

## **Kingsdale Advisors Releases CSA Submission on Vote Buying, Recommends Ban for Proxy Contests**

TORONTO ON., June 18, 2018– Kingsdale Advisors releases its detailed response to the Canadian Securities Administrators’ Staff Notice 61-303 and request for comment on the use of soliciting dealer arrangements, otherwise known as “vote buying”, where fees are paid to investment dealers for securing favourable votes in proxy contests and other corporate transactions.

Having acted in more proxy contests than all other advisors in Canada combined, Kingsdale is in a unique position to offer insight given the firm has been involved in and advised on every proxy fight where soliciting dealer arrangements have been used in Canadian history.

“Soliciting deal arrangements are not used for the altruistic purpose of increasing shareholder participation in a democratic process, they are used as an entrenchment tactic for directors under fire. Our view is very clear: the only way to ensure the integrity of a shareholder voting system that presently lacks transparency is to ban soliciting dealer arrangements within the context of proxy fights in their entirety,” said Wes Hall, Executive Chairman and Founder. “The broker client relationship is based on trust and that trust should not be manipulated by offering skewed incentives. Shareholder outreach should be exclusively the purview of entities that are transparent in their task to contact and convince proxy voters and that lack a ‘special relationship’ with an investor that can be improperly exploited.”

Historically, in Canada, the practice of soliciting dealer arrangements have been more common in takeover bid transactions. In recent years, however, the practice has migrated to transactions conducted by way of a shareholder vote and, more recently, to proxy contests where a board has a conflicted or entrenched position.

In its submission to the CSA, Kingsdale argues that the requirements that could make soliciting dealer arrangements permissible are unachievable in practical terms given the conflicted position the issuer initiating the arrangement is in. Specifically, that:

- a.) shareholders are properly informed of and understand the arrangement by those a shareholder has entrusted their money to, being both the issuer and the dealer; and
- b.) the arrangement creates a level playing field in that solicitation is made evenly and fairly for any votes received and payment is not conditional on one side winning, thereby restoring the original basis behind broker payments – to compensate them for their time spent reaching out to securityholders.

In each instance where soliciting dealer arrangements have been used in a proxy fight in Canada, neither has been true.

“Investment dealers are put in a position of trust by their clients who appropriately expect them to act in their best interests,” said Amy Freedman, Chief Executive Officer. “But when brokers are paid fees to secure a result the potential for conflicts of interest, board entrenchment, and exploitation of the integrity of the proxy voting process exists. The only way to ensure shareholders’ rights are protected is to ban vote buying in proxy contests.”

## **Let's Not Forget the Root Cause: An Opaque Shareholding System**

Kingsdale also believes that attention should be given to addressing the root cause that influences companies to employ soliciting dealer arrangements in the first place: a lack of transparency when it comes to objecting beneficial owners or OBO shareholders. In Canada, the shareholding system is renowned for the barriers it throws up for issuers, bidders or shareholders to contact OBO shareholders directly. In more progressive jurisdictions like the United Kingdom, there is no need for issuers to rely on brokers to communicate with their shareholders as they are able to contact their shareholders directly while protecting the anonymity that the OBO system is said to safeguard.

With contact information hidden, Canadian parties involved in corporate transactions are driven to seek out alternative ways to engage these shareholders. Presently the only way for Canadian issuers to reach all OBO shareholders is through snail mail which is archaic, slow, flawed and expensive. Looking forward, blockchain technology presents an opportunity to revolutionize the intermediated system and may allow for a more effective and modern means of direct communications between public corporations and their shareholders.

Kingsdale thanks the CSA for the opportunity to provide comment on this very important issue. Kingsdale's full submission is available [here](#).

### **About Kingsdale Advisors:**

With offices in Toronto and New York, Kingsdale Advisors is the leading advisor to public companies on all shareholder, governance, and transaction related matters having acted on the largest and highest profile proxy fights, transactions, and other special situations. Since 2003, public companies across North America have looked to the expertise of Kingsdale Advisors to secure the success of transactions or resolutions driven by shareholder votes. Kingsdale Advisors' multidisciplinary team offers an array of specialized services focused on strategic and defensive advisory, governance advisory, compensation advisory, strategic communications, voting analytics, and creative services.

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