



October 24, 2018

By email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File No. 4-725 SEC Staff Roundtable on the Proxy Process

Dear Mr. Fields,

Mediant Communications Inc. appreciates the opportunity to submit this letter regarding certain U.S. proxy voting issues in advance of the upcoming SEC Staff Roundtable on the Proxy Process.

Mediant delivers investor communications and technology solutions to leading banks, brokers, corporate issuers, funds and investment advisors. We are a premier provider of proxy services which include the distribution of electronic and printed proxy materials and processing votes of beneficial owners for our bank and broker clients. We perform similar functions for corporate and mutual fund issuers and their registered shareholders, as well as act as master tabulator for shareholder meetings. In this role, we are responsible for validating and applying the votes cast. We understand the “nuts and bolts” of the proxy voting process and respectfully provide observations that the Commission and the Staff may find useful in enhancing the accuracy, transparency and efficiency of the current proxy voting process.

In our experience over the last 10 years, the Commission and its Staff have worked collaboratively with proxy providers, issuers, and other stakeholders towards continuous improvement. We believe that the proxy voting system in the United States works well now – collecting, processing and applying votes across thousands of corporate annual and special meetings each year. We hold this belief notwithstanding the fact that, in the U.S., shares in public companies are often held by registered and beneficial owners that are serviced by brokers, banks, trustees, administrators, institutions, advisors, and solicitors, located both in the U.S. and abroad. This structure is intended to serve a number of purposes – perhaps most important of which is to allow shares to trade easily and efficiently in our secondary markets. This is vitally important to our deep and liquid capital market that serves both companies and their investors.

The U.S. structure is also one that allows brokers and advisors to serve their investor clients, allows investors to keep their portfolios private if desired, allows investors to hold securities in trusts and with advisors, and covers both domestic and international companies and clients. The protection of investor privacy however, also creates unintended consequences during the proxy voting process.

If investors were required to hold and vote their securities in their own names, shareholder votes would be easier to process, but we would lose a number of characteristics that make our capital market the envy of the world.

Despite the proven success of the U.S. system, we believe there is room for incremental improvement. Currently, the complex U.S. system presents challenges that can lead to over-voting, under-voting, and an inability to accurately validate votes so that they may be properly applied by the tabulator. We will discuss these challenges and offer solutions that can improve the operation of the system. The essence of the solution is timely communication among all participants and stakeholders involved in the process.





One reason why there are imperfections that tend to remain unaddressed is that votes in the corporate context are rarely close. The fact that a small percentage of votes fail to be properly counted is typically unimportant to the outcome. It is only in the rare event when there is a close contest that some of the system's imperfections are evident, and in these situations stakeholders are understandably vocal with their complaints. This may be one reason why process imperfections persist, but it should not be an acceptable excuse for any shortcoming in the system. All participants can, and should, do better, in all meetings, not just those in which there are close contests.

### ***Ensuring Shares are Voted in Accordance with Investor Instructions***

Among the issues mentioned in Chairman Clayton's Statement regarding the planned roundtable are over-voting and under-voting of securities by broker-dealers, and practical difficulties in confirming whether an investor's shares have been voted in accordance with the investor's instructions. Each of these issues has been the subject of industry discussion and SEC review for a number of years<sup>1</sup> and they are, in fact, closely related. Problems that arise from time to time in the context of applying proxy votes have prompted some investors to doubt that their voting instructions have been followed and to demand that the system provide them with confirmation. We believe that an important element in satisfying investor concerns is to continue to reduce the number of problems arising in vote tabulation. As a general matter, standardization and communication are key.

Potential over-vote situations can arise when the broker-dealer's customer account records show the customer with a larger equity position than is shown on DTC's Security Position Report for the firm. There are two primary reasons that can lead to an over-vote: (1) a firm's security lending practices, whereby one firm has loaned positions to another firm with corresponding voting rights attached or (2), the stock has not been delivered to the firm (i.e., recorded on the firm's books at DTC) due to an unsettled trade. Firms have processes and procedures to reconcile discrepancies resulting from these operations and, in most cases, firms are appropriately attentive to this reconciliation. Industry self-regulation requires broker-dealers to ensure that they have and are following internal protocols, and firms have been disciplined when mistakes occur due to the failure to have and/or follow procedures.<sup>2</sup> Over the years, the main focus of self-regulation has been enhancements to the broker-dealer internal control environment through policies and procedures to reconcile vote totals resulting from stock loans. Fails-to-deliver, in contrast, demand communication with the firm assigned the fail, in order to request an omnibus proxy that would give the receiving firm's account holder the right to vote the position.

Although stock loans and, to a lesser extent, fails-to-deliver have been much discussed in this context, we believe that there are several other industry practices that also contribute to vote tabulation difficulties, and that should be part of the focus when addressing improvements in the process. One such industry practice is when a broker-dealer or other DTC participant has, due to custody or any

<sup>1</sup> A concise and accurate description of over-voting/under-voting can be found in a briefing paper prepared by the SEC Staff in advance of a 2007 Roundtable on Proxy Voting Mechanics and maintained on the SEC website as part of its Spotlight on Proxy Matters, available at [www.sec.gov/spotlight/proxymatters.shtml](http://www.sec.gov/spotlight/proxymatters.shtml). End-to-end vote confirmation has been under discussion among issuers, transfer agents/tabulators and broker-dealer firms since at least 2011. See Report of Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation, available at <https://cpb-us-w2.wpmucdn.com/sites.udel.edu/dist/f/506/files/2012/04/end-to-end-vote-confirmation.pdf>.

