed on domestic exchanges are not Canadian. With different regulatory frameworks in disparate jurisdictions and variances in securities and corporate law within and outside of Canada, neither the domestic regulatory or legal communities feel they are in a position to take a lead role in reforming the system.

Similarly, intermediaries who serve both institutional and retail investors are a vital link in the proxy voting chain. As suppliers, however, their role is to ensure the safety and security of their clients' assets with no mandate to take overall control of shareholder interests.

During the symposium it was generally agreed that the "real customers" in the process and therefore its logical "owners" were the issuers and their shareholders. Yet these bodies are dependent on their custodians, transfer agents, investor communications experts and others in the shareholder voting chain to ensure the process meets their needs.

The panellists agreed that what they could do, however, was pool their knowledge of the system and identify some manageable next steps in advancing the process of change. Symposium roundtable moderator Ed Waitzer of Stikeman Elliott framed the task in this way:

["We need to maintain critical awareness of how big the problems are and whether they are solvable, to what extent a problem is real or theoretical and to what extent it matters if we come up with a solution. In short, we need to identify and prioritize what's going to make a difference in the system."](#)

# Industry Q&A

Symposium panellists were then asked to focus on a set of questions, inspired by the issues raised in the Davies report, with a view to confirming or clarifying each one. The resulting discussion focussed on the main categories of access to information, including quality of intermediary files; responsibility for the integrity of the proxy voting system; and the potential for technology to solve systemic problems.

To open the question and answer session, it was pointed out that under the current system intermediaries are required to create a list of their clients who are entitled to vote at shareholder meetings, together with the number of shares held by those clients. However, it was noted there is some uncertainty as to whether those lists are adjusted to account for shares on loan/pending trades/pending corporate actions; reflect the total holding position at CDS (and DTCC for interlisted companies); are reconciled before an intermediary transmits record date beneficial owner information to Broadridge or other proxy distributors so voting forms are not sent to ineligible shareholders, etc. As part of the Symposium roundtable question and answer panel session participants were asked if, in their experience, such lists were adequately adjusted/reconciled.

Commenting from an intermediary perspective, Kathy Byles, Director, Compliance Americas, RBC Dexia said: “We hear repeatedly that intermediaries are not balancing the lists that go out but we and our competitors find that perception incredible. The fact is that we all balance daily with CDS. Proxy or no proxy, we have robust systems and interfeeds that include automatic reconciliation. In addition, Broadridge has an overvoting correction system to which 97 per cent of Canada’s intermediaries subscribe. Moreover our clients are very aware of their voting entitlements and if they feel the information they’re receiving is inaccurate they let us know immediately.”

“To confirm this, we had a compliance audit specialist from our team examine 7,600 reports at Broadridge, of which 60 per cent balanced precisely. In 36 per cent of the cases, the voting list we provided to Broadridge

showed our position was less than that of CDS. This is due to the fact that the foreign intermediaries for which RBC Dexia is subcustodian had been removed from the lists provided to Broadridge and subtracted from our total. We provide these institutions with an omnibus proxy so they can communicate with their underlying beneficial holders and tabulate their votes. The remaining four per cent exceeded the CDS total due to missing positions with DTCC, although these were identified and rectified.”

“I would like to point out that I’m basing my comments on the majority of the votes - the electronically-held bulk positions with CDS that are voted electronically through Broadridge. This doesn’t include retail investors. We also have clients with physical securities that are not held by CDS but are sometimes voted by the security holder as though they are. This is a particularly difficult situation to resolve.”

“There is no question that inconsistencies in voting results are occurring but if, as we believe, the information is correct going into the process but incorrect coming out the other end, it’s a challenge to determine exactly where the problem lies.”

Presenting an issuer perspective and commenting on the strength of custodian input, Susan Enefer, Manager, Shareholder Engagement, bclMC, added: “As large institutional investors we have a major presence in the market but have very good custodians behind us who reconcile all our voting positions at the front end. We invest money, time and expertise in ensuring that we cast our vote diligently and thoughtfully and consider this an asset of our clients that we have a duty to protect. The missing link for those of us on the buy side is the “opaqueness” at the other end - not knowing for certain that our shares have been voted with as much precision as we applied in sending our instructions.

“If we could just fix the ‘problems in the plumbing’ and get confirmation from the tabulator or final point person that our vote has been accurately cast, it would be a wish come true.”

# Securities lending voting issues

Panel session speakers noted that securities lending had been identified by some industry related parties as a contributor to over reporting and over voting of shares through beneficially held positions and participants were asked their views on this.

Responding, Kathy Byles said: “Contrary to the position tabled in the Davies paper, the lists extracted by intermediaries to confirm proxy voting entitlements do not include securities on loan. For those securities lending participants who opt to exercise their voting privileges, the lending agent will recall the securities on loan in order to return them to the beneficial owner’s account prior to the record date, thus giving the beneficial owner the ability to vote their shares.”

