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SENT BY E-MAIL

Toronto, March 21, 2011

Ontario Securities Commission  
20 Queen Street West  
Suite 1900  
Box 55  
Toronto, ON M5H 3S8  
E-mail: jstevenson@osc.gov.on.ca

Attention: Mr. John Stevenson, Secretary

Dear Sir:

**RE: Ontario Securities Commission Staff Notice 54-701 – *Regulatory Developments Regarding Shareholder Democracy Issues***

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This letter is submitted in response to the Request for Comments (the “**Request for Comments**”) published by the Ontario Securities Commission (the “**OSC**”) on OSC Staff Notice 54-701 – *Regulatory Developments Regarding Shareholder Democracy Issues* (the “**Staff Notice**”). It has been prepared by us on behalf of our client, a reporting issuer operating in the mining area, who has had extensive practical experience with the proxy voting system and has asked us to provide you with their comments on the effectiveness of the system. The following are the comments:

1. The current proxy voting system is in need of substantive reform. Our client is in full support of a review by the OSC (and other members of the Canadian Securities Administrators (“**CSA**”)) of the proxy voting system as it is of the view there is a need for substantive reform of the system and that securities laws could effectively address the system’s shortcomings. The major areas of concern include delivery of materials to beneficial shareholders, the voting of shares at the actual meeting on behalf of beneficial owners and the role of third party intermediaries in the process.
2. The current proxy system makes it difficult, if not impossible, for issuers and other intermediaries to identify beneficial shareholders with certainty and to ensure the

appropriate shareholders receive shareholder materials in time to exercise their right to vote. The proxy voting system depends on the actions of a large number of intermediaries who each act independently. There is no regulation of these intermediaries or of the full process and therefore, it is difficult to know whether the aim of National Instrument 54-101 – *Communication with Beneficial Owners* is being effectively and consistently complied with. There is much anecdotal evidence that recipients are not receiving materials in sufficient time to make informed decisions.

3. There is no current mechanism which ensures that shareholders would know if their votes had been counted at the meeting as there is no regulation of this process. Beneficial shareholders which hold through intermediaries do not fill out a proxy prescribed by legislation which can be reviewed by the issuer, but rather fill out voting instructions whose contents are not prescribed and which may be discarded by the intermediaries based on their own internal criteria. Therefore, shareholders do not know if their votes are actually counted at the meeting. As a result, where a shareholder vote is crucial, it is not clear the information is flowing through to the real beneficial holders and then, in turn, such shareholders are not aware if their votes are being counted.
4. Due to the complexity of the system, an issuer must engage intermediaries to undertake the delivery of shareholder materials and to solicit proxies. In particular, where a vote is critical, an issuer is basically required to engage a proxy solicitation firm if they have any hope of ensuring that the voting results at a shareholders' meeting will have true integrity and represent the voice of the beneficial owners. An issuer has no comfort in knowing whether the materials have reached the beneficial owner through the chain of delivery, whether the voting instructions are reflected in a proxy received by the issuer and, therefore, whether the vote actually taken at a meeting reflects a view of the majority of beneficial owners or, in other cases, a super majority of beneficial owners. Due to a lack of regulation and oversight, intermediaries operate in accordance with their own procedures which may not be transparent to the issuer. In addition, due to the fact that there are a number of intermediaries involved in the system, the costs of retaining proxy solicitation firms and other intermediaries is prohibitive for smaller issuers.

While it is important to move forward on matters of corporate governance such as methods of election of directors, if the correct shareholders are not exercising the vote, the system has failed. Our client would, therefore, urge the OSC and other members of the CSA to review the proxy voting system with a view to see whether appropriate regulation could simplify the proxy voting system and increase its transparency.



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If you have any questions concerning these comments, please contact Walied Soliman at (416) 216-4820 or by e-mail at [wsoliman@ogilvyrenault.com](mailto:wsoliman@ogilvyrenault.com).

Yours very truly,

A handwritten signature in black ink, appearing to be "WS" with a large circular flourish around the "S".

Walied Soliman

WS/na