Andrea Taylor
Director

March 31, 2011

Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
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SENT VIA EMAIL

Re: OSC Staff Notice 54-701: Regulatory Developments Regarding Shareholder Democracy Issues (the Notice)

The Investment Industry Association of Canada (IIAC) is pleased to provide the Ontario Securities Commission (OSC) with our comments in response to the Notice (attached).

The IIAC is a member-based professional association representing approximately 190 IIROC registered investment dealers across Canada (over 90% of the IIROC membership). Our members have a strong interest in ensuring that the shareholder communications and voting system works efficiently and reliably for the benefit of shareholder clients, and in accordance with the requirements of National Instrument (NI) 54-101 and other related securities and corporate law requirements. Our members also have a responsibility to respect the privacy rights of clients by protecting their personal and trading information.

To these ends, we continue to urge the OSC (and other CSA members) to continue a general review of the shareholder communications and voting system in Canada, and to develop policy initiatives to address identifiable and measurable issues impeding the effectiveness of the system. We believe that our submission outlines many of these issues.

Please contact me if you would like to arrange a follow up meeting to discuss these issues further.

Yours sincerely,

"*Andrea Taylor*"

Improving the Shareholder Communications and Voting System in Canada

A Complex System in Need of Review, Not Overhaul

The shareholder communications and voting system in Canada is complex, and every party involved in operationalizing this process, whether as a securities law defined "participant" or as a "third party" service provider, has a uniquely positioned perspective on what could be done to improve the system. It is important for regulators to understand all of these perspectives, and the driving forces behind them, in order to determine what issues must be addressed to improve the overall effectiveness of the proxy system and corporate governance of Canadian issuers. The rights and interests of all affected parties must be balanced with the need to ensure the smooth functioning and continued competitiveness of Canadian capital markets. Recent media articles that suggest that the only solution is to rebuild the entire system from scratch seem designed primarily to shock readers, but ultimately add little substance to this debate.[1]

The IIAC recognizes and applauds both the CSA and the OSC for continuing their review of proxy-related issues, and for the leadership they have shown in reaching out to the industry to identify areas of improvement. The IIAC has had the opportunity to play a somewhat unique role in this debate. As a recognized "first point of contact" for many retail investors, the advisors who work for our members receive the frustrated calls of shareholders when they experience problems. Our members have dedicated resources – teams of professionals – who identify and deal with solving shareholder voting complaints. In our experience, many of these complaints can be placed into three categories, which we will describe in detail in this submission:

1) Issues created by the reliance on a paper-based system.
2) Issues that cause the disenfranchisement of Objecting Beneficial Owners (OBOs).
3) Issues that cause the disenfranchisement of Non-Objecting Beneficial Owners (NOBOs).

The shareholder communications and voting system and the role of the securities industry generally have come under a great deal of public criticism recently. There is little doubt that there is room for improvement, and we have consistently outlined our recommendations to regulators about areas in which we believe that measurable improvement can be made while minimizing disruption to the capital markets. There are a number of areas in which we agree

[1] "Voting problems dog Corporate Canada", *Globe and Mail*, January 31, 2011.

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with the criticisms, however, there are also a number of misconceptions about the proxy system and the role of our members that we believe are important to address.

Why the "Plumbing" is a Substantive Corporate Governance Issue

Most of the recent media focus in Canada has centred on the voting process itself (the "plumbing"), and, in our opinion, has focused primarily upon the perspective of contentious meetings involving large, well-financed and professionally represented corporate shareholders and issuers. We believe that many of these articles overlook the shortcomings of the existing system with respect to retail shareholders, and that these constitute a substantive concern for securities regulators. Many retail shareholders may be effectively shut out of the voting process because of the design of the existing rules and the choices made by other participants and third parties. Large corporate shareholders who have engaged proxy advisory and solicitation services are well advised of the problems that can arise and can take appropriate action to monitor these issues, whereas retail shareholders may be completely unaware of their shareholder rights, how the actions of other more engaged entities may be affecting these rights, or how this affects their investments.