<sup>2</sup> See, e.g., NYSE Hearing Panel Decision 06-54, available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/disciplinary-actions/2006/06-054.pdf>.





other reason, more than one DTC account. Such a participant has an inherent responsibility to ensure that the master tabulator is made aware that these multiple accounts exist so that it can apply votes appropriately. A standardized electronic communication format can alert and advise all master tabulators of the multiple account relationships, thereby reducing the risk of error.

Another industry practice which contributes to potential inaccuracies in vote tabulation is shares are held by a broker-dealer or other DTC participant at one or more depositories other than DTC, such as CDS (in Canada) or Euroclear. It should be incumbent upon the broker-dealer or DTC participant to effectively communicate with the master tabulator via an omnibus proxy to confirm the allocation of the votes associated with the custodial position. Effective communication can further reduce the risks in the system.

Issues can also arise due to correspondent brokers – those who are not self-clearing, but who hold and settle their beneficial client positions through another broker, which is a DTC participant. If the vote is being delivered by the correspondent broker that is not the DTC participant, an omnibus proxy must be delivered to the tabulator, so the tabulator can properly apply the votes against the DTC participant's position.

Finally, registered shares can also create issues for the tabulator. Some registered positions are actually held by the broker for the client. Brokers must be attentive to exclude such registered shares from the files being sent to proxy service providers, such as Mediant, in order to avoid double counting, where the shares appear in both the beneficial and registered totals.<sup>3</sup> As always, policies and procedures which include transparent communication methods benefit all stakeholders by reducing risks in the system.

### ***Suggested Best Practices***

As an experienced master tabulator for over a decade, Mediant stresses the maintenance of clear channels of communication with the issuer and with the proxy service providers to the brokers whose accounts are voting shares at the applicable meeting. We focus on identifying discrepancies and seeking clarification as early in the process as possible. We maintain records of all the issues that arise, including any inconsistencies that cannot be reconciled.

When we act as proxy service provider to our bank/broker clients, we are also proactive in identifying issues that appear when the votes arriving from these clients do not match the DTC position reports. The technology platform that Mediant provides to its bank/broker clients includes applications to assist the client in identifying and reconciling discrepancies before the vote is forwarded to the tabulator.

We note that securities industry regulators in Canada have recently done significant work to address tabulation issues in corporate proxy voting. In January 2017, the Canadian Securities Administrators published a staff notice<sup>4</sup> which sets out voting protocols aimed at improving the processes involved in the tabulation of proxy voting in Canada. These protocols outline expectations of the roles and responsibilities of key entities that implement meeting vote reconciliation and provide guidance on the kinds of operational processes that they should implement to support accurate, reliable and accountable meeting vote reconciliation. Progress under the voluntary protocols will be reviewed and will inform a

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<sup>3</sup> Beyond the potential impact on processing the votes of beneficially owned shares, processing the votes of registered shareholders can also present issues, if, for example, the shares are held by an entity that changed its name, or merged, so that the name on the books of the transfer agent is not the same as the name of the owner casting the vote. Again, communication is key to ensure such discrepancies are identified in a timely fashion so that they may be cleared up in time for the votes to be counted.

<sup>4</sup> CSA Staff Notice 54-305 *Meeting Vote Reconciliation Protocols*, available at [http://www.osc.gov.on.ca/documents/en/Securities-Category5/csa\\_20170126\\_54-305\\_sn-meeting-vote-2.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20170126_54-305_sn-meeting-vote-2.pdf).





decision on whether additional regulations should be imposed. We believe that a similar approach is advisable in the U.S.

An important aspect of the Canadian protocols involves making sure that banks/brokers and their account holders are made aware of situations in which the tabulator “rejects or pro-rates an intermediary’s proxy votes submitted on a Formal Vote Report, including because vote entitlements could not be located despite the tabulator’s reasonable efforts.” Flagging these issues for all meetings should help raise awareness, and it is reasonable to assume that the account holders will expect that their banks/brokers will take appropriate steps to rectify discrepancies so that votes will be appropriately applied at future meetings. Mediant maintains the records necessary to fuel this kind of post-meeting corrective effort and we would welcome an industry approach in the U.S. similar to that being undertaken in Canada.

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Thank you for the opportunity to comment on the proxy voting process. If we can answer any questions or provide any additional information, please let us know.

Very truly yours,

Sherry Moreland  
President & Chief Operating Officer

cc: The Honorable Jay Clayton, Chair  
The Honorable Kara M. Stein, Commissioner  
The Honorable Robert J. Jackson Jr., Commissioner  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
William Hinman, Director, Division of Corporation Finance  
Dalia Blass, Director, Division of Investment Management