“The right to recall any security on loan at any time is clearly articulated in the legal contracts. It is the beneficial owner’s right to exercise this option. The decision to vote does not rest with the securities lending provider or borrower.”

From an issuer perspective, Paul Schneider, Senior Investment Associate, Corporate Governance, Ontario Teacher’s Pension Plan, added “There used to be issues in recalling our shares in time for the vote. We wanted to be able to assure our board that we vote every share at every meeting of every company so we gave up securities lending to ensure the simplicity of the voting process. It was a trade-off but we chose to go down that route.”

Underlining the help service providers can offer in the process, Yvonne Wyllie, Head, Securities Lending, Market Products & Services, RBC Dexia, commented that plan sponsors could work with providers to establish optimal proxy voting requirements.

“Market participants shouldn’t have to alter their investment strategies or sacrifice corporate governance to accommodate securities lending. The key is to work with their provider to establish a proxy voting process that meets their own requirements. The value of a particular vote is determined by the owner of that vote. Some may vote only when the issue is contentious while others may vote on every issue,” she added.

Outlining the role of transfer agents in securities lending related voting and the challenges facing transfer agents, Bill Speirs, Director, Compliance & Risk, Canadian Stock Transfer Company, Inc said, “We handle the issuer response under National Instrument 54-101, which entails mailing proxies to registered holders, tabulating proxies and acting as scrutineer at shareholder meetings. Securities lending is one of several activities that can be a factor when intermediary files are not reconciled prior to the mailing of the proxies. When we see one of these situations it tends to be at the last minute or actually in the meeting and it’s difficult to resolve it in time.”

“If the result is an ‘over vote’ the most common way to address it is by pro-rating the results. This solves the over voting position but raises questions as to the integrity of the vote. Clearly, if the positions were completely reconciled prior to the casting of the votes you’d have an easy way to track the vote from beginning to end.”

In a separate response, Eleanor Farrell, Director, Corporate Governance and Legal, Canadian Pension Plan Investment Board, explained some of the key securities lending related challenges facing issuers.

“Securities lending is not the biggest issue. The problem is when you’ve posted securities as collateral. You feel you’re the beneficial owner and should have the right to vote but your broker has rehypothecated those securities and in effect sold them on to someone else. The question is, who is actually entitled to vote? Do you have economic exposure to those securities? If so, should you be entitled? The same is true for derivatives. You don’t actually have beneficial ownership but you have economic exposure so who has the right to vote – the person who actually owns the securities or the person who has the economic exposure? It’s a difficult question,” she said.

Responding to this Susan Enefer, added, “We do lend our shares but we recall them and our intermediary reconciles all of our voting positions for us. We know at the front end we’re good to go.”

Providing CDS’ perspective, Amrita Williams, Director, Business Development, CDS Innovations Inc. noted that, “We’ve reviewed securities lending practices and have concluded that the current system meets the needs of the industry.”

# Who fixes the voting system?

Moving on, the panel was asked whether securities regulators, companies or other parties should be charged with fixing the Canadian voting system and about the role of the issuer in ensuring the accuracy of their shareholder votes.

Responding from a regulator perspective, Winnie Sanjoto, Senior Legal Counsel, Ontario Securities Commission, pointed out that proxy voting infrastructure has been a huge challenge for securities regulators for a number of years, with information housed in several repositories that often didn't communicate with each other. Expanding on the issues facing the industry she remarked, "As demonstrated by this symposium, stakeholders now have the goodwill and intention to work together, which eliminates a major stumbling block. However it's still difficult for us as regulators to determine exactly where the problem lies and whether we need to intervene or let the market come up with the appropriate response. It may not even be a problem that can be fixed in our market alone given the need for our model to mesh with cross-border platforms."

"In my view, not just securities regulators but corporate regulators will need to be involved so both securities law and corporate law are reflected in the infrastructure."

Commenting on behalf of the Canadian Coalition for Good Governance (CCGG) on the need to address key proxy voting issues, CCGG member Stephen Griggs added:

"The proxy voting system is essential to the integrity of the capital markets, yet there is no responsibility for any of the players to ensure the entire process is correct and no incentive for them to make the investment necessary to achieve that. In my opinion, issuers have a fundamental obligation to ensure that the system works and should invest in fulfilling that obligation. Regulators should direct public companies to accept responsibility for ensuring the accuracy of their shareholder voting and give them time to put the necessary framework in place."

David Masse, Senior Legal Counsel and Assistant Corporate Secretary, CGI Group Inc. and Chairman, Canadian Society of Corporate Secretaries shared his views on the accuracy of certification of voting saying, "Issuers can certify the accuracy of their own financial results because they have pretty much end-to-end control over the results of their operations. When it comes to voting and the tabulation of proxies, issuers are mainly relying on their transfer agents so the average issuer doesn't have the power to control the situation."

"Under corporate law, issuers are told their registered voters are their shareholders and once they've dealt with these holders they've met their legal obligation. In the case of beneficial owners, issuers comply with 54-101 but for most this is a more nebulous process."

