November 1, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Department of Government Services and Lands,
Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

M. Claude St. Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 17th Floor
Montreal, Québec H4Z 1G3

Dear Sirs,

Thank you for the opportunity to provide comments on the proposed National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer (the “Instrument”).

Royal Trust Corporation of Canada ("RT"), a wholly-owned subsidiary of Royal Bank of Canada, has served investors as trustee and custodian for over a century and has over eighteen years' experience providing global custody. RT ranks first in Canada in terms of assets under administration, with over $881 billion, representing 34.5% of CDS. Institutional investors account for more than 78% of the total assets. The comments we are now submitting relate primarily to these institutional holders, the pension funds and mutual funds which have appointed RT as their trustee, and the numerous Personal Trust accounts we administer.

The concerns expressed on this issue in our previous letter to the CSA, dated September 15, 1998 (copy attached), continue to be valid. The draft Instrument published for comment on September 1, 2000 raises nine additional major concerns, as follows:

- **The current system works extremely well for the institutional holders and must not be dismantled. If issuers were to do the mailing, institutional investors would be disenfranchised and proxy returns would decrease. The solution is to exempt discretionary managers from the definition of 'intermediary'.**

- **From a governance perspective, there are more controls built into the existing system than would be in place under the proposed Instrument with the split of NOBOs and OBOs and the fragmentation of the mailing process. There would be fewer controls, which would jeopardize the integrity of the voting system.**

- **The proposed Instrument permits NOBO information to be obtained by any third party. It is imperative that beneficial owners who chose to be NOBOs under NP 41 and non-responders be deemed to be OBOs, not NOBOs.**

- **Under the proposed system, an issuer would arrange to deliver to the NOBO a legal proxy to the extent that the issuer's management holds a proxy given by the registered holder. We question how the issuer would obtain a proxy from the registered holder (i.e. intermediary's nominee name). The process by which issuers would obtain a legal proxy for a beneficial holder must be approved by all parties to ensure the continued integrity of the voting system.**

- **Intermediaries must not be held accountable for deficiencies in delivery of material where they do not control the mailing.**

- **Gaps in and the complexity of the proposed Instrument have grown substantially. We support the suggestion by CCSSA to conduct a comprehensive, in-depth analysis.**

- **Issuers would be denied access to even more of their beneficial owners, as foreign investors, institutional investors and trust companies would likely elect to be OBOs.**

- **Shareholders have a right to remain anonymous without the penalty of delivery costs. The issuers should bear the costs of distribution to OBOs.**

- **The proposed Instrument should be harmonized with National Policy 11-201 and efforts should be focused on using the new technology to improve communication with shareholders and reduce issuers' costs.**

The following are the details surrounding each of the above concerns.

DANGERS IN DISMANTLING THE EXISTING SYSTEM

Elimination of the 'bulking up' system

RT is of the view that he current system works extremely well for the institutional holders and must not be dismantled. RT and other large intermediaries have worked hard through the years at their own expense to put in place a 'bulking up' procedure for institutional holders, which works smoothly, elicits few complaints from beneficial holders, and reduces significantly the

volume of material required to be sent. In the paper-based world, this means substantial savings for reporting issuers in paper, printing and postage costs. The 'bulking up' is done by the intermediaries themselves through their own systems and would not be available under the proposed Instrument, where issuers or their agents do the mailing.

We doubt that issuers fully appreciate the significant benefits they reap from this 'bulking up' system if, in fact, they are even aware of and understand it.

We present here an illustration using RT's holdings of BCE, one of Canada's largest issuers. BCE has approximately 644,680,000 shares outstanding, of which RT holds approximately 147,300,000 shares, representing 22.84%, through CDS. This is broken down as follows.

	# Client accounts at RT	Voting authority/ control	Shares held	% of RT Holdings	% of BCE outstanding	Pieces of mail currently	Possible pieces of mail
A	3,526	RT	2,192,000	1.49	0.34	1	3,526
B	3,748	External managers	92,270,000	62.64	14.31	180	3,748
C	469	Client	41,817,000	28.39	6.48	469	469
D	281	No mail	11,021,000	7.48	1.71	0	281
E	**8,024**		**147,300,000**	**100**	**22.84**	**650**	**8,024**

The majority of RT's clients have granted full discretion and voting authority to either RT itself or to an external investment manager/adviser. Generally, Personal Trust accounts (Row A in the above table) give authority and discretion to RT, and institutional accounts (i.e. pension and mutual funds) (Row B above) use external third party investment managers/advisers. There are approximately 180 external managers in total that RT deals with, in respect of client accounts.

