SHARE
SHAREHOLDER ASSOCIATION *for* RESEARCH & EDUCATION

March 31, 2011

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Attention: John Stevenson, Secretary

Dear Mr. Stevenson,

Re: Staff Notice 54-701 – Regulatory Developments Regarding Shareholder Democracy Issues

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The Shareholder Association for Research and Education (SHARE) welcomes the OSC's decision to canvas the views of capital markets participants on shareholder democracy issues.

SHARE is an advisor to Canadian institutional investors. Since its creation in 2000, SHARE has provided proxy voting and shareholder engagement services as well as education, policy advocacy and practical research on emerging responsible investment issues.

In response to above-noted Staff Notice, we offer the following comments.

I - Shareholder advisory votes on executive compensation

Say on pay is just one of the mechanisms that shareholders use to provide boards with feedback on executive compensation. Where it is available, the vote prompts companies to establish more accountable and responsible remuneration practices and to improve pay disclosure when executive pay policy is reviewed each year.

Shareholder support for 'say on pay' in Canada

To date, 20 shareholder proposals have been voted by shareholders of Canadian public companies to provide shareholders with a say on pay. The 2008 vote results indicated strong support for say on pay, averaging 40% of votes cast. The 2009 proposals each received support from a majority of shareholders except for those on the ballots of companies with dual class shares. In 2010, most of the proposals filed were withdrawn in response to company

commitments to adopt say on pay[1]. The details of all say on pay shareholder proposals filed and voted in Canada to date are set out in Appendix I to this submission.

Market Penetration and Regulation

Approximately 10 percent of FTSE100 companies held advisory votes on executive compensation prior to the coming into force of the Directors Remuneration Report Regulations (DRRR) in August 1, 2002.[2] The DRRR mandated the annual pay votes for virtually all UK companies, beginning with each firms first annual meeting after December 31, 2002.

As of March 25 2010, 65 U.S. companies that were not legally required to provide shareholders with an advisory vote on executive compensation[3] either had already done so, or had committed to do so by 2011.[4]

Although Canada is a smaller market by virtually all measures than either the U.S. or UK, there are currently 55 companies that have either held pay votes or have committed to holding their first pay votes in 2011 or 2012.[5] These companies include more than 50% of the S&P/TSX 60 Index. This high rate of adoption of say on pay has come about as a result of strong support for shareholder proposals asking for vote on pay.

We would argue that we now have a critical mass of firms holdings pay votes, and that this is an appropriate time to draw on our collective experience with the vote at home and abroad to formulate regulations for a mandatory annual advisory vote on executive pay in the Canadian market.

We would also point to the vote results on the management say on pay votes that were held in 2010 as evidence of the important contribution that the votes are making to dialogue in Canada. Some detractors of the pay vote cautioned that each vote would be a rubber stamp,

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[1] Ten of the 12 say on pay proposals filed by Meritas Funds in 2010 were withdrawn in response to issuer agreement to provide the vote. Details of these proposals can be found in SHARE's database of shareholder proposals online at: **http://www.share.ca/shareholderdb/**

[2] Say on Pay Six Years On: Lessons from the UK Experience, Deborah Gilshan, Corporate Governance Counsel, Railpen Investments and PIRC Limited P. 7, online at: **http://www.cii.org/UserFiles/file/Say%20on%20Pay%20-%20Six%20Years%20On%2009-24-09.pdf**

[3] American Recovery and Reinvestment Act of 2009 requires that issuers in receipt of U.S. government assistance under TARP are required to provide their shareholders with a say on pay in AGM proxy statements filed with the SEC after February 17, 2009.

[4] Say on Pay Facts and Background, AFSCME Office of Corporate Governance and Investment Policy, March 25, 2010, pp. 2-5, Online at: **http://www.shareholderforum.com/sop/Library/20100325_AFSCME.pdf**

[5] See **www.share.ca/say-on-pay**

leading to invariable landslides in favour of pay packages. Others worried that shareholders would indiscriminately vote against to express the simplistic, disgruntled view that "they all make too much money".