Over 85% of IIAC firm revenue is derived from firms that are exclusively retail or have a retail component ("integrated"). The IIAC also represents institutional firms; however, the vast majority of IIAC firms deal with retail investor clients to a certain extent. These relationships are crucial to the success of our industry, and IIAC firms spend a great deal of resources maintaining these relationships – the proxy process is an important part of client relations. There is a significant cost involved, especially for brokers who become "problem solvers" in a shareholder communications and voting system that doesn't give them adequate power to solve the problem for the shareholder client.

SEC Chairman Mary Shapiro has stated that the transmission of the communication between shareholders and issuers is important for effective governance, and we agree.[2] Over 60% of all shareholder meetings in Canada contain "special business" to be voted on by the shareholders.[3] Furthermore, if reforms are implemented with respect to mandatory shareholder advisory votes on executive compensation ("say on pay") and individual director voting and majority voting for director elections, as contemplated in the Notice, the effectiveness of the "plumbing" becomes even more of a substantive corporate governance issue.

[2] Speech by SEC Chairman: Opening Statement at the SEC Open Meeting, July 14, 2010.

[3] Statistics provided by Broadridge Investor Communications Solutions, Canada, 2010. Data was provided on selection of Meeting Type for meetings held between July 1, 2009 and June 30, 2010. Throughout this document, where data has been provided by Broadridge, we will use the shortened citation of "Broadridge" and the year of the presentation.

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As such, we agree with other parties who have called for further review of the shareholder communications and voting system in Canada. This review should go further than the review process started by the CSA in 2008 to implement notice-and-access, to consider all issues affecting the proxy process, and to put forward recommendations for improvement.

We do not believe that it will be possible to engage in such a review without involving the many stakeholders in the system, as they are the ones with the necessary expertise. The best approach will be to recognize the interests or conflicts that these stakeholders bring to the table, and to manage these appropriately. Although we believe that regulators are best equipped for managing this review process and the team of experts that will need to be consulted, if an outside party is engaged to manage the review, there must be a clear and accountable process for documenting input into the process. Even if an outside party is engaged, a regulatory team should be involved in overseeing the process and approving the final report or recommendations.

Moving Away from Reliance on a Paper-Based System

Notice-and-Access

The IIAC supports the CSA's proposal to implement a system of notice-and-access in Canada, and believes that the implementation of notice-and-access will ultimately reduce waste, lower costs, and make the system more efficient.[4] Research conducted by Broadridge in the United States shows that American issuers saved over $200 million in print and postage in 2010, attributable to the availability of notice-and-access.[5]

We urge Canadian securities regulators to do more to facilitate and encourage the transition to notice-and-access, and beyond.

Regulators have expressed concern in the past that some Canadian shareholders may not be ready for electronic communication. However, recent data released by comScore shows that Canadians spend twice as much time online per month than the worldwide average (40 hours vs. 20 hours). 95% of Canadian households can access broadband services by landline, and use of satellite services extends this access number to almost 100% across the country. The research also shows that the fastest growing demographic for web usage in Canada is age 55 and older.[6] If there is any country in the world that is ready for online proxy communications and voting, it is Canada. Electronic voting in Canada (available through telephone, fax and the Broadridge "ProxyEdge" service" has increased in Canada from 37% in 2002 to 89% in 2010.[7]

[4] CSA Notice and Request for Comments on Proposed Amendments to NI 54-101, NI 51-102 and NP 11-201, April 9, 2010.
[5] Broadridge, 2011.
[6] "Canadians' Internet usage nearly double the worldwide average", *Globe and Mail*, March 8, 2011.
[7] Broadridge, 2011.

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A movement away from paper-based communications may also go a long way toward solving other issues associated with the proxy system by streamlining the process and reducing waste. The key question is: can it be done in a way that does not discourage or reduce voting, and possibly in a way that promotes or encourages voting, especially among the average retail shareholder?

The success of the implementation of notice-and-access, and any other developments to encourage electronic shareholder voting, will depend heavily upon the ease with which shareholders can access the materials. Shareholders should be able to access materials using one link, and should be able to seamlessly transition to online voting websites where issuers have chosen this option. Otherwise, there is a substantial risk of shareholder frustration and confusion, leading to disinterest and low voter turnout. The proposed amendments to NI 54-101, released by the CSA last year, provide a solid foundation to move toward this goal, however, there are changes that should be made to increase the successful acceptance of notice-and-access in Canada, by both reporting issuers and shareholders.