As you will see from row A of the above table, 3,526 clients, holding only 2,192,000 shares, have granted authority to RT. In this case, the investment management arm of RT currently receives just one set of proxy material, together with a report showing the share ownership information of the 3,526 clients that comprise the position. If the issuer or its agent were to do the mailing under the proposed Instrument, they would mail 3,526 sets of material to RT, or possibly to a few underlying clients. In the latter case, it may be immediately discarded, or possibly re-routed to RT. What is certain is that RT would neither require nor appreciate this volume of unnecessary material, and the clients who received material would be confused and potentially irate. To the extent that the material goes to the underlying client and is discarded, RT would not be able to vote, and these clients would be disenfranchised. From a proxy return perspective, this would be a huge cost to issuers for very few votes, as this position represents only 0.34% of BCE's issued and outstanding shares.

More significant, from a proxy return perspective, is row B of the table. As you will see, 3,748 institutional clients (primarily pension or mutual funds) hold 92,270,000 shares of BCE, representing a hefty 14.31% of BCE's issued and outstanding shares. In this case, the funds have granted voting authority to 180 external investment managers. Under the existing system, RT arranges to mail one package of material to each of the 180 investment managers, together with a summary report of clients who have given authority to the fund manager. Were the issuer or its agent to do the mailing, 3,748 sets of material would be forwarded to the individual funds. This would result in mass confusion and uncertainty on the part of the 180 investment managers

as well as the 3,748 institutional investors. Again, these funds could be disenfranchised, and the issuer would achieve a correspondingly low proxy return.

The solution to these problems is simply to exempt discretionary managers from the definition of "intermediary".

One of the issuers' objectives is to enhance their corporate governance by increasing their proxy returns. As we have demonstrated, the opposite would occur under the proposed Instrument. The issuers have complained that proxy returns are progressively more difficult to achieve each year. The reasons for this may have more to do with the fund managers' focus on their fund performance than any obligation on their part to get involved with shareholder matters.

Elimination of controls and integrity of voting system and Canadian market

From a governance perspective, there are more controls built into the existing system than would be in place under the proposed Instrument with the split of NOBOs and OBOs and the fragmentation of the mailing process. For example, the intermediaries now manage share discrepancies for record date positions, they serve as one point of contact for enquiries relating to meetings, they control and monitor proxy splits, and they provide voting confirmations on request. Under the proposed system there would be fewer controls, which would jeopardize the integrity of the voting system.

Instructions from beneficial owners

The default for dealing with non-responders has been eliminated in the proposed Instrument. An existing client that does not respond to a new request for instructions would continue to be governed by the instructions previously given or deemed to have been given under National Policy 41 ("NP 41"). The Instrument contemplates that, if he chose to be a NOBO or did not respond to the NP 41 request, he would be deemed to be a NOBO for three years after the proposed Instrument comes into force.

The proposed Instrument would permit NOBO information to be obtained by any third party. In order to comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and with a trustee's fiduciary responsibility, it is imperative that clients who chose to be NOBOs under NP 41 and non-responders be deemed to be OBOs, not NOBOs.

Exercise of voting rights

The proposed Instrument sets out a procedure whereby beneficial owners may exercise voting rights by attending and voting at a meeting, and issuers would be required to explain in plain language how this may be accomplished. Many beneficial owners are not familiar with the concept of registered vs. beneficial shareholders and, if asked, would probably respond quite confidently that they are registered shareholders. We believe that, no matter how plain the language, it would confuse many beneficial owners. The intermediaries would be contacted to help but, if they have not controlled the mailing, they would be unable to do so.

Under the current system, the intermediaries are very accommodating to their clients' needs and can produce, on very short notice, proxies to enable them to attend meetings and vote. Under the proposed system, an issuer would arrange to deliver to the NOBO a legal proxy to the extent that the issuer's management holds a proxy given by the registered holder. We question

how the issuer would obtain a legal proxy from the registered holder (i.e. intermediary's nominee name), as intermediaries are bound to deal only with their clients, not the issuer.

