

New CSA exemption provides clarity for CBCA director elections

February 02, 2023

An exemption for reporting issuers incorporated under the Canada Business Corporations Act (CBCA) from the form of proxy requirements for the uncontested election of directors has been implemented by the Canadian Securities Administrators (CSA) by way of substantively harmonized blanket orders.

Takeaways

- As a result of amendments to the CBCA that came into force on August 31, 2022, CBCA-incorporated reporting issuers must give shareholders the option to vote **“for” or “against” each nominee director in an uncontested director election.**
- Effective January 31, 2023, blanket orders adopted by the CSA (the Blanket Orders) give CBCA-incorporated reporting issuers an exemption from the securities law requirement that a form of proxy sent to shareholders provide such **shareholders with the option to vote securities registered in their name “for” or “withhold” in respect of director nominees (the Exemption).**
- The Exemption does not impact the form of proxy requirements for any other matter to come before shareholders at an annual or special meeting.

CBCA majority voting amendments created uncertainty for reporting issuers

Amendments to the CBCA that came into force in August 2022 imposed a majority voting requirement on CBCA-incorporated issuers (the Majority Voting Amendments). This is a first amongst Canadian corporate statutes and, as a result, the CBCA now **requires that issuers allow shareholders to vote “for” or “against” individual director nominees in uncontested director elections rather than “for” or “withhold”, as has been historically required.** The Majority Voting Amendments created some uncertainty for reporting issuers incorporated under the CBCA as National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) requires that a form of proxy sent to securityholders of a reporting issuer provide an option for such holders to either vote or withhold from voting the securities registered in their name in respect of the election of directors.

Blanket Orders address discrepancy between NI 51-102 and the CBCA

Effective January 31, 2023, Blanket Orders adopted by the CSA provide an exemption from the requirement in NI 51-102 that securityholders either vote or withhold their votes in respect of director nominees, provided that:

- The issuer is a reporting issuer incorporated under the CBCA;
- If there is only one candidate nominated for each board seat at a meeting of shareholders (an uncontested director election), each candidate is elected only if the number of votes cast in their favour represents a majority of the votes cast “for” and “against” them by shareholders present in person or by proxy (unless the issuer’s articles require a greater number of votes);
- The issuer sends a form of proxy to each shareholder entitled to receive notice of the meeting concurrently with giving notice of the meeting;
- The form of proxy complies with the requirements set out in section 9.4 of NI 51-102, reading paragraph 6 thereof without reference to the election of directors; and
- The form of proxy allows shareholders to specify, for each candidate nominated for director, whether their vote is to be cast “for” or “against” the candidate.

Notably, the Exemption does not impact the form of proxy requirements as they relate to any other matter to come before shareholders at a shareholder meeting. As such, NI 51-102 still requires that securityholders be provided with the option to vote or withhold votes in respect of the appointment of an issuer’s auditor.

Next Steps

As noted above, the Blanket Orders came into force on January 31, 2023. In Ontario only, the Blanket Order will expire on the earlier of (i) July 31, 2024 (unless extended) and (ii) the effective date of any amendment to NI 51-102 that addresses this issue. The CSA has indicated that it is considering whether future amendments to NI 51-102 are warranted.

For further information, please see [CSA Staff Notice CSA Coordinated Blanket Order 51-930 Exempting Reporting Issuers Incorporated under the Canada Business Corporations Act from the Director Election Form of Proxy Requirement](#) (January 31, 2023) and the local blanket orders (CSA Coordinated Blanket Order 51-930 - Exemption from the Director Election Form of Proxy Requirement) in [British Columbia](#), [Alberta](#), [Ontario](#) and [Québec](#).

By

[Laura Levine](#), [Kent Kufeldt](#)

Expertise

[Capital Markets](#), [Corporate Governance](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.