Neither of these feared outcomes is borne out in the vote results from the first year of say on pay in Canada. Instead, the shareholders who did take exception to executive compensation at some companies used the votes to distinguish acceptable practice from poor efforts. The range of votes against was significant, from 0.8% to13.7%, providing ample evidence that the vote is being used responsibly by shareholders, and provides useful feedback to issuers. Each say on pay vote outcome from 2010 is set out in Appendix II to this document.

The Dodd-Frank Act and the Frequency Vote

It is unfortunate that the Dodd-Frank Act transformed the straightforward annual advisory vote on executive compensation into a bipartite ordeal that adds a multiple choice vote on how often the vote should take place to the vote itself in 2011, the year of its introduction.

Boards and compensation committees make decisions about executive compensation every year. They decide whether to increase executive salaries and by how much, they evaluate performance in order to determine awards under short-, mid- and long-term incentive schemes, and they set any performance objectives that will apply in the ensuing year.

All tabulations of shareholder votes on the preferred frequency of say on pay (the "say when on pay" or SWOP resolutions) have demonstrated very strong support for the UK-style annual vote, even in instances when management recommended that the votes take place once every two or three years.[6] This voting pattern is contrary to the customary deference of most shareholders to managements' recommendations.[7]

To the extent that the frequency vote diverts the discussion from pay issues to the frequency question, it retards progress towards the implementation of compensation practices and policies that better answer the needs of companies and shareholder alike.

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[6] *Early Results From the 2011 Proxy Season Show Clear Trends Developing on "Say-on-Frequency" Resolutions*, Corporate Governance Commentary, Georgeson Inc., Latham & Watkins LLP, March 3, 2011, online at: **http://www.lw.com/upload/pubContent/_pdf/pub4027_1.pdf**; Sheppard Mullin Richter & Hampton LLP, *Say-on-Pay Voting Results through March 3, 2011*, Corporate Securities Law Blog, March 3, 2011, online at: **http://www.corporatesecuritieslawblog.com/uploads/file/GCS%20-%20S-O-P%20Log%203-2-11.pdf**.

[7] Janine Sagar, *Investors Care Less and Less About Management's Recommendations*, Corporate Secretary, March 3, 2011, online at: **http://www.businessinsider.com/investors-care-less-and-less-about-managements-recommendations-2011-3**.

It is desirable that OSC staff develop proposals to mandate annual advisory votes on executive compensation for all non-Venture TSX listed issuers.

II - Slate voting and majority voting for uncontested director elections

We believe that securities regulators should eliminate slate voting and require majority voting in uncontested director elections.

Shareholders are unable to vote on director nominees individually in a slate vote, and must therefore support all or none of the nominees. If a shareholder has reason to withhold support from one or more nominees, that shareholder is put in the untenable position of voting for nominees it does not support or withholding support from nominees that it does support.

There is some evidence that shareholders are increasingly adverse to the practice of presenting directors for election as a slate. As an example, the vote report filed this year by Labrador Iron Ore Royalty Income Fund indicates that **"**proxies received by management included a large number of withheld votes on the election of Trustees". The report does not set out the proxy vote tally, leaving unitholders with no information about the extent of opposition to the election of the board. Instead it simply states that the "nominees were elected". SHARE asked Labrador Iron Ore for the actual vote tally, and we were informed that only about one-third of votes cast were supportive of the nominees.

The Labrador Iron Ore trustees were 'elected' because of the trust's plurality voting policy. Abolishing slate elections is the first step toward giving shareholders the right to truly elect directors (or not), but it is also necessary to require all companies to abandon plurality voting. Although a 'withhold' vote clearly indicates that a shareholder does not support a director's continued service on the board, the use of a plurality voting standard means that such votes have no effect on the outcome of the election regardless of whether directors are elected individually or as a slate. If directors are instead elected under a majority voting policy, 'withhold' votes are acknowledged to be non-supportive of the election of a nominee. If there are more votes withheld than votes for on the candidacy of a director, that director is not elected.