The proposed process by which issuers would obtain legal proxies for beneficial holders must be approved by all parties to ensure the continued integrity of the voting system.

Deficiencies in delivery of material

We supported the Canadian Bankers' Association's 1998 suggestion that further consideration be given to specifying in the proposed Instrument that an intermediary is not responsible for deficiencies in delivery of material to NOBOs where a reporting issuer has elected to distribute the material directly. In their response to this suggestion, the CSA regarded this as a client relationship issue that may be addressed by each intermediary.

This is not simply a client relationship issue. The Instrument should not directly or indirectly impose responsibility or liability on an intermediary where it has no control over the method of delivery.

From a practical perspective, beneficial owners will call their intermediaries if they do not receive material, if it arrives late, and in connection with proxy vote splits or incorrect share positions. However, if the issuer has done the mailing, the intermediaries will not be in a position to assist the beneficial owners.

Complexity and gaps in proposed Instrument

The comments published on September 1, 2000 indicated that the previously-proposed process left too many gaps. Even CCSSA, on behalf of the issuers, expressed this concern, acknowledging that most institutional holders would elect to be OBOs and issuers would still not have access to their major shareholders, and proxy returns would remain low. This gap has grown substantially under the latest revision. Not only would even more beneficial owners elect to be OBOs, as discussed below, but intermediaries would be less able to assist with bringing in votes.

Another recurring comment is that the previous draft Instrument was too complex, and satisfied no-one. CCSSA indicated it would support an in-depth analysis of the current process and its true costs, which might identify ways of reducing the complexity of the proposed Instrument and increasing its cost effectiveness. As the proposed Instrument has not addressed this problem, RT would enthusiastically join CCSSA in supporting a comprehensive, in-depth analysis. We recognize that previous efforts in this direction have been unsuccessful, but perhaps all the changes in technology and a deeper understanding of the process might better enable a fresh task force to reach a satisfactory conclusion for all parties.

Decreased issuer access to beneficial owners

Issuers would be denied access to even more of their beneficial owners under the proposed Instrument, as foreign investors, institutional investors and trust companies would likely elect to be OBOs. Four examples of circumstances in which the numbers of OBOs would increase are:

- For confidentiality reasons, it is imperative that clients who chose to be NOBOs under NP 41 and non-responders be deemed to be OBOs, not NOBOs.

- RT's large foreign intermediary clients would probably wish to retain the existing system for confidentiality reasons, and would therefore choose to be OBOs. Although small in terms of numbers of clients, they hold significant numbers of shares, as illustrated by Row C of the BCE example above.

- The fact that NOBO information would be accessible by third parties would undoubtedly prompt some beneficial owners, who would otherwise elect to be NOBOs, to become OBOs.

- The CSA suggest that a trust company which is uncomfortable with the concept of direct mailing by reporting issuers may require all its clients to be OBOs. This would probably happen, primarily because of its fiduciary responsibility and privacy laws.

COSTS OF SENDING MATERIAL TO OBOS

The CSA have resolved to remain silent with respect to allocation of OBO mailing costs, and permit the market to determine this where the matter is not addressed by local rule. This is unacceptable in our view.

Shareholders have a right to remain anonymous without the penalty of delivery costs, and this should continue. In fact, some shareholders choose to be non-registered purely to achieve this objective.

As noted above, intermediaries have worked diligently during the years at their own expense to make the process significantly more efficient and cost-effective for issuers. The system now works smoothly and provides issuers with both integrity of voting and significant cost savings. Under the proposed Instrument, intermediaries would have to dismantle the current efficient process, make further systems modifications to implement the new requirements at considerable expense, and bear the expense of canvassing all their clients for their instructions. As with any costs of providing custodial services, these costs would be passed through the intermediary to the client unless they are picked up by the issuers.

It is our belief that, if issuers are intent on dismantling the existing system and pursuing what they misperceive as greater efficiencies, cost savings and greater access to their beneficial owners, the issuers themselves should bear the OBO distribution costs.

