Direct Dial: (514) 847-4528
tdorval@ogilvyrenault.com

Montréal, March 29, 2011

BY EMAIL

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Dear Sir:

RE: OSC Staff Notice 54-701 – *Regulatory Developments Regarding Shareholder Democracy Issues*

This letter is submitted in response to Staff Notice 54-701 — *Regulatory Developments Regarding Shareholder Democracy Issues* (the "**Staff Notice**") published by the Ontario Securities Commission (the "**OSC**") requesting public comment on whether or not regulatory reform to securities legislation is required to address certain shareholder democracy issues. Our letter reflects comments generated from a working group of capital market participants having a combined market capitalization of more than $50 billion (the "**Participants**"). We thank you for the opportunity to comment on the Staff Notice.

I. GENERAL

As a preliminary point, the Participants are of the view that the matters outlined in the Staff Notice are of national interest and we would urge the OSC to develop a joint position with the other Canadian securities commissions on these important questions. Other commissions can bring insightful comments including with respect to regional disparities, which could benefit all market participants.

Furthermore, we believe that the Canadian approach to corporate governance, of fostering best practices as opposed to imposing prescriptive rules that may not be the most efficient from a cost benefit perspective, has worked well historically. Issuers should have the flexibility to adopt governance practices that they believe are the best suited to their needs, subject to appropriate

disclosure. This flexibility is among the arguments that are used to convince corporations to become reporting issuers in Canada. Obviously, more issuers means more diversity and liquidity in our markets.

II. COMMENTS ON EACH ITEM DESCRIBED IN THE STAFF NOTICE

1. Slate voting and majority voting for uncontested director elections

Although many of the Participants already allow shareholders to vote for individual directors as opposed to a slate of directors, they generally believe that the voting method should be left to the discretion of each issuer. The Participants believe that the manner in which directors are elected should exclusively be governed by the corporate statute under which each of them was incorporated, as opposed to securities regulations.

The Participants are also of the view that majority voting should not be a mandatory requirement. Majority voting policies were inspired by U.S. developments in that matter. However, there are important differences between the U.S. and the Canadian corporate and securities law environments, including with respect to shareholder proposals. Indeed, most corporate statutes in Canada allow shareholders to submit proposals on nominations for directors. Hence, for corporations that are governed by the *Canada Business Corporations Act*, a proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate five percent (5%) of the shares of the issuer entitled to vote at a meeting to which a proposal is to be presented. In addition, nominations can be made at the meeting from the floor.

Another important distinction between Canada and the US is the number of controlled companies in Canada, for which a majority voting policy (or even individual voting mechanisms) would not influence the outcome of the vote.

Furthermore, some of the Participants are concerned that requiring issuers to adopt majority voting policies could result in the loss of directors with particular experience or expertise, which augments or differs from the experience or expertise possessed by other board members. It is important for board members to complement each other so that the board as a whole functions well.

Participants believe that in order to have better boards, it is more efficient to promote an independent process pursuant to which independent board members perform a serious analysis of the needs of a corporation and the best candidates to act as directors. Individual director performance assessments, overviewed by an independent committee, is also a key tool to ensure the continuous improvement of a board. Most of the Participants already have these mechanisms in place.

2. Mandated shareholder advisory votes on executive compensation

The Participants are of the view that shareholder advisory votes on executive compensation ("**Say on Pay**") should not be mandatory. Even though some of the Participants have adopted Say on Pay as a best practice, many still believe that it is a dangerous precedent and that decisions related to executive compensation are best considered at the board level.

Indeed, many Participants are of the view that decisions on executive compensation should generally remain within the domain of directors who are subject to a fiduciary duty in the exercise of their duties to act in the best interests of the issuer. Most concerns of shareholders can be addressed through alternative shareholder communication methods. For example, many issuers have adopted engagement policies allowing shareholders to engage into a real dialogue with directors on compensation practices. Any questions on this topic may also be addressed at the annual general meeting of issuers and shareholder proposals can be used in cases where there has not been satisfactory resolution of an issue through communication.

Several Participants also point out to the fact that Canada has been less subject to problematic pay practices than other jurisdictions and that imposing a remedy on a systemic basis is not the most efficient approach to prevent isolated problems. In fact, shareholder proposals are better suited in those cases.

Furthermore, for many Participants, imposing Say on Pay would create a dangerous precedent which could become the basis for further requests to hold shareholder votes on various other topics falling under the domain of boards of directors. Ultimately, public corporations would be more difficult to govern, much to the detriment of their shareholders.

3. Effectiveness of proxy voting system

We encourage the OSC, as well as the other members of the Canadian Securities Administrators ("**CSA**"), to review the current proxy voting system. As described in various reports, our system suffers from various problems of transparency, certainty and accuracy, which affect its credibility. In reviewing the effectiveness of the proxy voting system, Participants would urge the CSA to consider the role of the different market intermediaries, including proxy advisory firms, following the lead of the U.S. Securities and Exchange Commission on that question.

III. CONCLUSION

In short, we believe that the OSC should come to a consensus with all CSA members with respect to the topics described in the Staff Notice. We believe that the Canadian way, characterized by fostering best practices, has served our economy well until now and that we should keep this approach with respect to majority voting and Say on Pay. We also believe that

the proxy voting rules should be reviewed in order to enhance transparency, accuracy and certainty and that such review should include an assessment of the roles and responsibilities of various market intermediaries, including proxy advisory firms.

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If you have any questions concerning these comments, please contact Thierry Dorval at (514) 847-4528 (direct line) or by e-mail at tdorval@ogilvyrenault.com or Tracey Kernahan at (416) 216-2045 (direct line) or by e-mail at tkernahan@ogilvyrenault.com.

Yours very truly,

(s) *Thierry Dorval*