A director nominee who does not have the support of a majority of shareholders should not continue to serve on a corporate board, and securities regulation should reflect that.

It is imperative that OSC staff develop proposals to eliminate slate voting and plurality voting in the election of directors for all of the issuers that it regulates.

III - The effectiveness of the proxy voting system

We have no specific recommendations for securities regulation reform in connection with the proxy voting system at this time. It is evident that further study of many aspects of the system is necessary in order to identify and fully understand the extent to which problems exist before effective solutions can be advanced in a future consultative process.

All shareholders who want to exercise their franchise must have an opportunity to do so that is as straightforward as possible, and all votes cast by shareholders must be tabulated correctly. To the extent that these fundamental shareholder expectations are not currently being met, or that other factors are skewing the vote results, the proxy system requires attention with a view to improvement.

We believe that in this key area, securities regulators should take on the organization of a roundtable process in which representatives of all participants in the proxy voting process are asked to clearly identify and detail any impediments to shareholder participation and accurate vote tabulation.

In particular, efforts should be made to determine if the following concerns about the proxy system are real and if so, how significant their impact is on shareholder voting:

1. Non-delivery of proxy materials to OBOs
2. Deficiencies in intermediary records
3. Votes cast by parties without an economic interest in the outcome
4. Lack of vote verification for shareholders
5. Lack of independence of person assessing validity of shareholder ballots

Once the degree of deficiency is identified in connection with each of these areas, the regulator can proceed with proposals for reform that are aimed at improving the opportunities for shareholder participation and the accuracy in reported vote outcomes.

IV - Other Shareholder Democracy Issues

Shareholder Vote Reporting

Closely related to the proxy system imperative of accurate vote tabulation is the need for numerical reporting of shareholder votes by companies.

Approximately one quarter of the reports of voting results filed by issuer constituents of the S&P/TSX Composite Index (the Index) in 2010 included only 'show of hands' results on all proposals put to shareholders. An additional 12% of issuers provided a mix of numerical (number and/or percentage of shares voted in support and not in support of each resolution) and 'show of hands' results. The remaining issuers, fewer than two-thirds of the Index, filed vote reports that provide numerical results for all issues on the proxy ballot.

U.S. companies must submit vote results using SEC Form 8-K within four days of the relevant shareholder meeting. If the meeting involved the election of directors, the report must include the name of each director elected at the meeting, as well as a brief description of each of the other matters voted upon, and set out the number of votes cast for, against or withheld on each matter, including a separate tabulation with respect to each board nominee. These are the requirements that should be in place for Canadian issuer vote reporting.

Many senior Canadian companies conduct votes by ballot on all issues put before shareholders at their meetings. Shareholders who attend the meetings are provided with ballot forms for the items to be voted when they register their attendance. As agenda items are presented, the shareholders mark their ballots, which are collected and tabulated. The votes cast at the meeting are added to those sent in prior to the meeting by proxy to produce total numerical vote results. Companies that conduct votes by a show of hands at their meetings could be permitted to continue this practice as long as they report the results of the proxy vote tabulation in their vote results filing.

We recommend that Canadian shareholder vote reporting requirements be enhanced to:

i) Require that issuer vote reporting include the number of shares voted for and against or withheld for all items voted by shareholders; and,
ii) Fix a deadline, expressed as days after the shareholder meeting, for filing vote reports on SEDAR.

Proxy Access

From our perspective, the primary argument in favour of introducing proxy access in the Canadian market is the high cost to shareholders of proposing board nominees by way of a dissident circular. We also note that although a shareholder may proceed by way of dissident filing only if a 5% shareholding requirement is met, there is no applicable holding period as there is for filing a shareholder proposal.