ELECTRONIC COMMUNICATION

A recurring comment by all parties through the years has been the need for electronic communication for shareholder materials. Since our 1998 letter, electronic communication for shareholder materials has become a reality, and is radically changing the landscape. This has significant impact in a number of areas, which may be categorized as follows:

- Increased legislation and regulations
- The need to alleviate demands on the networks
- Electronic voting

Legislation and regulations

Various forms of legislation and regulations dealing with electronic communication are in various stages of finalization, and may be summarized as follows:

- The federal Bill C-6, the personal *Information Protection and Electronic Documents Act*, was assented to April 13, 2000. Bill S-19, an Act to amend the *Canada Business Corporations Act*, which includes provisions on electronic documents, received first reading on March 21, 2000.

- National Policy 11-201 ("NP 11-201") took effect January 1, 2000. This sets out the CSA's views on how obligations imposed by securities legislation to deliver documents can be satisfied by electronic means.

- In terms of provincial legislation:

  - the Ontario *Electronic Commerce Act* (Bill 88) came into force October 16, 2000
  - Saskatchewan's *Electronic Information and Documents Act*, *2000* has been proclaimed in force
  - Manitoba's *Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act* was passed October 5, 2000, and will be in force on proclamation
  - BC's *Electronic Transactions Act* and Quebec's *Act Respecting the Legal Normalization of New Technologies* are in committee.

This proliferation highlights the urgent need for harmonization of legislation and regulations. Where provisions of various jurisdictions' legislation appear to conflict, precedence should be established. In our view, the proposed Instrument should be more in line with NP 11-201.

To give you an example of a conflict: NP 11-201 contemplates that posting materials on a website (with consent) may satisfy the requirements. Thus, an issuer wishing to make its proxy materials available merely by posting them on a website would satisfy the requirements as long as the intended recipient's consent was obtained and the issuer complied with its terms. The Ontario *Electronic Commerce Act*, on the other hand, might be interpreted as prohibiting an issuer from making its proxy materials available in this way. Would NP 11-201 take precedence over the Ontario Act?

Another example of potential conflict is whether the intended recipient's consent to electronic delivery is required. NP 11-201 suggests that three of the four basic components of electronic delivery -- notice, evidence and access -- may be satisfied by obtaining consent. Going a step further, the draft Act to amend the *Canada Business Corporations Act*, requires consent to satisfy the requirement to provide a document if it is provided electronically.

The need to alleviate demands on the networks

With their new ability to deliver documents electronically, issuers stand to gain considerable savings on paper, printing and postage costs. However, consideration must be given to the demands which will be placed on the networks. This is especially important in view of the fact that the proposed Instrument would increase the volume of proxy materials going through the system, as demonstrated above.

You will be familiar with the size of some of the documents included in proxy materials. The annual report often runs over fifty pages, with dense text supplemented by graphics and pictures. Some management proxy circulars can run over fifty pages of extremely dense text, depending on the business to be transacted at the meeting. The proxy form is one sheet, often covered with fairly dense text. One package alone could take considerable time to download.

Multiply this by the millions of packages that could potentially go through the system each proxy season, and one wonders if the networks can cope.

We must strive to mitigate any risk of overloading the networks by reducing the volume of material through all sensible means, while ensuring good corporate governance. We support the provisions of NP 11-201 which provide the option of posting materials on a website. We encourage harmonization of the proposed Instrument with NP 11-201, so that issuers and investors benefit from new technology.

Electronic voting

It is obvious that the industry as a whole is moving towards electronic communication, and one component of this is electronic voting. Telephone voting has been an option available through ADP/IICC for a number of years. Currently, IICC has the systems in place to introduce Internet voting to the Canadian marketplace, and this option will be made available on receipt of approval. Thus there is no need for several other parties to make the significant systems expenditures that the proposed Instrument would entail.

CONCLUSION

In summary, the stated purpose of the proposed Instrument is:

- to establish an obligation on reporting issuers to send proxy-related materials to the beneficial, non-registered owners of its securities
- to provide a procedure for sending materials to beneficial owners, and
- to impose obligations on various parties in the securityholder communication process.

All three objectives are achieved by the existing process.

We believe that the issuers do not clearly understand the efficiencies, accountabilities and co-operation that are built into the existing system. As we have attempted to show, the existing system depends on the intermediaries being in a position to co-operate in a variety of ways. Retaining this ability to co-operate, combined with e-communication savings, might well be the best route to achieving good corporate governance.

We would be happy to discuss the above at your convenience, and to be an active participant if, as suggested above, a task force is set up to conduct a comprehensive, in-depth analysis of the process.

Sincerely,

José Placido