The CSA's stated concern about monitoring the implementation of notice-and-access before extending it to special meetings where fundamental changes are being voted on is well understood, but there is also a corresponding concern that limiting the implementation will only serve to confuse shareholders, who will receive different types of mailings for different meetings. There is also a concern that the large number of special meetings will limit reporting issuers who would like to take advantage of the opportunity to use notice-and-access. Recent data showed that 61.7% of meetings over the past year were identified as "Annual and Special Meetings", and thus not eligible under the proposed CSA model of notice-and-access.[8]

The use of notice-and-access should be expanded to all meetings, including special meetings, at the option of the issuer.

We also believe that shareholder literacy and education will be very important to the success of this electronic transition process, and that regulators should work with industry to ensure that standard materials explaining the change in the process can be provided to investment dealers and their advisors who have the greatest amount of contact with the shareholder client. Consistency of the message and the look of materials (to enhance recognition) will be crucial to the success of notice-and-access.

Reducing the Waste of Unwanted Mailings

Another reason why the IIAC supports notice-and-access is because it could alleviate shareholder complaints received by our members from frustrated clients who receive unwanted paper mailings, contrary to their explicit instructions declining receipt of any proxy materials (approximately 10-15% of all beneficial shareholders).[9] The current account opening process gives a choice to the shareholder about what materials they would like to receive, and provides them with an option to decline all mailings. Some shareholders choose not to receive

[8] Broadridge, 2010.
[9] Broadridge, 2009.

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materials because they feel strongly about privacy or would like to reduce the number of paper mailings they receive for environmental reasons. As younger investors enter the marketplace, they will be accustomed to dealing with almost all of their financial transactions electronically. The bottom line is that shareholders are given the choice to decline materials and they are genuinely confused or frustrated when they subsequently receive paper mailings.

Our members' clients have made it clear through their feedback that the receipt of any materials is seen as an indication that the industry and its regulators are not listening to their choices and concerns. This is the primary reason why the IIAC has advocated in previous submissions that the ability for the issuer to mail to shareholders who have declined to receive materials be removed from NI 54-101 (ss. 2.10 and 4.3).

Issuers should not be able to override shareholders' choices not to receive mailings.

While the IIAC also recognizes the concerns expressed by the CSA and by other stakeholders that beneficial shareholders need be alerted to the existence of meetings, especially special meetings dealing with fundamental changes, we question whether the printing and mailing of packages to shareholders who have declined to receive materials is effective. Low voter turnout may be further exasperated by shareholder frustration at having received paper materials against their explicit instructions.

If regulators are of the opinion that issuers should retain the ability to override the choice of the beneficial shareholder to decline mailings, we believe that a "middle ground" solution could potentially be found through the use of notice-and-access for those shareholders that have declined to receive materials. Regulators should consider the use of these waste-reducing mechanisms to minimize the frustration and confusion for the securityholder, and to reduce costs for reporting issuers.

Issuers could send out a one-page Notice to declining shareholders instead of full paper proxy packages.

This would meet the issuer's need to communicate, reduce costs for the issuer; reduce the size of the paper mailing to the shareholder; provide shareholders with information that they would not otherwise have received; and it would likely reduce the complaints received by IIAC members.

Disenfranchisement of Objecting Beneficial Shareholders (OBOs)

All beneficial shareholders should be entitled to receive proxy materials and to vote at shareholder meetings. However, this principle must be carefully balanced with the current trend towards consumer privacy. Investors are increasingly aware of privacy issues, and are interested in protecting their personal information and limiting the ability of issuers and their agents to contact them directly. This desire to protect privacy and limit outside solicitation has resulted in an increased number of shareholders opting to be "Objecting Beneficial Owners" (OBOs). According to Broadridge, 51% of beneficial securityholders are now designated as

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OBOs, compared with only 38% in 2004.[10] OBOs have not opted out of the shareholder communications and voting process, but have been given the option under NI 54-101 to object to the intermediary disclosing ownership information about the beneficial owner.