We believe that the requirements for use of a proxy access mechanism in our market should include thresholds that represent a middle ground between those required to file a shareholder proposal and the 5 percent requirement. We suggest that the applicable threshold be 1% of shares, held for a one year period prior to filing.

Disclosure on Engagement with Shareholders

In the CSA's December, 2008 Request for Comment on the Repeal and Replacement of Corporate Governance Guidelines and Disclosure of Corporate Governance Practices included proposed Principle 9 - Engage effectively with shareholders.[8]

We did not support the replacement of the existing comply or explain corporate governance disclosure regime as proposed by the CSA in 2008. We believe that prompting issuer disclosure regarding engagement with shareholders is appropriate and desirable within the existing comply or explain requirements.

As an element of comply or explain, the disclosure on engagement with shareholders should include the requirement to describe the process(es) by which the board endeavors to stay informed of shareholders' views through the shareholder meeting process as well as through ongoing dialogue.

We appreciate this opportunity to contribute to the OSC's review of shareholder democracy issues. Should you require any clarification of the points raised above or additional supporting information, please do not hesitate to contact the undersigned.

Sincerely,

Laura O'Neill
Director of Law and Policy

[8] Canadian Securities Administrators, Request for Comment – Proposed Repeal and Replacement of NP 58-201 *Corporate Governance Guidelines*, NI 58-101 *Disclosure of Corporate Governance Practices*, and NI 52-110 *Audit Committees* and Companion Policy 52-110CP *Audit Committees*, December 19, 2008, p. 5.

Appendix I: Say on Pay Shareholder Proposals Voted in Canada

Year	Company	Votes For	Filer
2008	CIBC	44.9%	Meritas
	Royal Bank	42.1%	Meritas
	Bank of Montreal	34.7%	Meritas
	Bank of Nova Scotia	93.2%	Meritas
	TD	41.5%	Meritas
2009	CIBC	51.9%/53.1%	Meritas/MEDAC
	Royal Bank	54.4%/56.9%	Meritas/MEDAC
	Bank of Montreal	53.6%/53.9%	Meritas/MEDAC
	Bank of Nova Scotia	51.6%/52.9%	Meritas/MEDAC
	Laurentian Bank	66.7%	MEDAC
	National Bank	56.8%	MEDAC
	Power Corporation	18.2%	MEDAC
	Bombardier	13.2%	MEDAC
	BCE	93.1%*	MEDAC
2010	Methanex	63.9%	Meritas
	Gennum	46.8%	Meritas

*Board recommended a vote "FOR" this proposal

Appendix II: 2010 Management Say on Pay Vote Results in Canada

Company	Votes Against
Barrick Gold Corporation	13.70%
TransCanada Corporation	13.23%
Manulife Financial Corporation	12.09%
Bank of Montreal	10.80%
Industrial Alliance Insurance	9.52%
Royal Bank of Canada	8.88%
Cameco Corporation	8.26%
Sun Life Financial Inc.	8.02%
BCE Inc.	7.51%
Canadian Imperial Bank of Canada	7.11%
Pan American Silver Corp.	5.70%
Thomson Reuters Corporation	4.74%
TMX Group Inc.	3.38%
Bank of Nova Scotia	3.20%
Agrium Inc.	3.05%
First Quantum Minerals	2.97%
Potash Corporation	2.66%
The Toronto-Dominion Bank	2.60%
Sun Opta Inc.	2.50%
Empire Company Limited	2.00%
IAMGOLD Corporation	1.91%
Cenovus Energy Inc.	1.74%
Bell Aliant Inc.	1.52%
National Bank of Canada	1.45%
Franco-Nevada Corporation	0.85%
Laurentian Bank of Canada	0.81%
Russel Metals Inc.	0.80%
Altius Minerals Corporation	Show of Hands
SNC-Lavalin Group Inc.	Show of Hands