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Via email: jstevenson@osc.gov.on.ca

Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Attention: John Stevenson, Secretary

Dear Sir:

We appreciate the opportunity to respond to the request for comment by the Ontario Securities Commission (the "**OSC**") on OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues* (the "**Notice**"). We would like to comment on the section of the Notice entitled "mandated shareholder advisory votes on executive compensation", which is also referred to as "say-on-pay" in the Notice.

We acknowledge the movement towards say-on-pay in Australia, the U.K. and other parts of Europe and the implementation of say-on-pay in the U.S. as a result of the *Dodd–Frank Wall Street Reform and Consumer Protection Act*. We also acknowledge that Canada's largest financial services companies have begun allowing say-on-pay shareholder advisory votes on executive compensation.

In addition, we acknowledge that the Canadian Coalition for Good Governance (the "**CCGG**") has stated that a voluntary shareholder advisory vote on a board of directors' approach to compensation is an important part of an ongoing integrated engagement process between shareholders and boards of directors. We note that the CCGG has also stated that these advisory votes provide shareholders with an opportunity to express their satisfaction with a board of directors' approach to executive compensation.

We agree that shareholders should have the opportunity to express their satisfaction with a board of directors' approach to executive compensation. We also agree that a voluntary say-on-pay shareholder advisory vote could be one method by which a reporting issuer provides shareholders with such an opportunity. However, it is our submission that the OSC should not adopt a mandated say-on-pay for the reasons that follow.

Pursuant to corporate law, it is the responsibility of a board of directors to supervise the management of a company. An important part of this responsibility is to determine executive compensation, balancing the need to attract, retain and properly motivate talented management with the cost of compensation programs. These determinations are made based upon a particular company's strategy, goals and overall business environment, as well as an in-depth knowledge of its executives' business objectives and results, leadership capabilities and individual performance. It is pursuant to their detailed knowledge of these matters that boards of directors can effectively represent the interests of shareholders in overseeing executive compensation. The shareholders are able to indicate whether their interests have been met when they annually elect the board of directors. This method of evidencing shareholder approval or disapproval is particularly powerful if a company has adopted a policy of individual director voting and majority voting for uncontested elections of directors. We submit that this division of rights and duties respects fundamental corporate law governance principles, and that mandatory "say-on-pay" risks blurring these principles.

We also submit that say-on-pay voting results could be misconstrued. For example, a vote heavily in favour of a company's approach to executive compensation for a given year could lead a board of directors to ignore legitimate concerns expressed by a small minority of shareholders. Likewise, a vote heavily against a company's approach to executive compensation could be the by-product of events beyond a company's control, or a reaction to unrelated events at other companies, and have the effect of pressuring a board of directors to make changes to a company's executive compensation policies and practices that are not in the long-term interests of a company or its shareholders.

In addition, a simple "thumbs up" or "thumbs down" to a company's approach to executive compensation may not indicate to a board of directors which elements of its policies and practices were objectionable to shareholders, and may fail to provide useful insight into what particular aspects of a company's executive compensation policies and practices need to be addressed or how to address them.

Furthermore, we submit that integrated engagement processes between shareholders and boards of directors are already in place. For example, shareholders have the opportunity to express their satisfaction regarding executive compensation, or any other aspect of a company's business, through direct communication with a company's board of directors. Direct communication allows a shareholder to articulate its concerns about matters of importance in a way that the board of directors can evaluate, follow up with the shareholder when appropriate, and take action when deemed necessary. In addition, as mentioned above, the shareholders annually elect the directors that they want to represent their interests.

Reporting issuers also engage shareholders by providing detailed and meaningful information regarding executive compensation decisions. It is our submission that it is the provision of such detailed and meaningful information that is the key issue for shareholders. To this end, each year a reporting issuer is required, under Canadian securities laws, to provide in its information circular an in-depth discussion of how its

board of directors reached the decisions it did in respect to executive compensation. This disclosure allows a shareholder to fully understand the objectives, philosophy and principles a board of directors has used in its approach to executive compensation. A mandated say-on-pay vote would not increase the quality of this disclosure.

Moreover, under the current system, the OSC undertakes periodic reviews which monitor compliance with continuous disclosure requirements. If a reporting issuer does not meet its disclosure requirements, the OSC can and will require additional disclosure, re-filings or other staff action. The OSC also provides guidance to reporting issuers by way of staff notices, and makes amendments to the form requirements when and if deemed necessary. In this manner, the OSC helps to ensure that shareholders are provided with detailed and meaningful information regarding executive compensation decisions. In sum, the system works effectively as currently constituted and does not need to incorporate mandatory say-on-pay.

If the OSC does decide to introduce a mandated say-on-pay vote, then pursuant to corporate law the annual meetings at which these mandated say-on-pay votes will occur will become special meetings with the additional costs as a result. Given these additional costs, we submit that a mandated say-on-pay vote, if adopted, should be required to occur no more than once every three years, in order to avoid additional annual expenses for reporting issuers. In addition, the three year period between votes would have the added benefit of providing the board of directors and shareholders with sufficient time to meaningfully gauge whether a company's current approach to executive compensation is achieving its expected goals.

Thank you for the opportunity to comment.

Sincerely,

Viterra Inc.
James R. Bell
Senior Vice-President, General Counsel and Corporate Secretary
JRB/
cc: Thomas Birks, Board Chair, *Viterra Inc.*
Mayo Schmidt, President and Chief Executive Officer, *Viterra Inc.*