Currently, if both the reporting issuer and the shareholder choose not to pay for the mailing, NI 54-101 is silent with respect to which party should pay for the sending of shareholder materials to OBOs who have opted to receive the materials. The rule leaves considerable doubt as to how the situation should be handled, and the ultimate result is that these OBOs may not receive mailings to which they are entitled.

Shareholders, whether registered or beneficial, NOBO or OBO, should have the opportunity to be treated alike with respect to shareholder communications and voting and NI 54-101 should be amended to explicitly set out that payment for OBO mailings is the responsibility of the reporting issuer who wishes to communicate with its investors.

Presently, section 2.14 of NI 54-101 states that the reporting issuer must pay for mailings that are sent to OBOs who have declined to receive materials, allowing reporting issuers to send (and pay for) unwanted mailings to shareholders who have asked not to receive them; however, OBOs who want to receive materials can be effectively disenfranchised by an issuer who chooses not to pay for the mailing. This is a strange and inequitable result, and it makes little sense for the rule to be silent in this regard, when in all other instances, the reporting issuer pays for the mailing. Issuers must be responsible for communicating with their shareholders about corporate matters. Otherwise, OBOs are effectively penalized for wanting to protect their privacy and limit third-party solicitation.

We believe that there may also be considerable confusion existing among parties who must interpret NI 54-101 – effectively a mix-up between shareholders that have chosen to be OBOs and shareholders that have chosen not to receive materials. Enough anecdotal experience exists indicating that various parties mistakenly believe that OBOs have "opted out" of the shareholder communications and voting process or that they do not want to receive materials, that it merits further attention by the regulators. Issuers may believe that they are following the wishes of OBOs by choosing not to mail to these shareholders, when in fact they may be effectively shutting these shareholders out of the proxy process.

This emerging scenario has been proven by the statistics: As at the end of June 2010, 37% of issuers were not paying for delivery of proxy-related materials to OBOs. Where issuers acquire NOBO lists and mail directly with the assistance of their transfer agent, 49% of issuers choose not to pay for delivery to OBOs. [11]

Intermediaries took the initiative and paid for mailings to 68% of this group. However, the remaining 32% of shareholders received no mailings and were effectively shut out of the beneficial communication process. These numbers have increased since 2009. In our opinion, this is an identifiable, measurable disenfranchisement of shareholders – shareholders who have

[10] Broadridge, 2010.
[11] Broadridge, 2010.

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not opted out of the proxy process will not receive notice of a meeting, or receive a voter information form.

It is often presumed that intermediaries should, or are able, to pass these costs onto the shareholders. However, most investment dealers have indicated that they are unable to pass along these costs for a variety of reasons. Dealers are reluctant to charge small mailing fees to individual clients (even if these small amounts add up to large amounts in the aggregate) because they do not want to be perceived as "nickel and diming" clients in a highly competitive environment. Dealers are also under a great deal of pressure to provide clients with high rates of return on investments, and have been facing recent criticism from government and regulators on the fees that they charge their clients.

Perhaps most importantly, OBOs should not be penalized for protecting their privacy by being charged delivery fees that registered owners or NOBOs are not charged. We believe that the idea that shareholders should have to pay in some way for this "service", like an unlisted phone number, is outdated. Shifting ideas about privacy shows that the public views privacy as the default, and the release of information as something that requires consent – not something they should have to pay for.

In the face of conflicting requirements, most dealers have little choice but to absorb these charges – but these costs are growing. Small, independent dealers cannot afford to absorb more costs at a time when they are also dealing with volatile markets and increased regulatory costs.

One of the fundamental principles of NI 54-101 is to "equitably and clearly define the obligations of each party in the securityholder communication process"; the first step in this process is to recognize that issuers should view the cost of communicating with all of their shareholders as a basic cost of doing business as a public company. Intermediaries facilitate this process, but should not be responsible for the costs of the issuers to carry out their corporate duties; likewise, shareholders should not be penalized for choosing to protect their personal information. The implementation of new technologies, including notice-and-access, should greatly offset the costs of these communications, so it seems reasonable to ensure that all shareholders who want materials should receive them.