# Improvement potential

The panel also explored the role of technology in the proxy voting process, focusing on existing platforms as well as the potential to improve the system through technological innovation. Patricia Rosch, President of Broadridge, described her company's promising involvement in a project managed by the Weinberg Center for Corporate Governance at the University of Delaware. A separate industry roundtable is examining the potential for tabulators, nominees and proxy service providers to supply each other with information in order to facilitate end-to-end vote confirmation. Minnesota-based United Health Group offered to be the first to provide such a service to its shareholders and Broadridge has been working on a process to support the system.

Initial results are encouraging\* and feature concrete recommendations to streamline the proxy voting process, including early-stage entitlement confirmation, the encouragement of early voting and enhancements to exception processing.

Panellists also brought some additional perspectives to technology issues currently affecting the proxy voting system in Canada:

Commenting on technological advances made in the proxy voting arena, Patricia Rosch, said:

"Given that the shares of beneficial owners are held in 'fungible mass' by intermediaries and may be voted as an aggregate position, it's a challenge to ensure that each vote has been accepted at the meeting, confirmed by the tabulator and certified by the scrutineer. However, we're driving toward more granularity in our system and are making good progress through technology. The final piece we're building is more interaction between the passing of the shares and what finally gets tabulated and accepted at the meeting."

"Others in the market are also seeking better electronic solutions. For example, SWIFT has developed a vote confirmation service that works to incorporate additional messages through straight through processing (STP). As vote confirmation becomes more relevant, we're optimistic that our systems will keep pace with the change"

Commenting on the risk of over voting in the current system, Bill Speirs added:

"From our perspective, whatever can be done to minimize the risk of over voting would be welcome. As it is, we receive a position from an intermediary that says it has this many votes in favour and this many withheld and there's no way of breaking down that number. If we have an over vote and need to pro-rate, we can only base the pro-rating on the overall number of shares available to be voted."

Amrita Williams emphasised the need for industry input to develop optimal automated systems for shareholder votes.

"An automated system that can gather investor information, apply investor options to issuer choices and track shareholder votes will be extremely complex and will require industry input and consensus. However the concept of a data hub with appropriate accessibility and measurable control as a way to resolve proxy voting issues has been around for many years and we believe CDS can play a role as a data repository. We're in the process of reviewing our own systems and processes accordingly."

\*An executive summary of the resulting report may be found at [http://www.broadridge.com/investor-communications/us/UniversityDelaware\\_Report.pdf](http://www.broadridge.com/investor-communications/us/UniversityDelaware_Report.pdf)

# Meeting growth requirements

Commenting on expected industry growth and requisite shareholder voting requirements, David Masse added: “The accelerating pace and volume of transactions in our capital markets is a relatively new phenomenon and forecasts predict a 200 per cent increase in the next two years. Information technology has enabled the market to slice and dice risk and reward in ever-finer increments, resulting in more opportunities for profit. These financial transactions work very efficiently because that’s where the money is made. If the same degree of accuracy and accountability could be brought to the proxy voting process, we’d all feel better about the growing influence of shareholders in the market.”

“Maybe one way to start is a good technology approach to shareholder communication - give investors a one-page ‘cheat sheet’ and let them use their systems to drill down to relevant voter information.”

In conclusion Patricia Rosch noted the state-of-the art shareholder voting facilities already available in the neighbouring US.

“In the US, prospectuses are already available electronically so shareholders can choose an overview or go in deeper for detailed information. The technology is there, including the potential for e-voting. The important thing is that all shareholders be treated equally,” she said.

# Conclusion

In his closing remarks, moderator Edward Waitzer noted that while there are issues on the transactional side to be dealt with, these technical mistakes are at least reversible in the voting process. The real debate now centres on the integrity and efficacy of the day-to-day voting system.

Waitzer outlined the true challenge as the multiplicity of stakeholders and regulatory frameworks and the difficulty of assigning responsibility. He emphasized that as shareholder engagement becomes more robust, the need for a solution will become more pressing.

José Placido stressed that the outcome of the symposium needed to move from awareness to action and challenged intermediaries, including RBC Dexia, to put forth details of any additional information that needs to be included in proxy voting reports as well as plans for delivering it.

David Masse agreed that participants must “sharpen the issues and eliminate the noise” prior to the next session and determine what steps can be taken right away to bring positive change to the proxy voting process.

All agreed that the progress being made in other markets, predominantly the US, is important and should be examined closely for best practices.

As Doug Pearce commented at the outset, the Canadian capital markets, among the most respected in the world, have a unique opportunity to lead in the effort to create a proxy voting model on which others can build.

In summary, the Canadian process of shareholder voting works relatively well but it can be improved. It is a complex process with many players and regulations. As a result, it will take time and a focused effort to bring about change. The fact that market participants recognise this and are willing to work together through sessions such as this through other industry groups (i.e., the Canadian Society of Corporate Secretaries) bodes well for the integrity of the shareholder vote.

RBC Dexia will keep you informed of further events and developments in this sector.

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