Disenfranchisement of Non-Objecting Beneficial Shareholders

Our members are often the first point of contact for beneficial owners who are seeking shareholder materials or information about voting at a shareholder meeting.

Our members have voiced their concerns about their inability to assist these shareholders because of the cumbersome nature of the proxy system that requires NOBOs to deal directly with transfer agents to obtain legal proxies – specifically where Broadridge is not engaged to manage the communications and voting process and a NOBO list is given to a reporting issuer through its transfer agent.

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Where omnibus proxies have been granted to the reporting issuer through NI 54-101 to vote on behalf of shareholders, shareholders who then decide to vote at a meeting may request a legal proxy from the reporting issuer, though its transfer agent. Our members have anecdotally reported that they have received numerous complaints from clients who have been unsuccessful in obtaining legal proxies. The ineffectiveness of this process is caused by a general lack of understanding of the requirements, poor customer service from employees of transfer agents, and insufficient time to process shareholder requests prior to the meeting. Our members can direct clients to transfer agents, but are powerless to provide any further assistance under the rule.

We understand that the OSC and other regulators are aware of this problem, and that temporary exemptive relief has been provided, but only where Broadridge conducts the mailing to shareholders. We believe that permanent amendments should be made to NI 54-101 that could improve the process that currently takes place between depositories, intermediaries, reporting issuers and their transfer agents.

- Creating a process that ensures that the beneficial shareholder has one point of contact (or to minimize the points of contact) to request materials and participate in the voting process, and enough information and time to successfully carry out its request. This point of contact should be the advisor with whom the investor typically communicates. i.e. where an issuer has no intention of mailing to declining NOBOs, the omnibus proxy granted to the reporting issuer only provides a partial proxy; and the intermediary (dealer) retains voting authority with respect to declining NOBO shares.

- Clearly and explicitly defining the roles and responsibilities of NOBO list providers and issuers, including reasonable timeframes and guidance for dealing with requests from investors who request assistance in exercising their right to receive materials and to vote. This would be especially helpful in the event of contested votes that result in a dispute, requiring a review of the process.

A Discussion about Over-Reporting

The shareholder communications and voting system and the securities industry generally have come under a great deal of public criticism recently. We acknowledge that there is room for improvement, and we have tabled a number of recommendations to regulators about areas in which we believe that measurable improvements can be made while minimizing disruption to the capital markets.

The system is indeed complicated. It involves a number of different parties and information systems and databases. It is susceptible to administrative and technological errors, and some of these have been identified anecdotally in the media and published reports. However, the handful of cited material instances is small in comparison to the overall number of shareholder meetings held in Canada every year.

It is generally accepted among the various parties involved in the securities industry that not enough independent research has been undertaken to prove the prevalence of material

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instances of "over-reporting" (aka "over-voting") in Canada. However, it also seems to have been accepted by some (without further verification) that if over-reporting in Canada does exist, it is primarily as a result of unreconciled lists of shareholders produced by intermediaries engaged in securities lending. The IIAC will not comment in this paper about the merits of or the reasons for securities lending practices generally, except to state that we believe it is beyond the scope of the Notice.

The IIAC has discussed the issue of over-reporting with our members for a number of years, and the answers that we have received have been consistent:

> ***1) In the scope of the entire proxy season in Canada, overvoting is generally not considered to be a macro-level issue – it does not materially affect shareholder voting on a widespread basis.***
>
> ***2) There are a number of other shareholder communications and voting issues that are considered to be materially affecting the quality of the shareholder vote in Canada. These issues have been identified and can be measured.***
>
> ***3) In the instances in which material voting irregularities occur, there are a number of safeguards that have been built into the system to identify and deal with these problems. No system will catch every single error.***
>
> ***4) Even if a "perfect" system could be built, the costs would ultimately be borne by the shareholders. Who decides if the benefits are worth the costs, and based on what criteria?***

Improvements to the system have been and will continue to be made to deal with specific problems without regulatory intervention. For example, our members are able to be proactive and take action on possible over-reporting situations by using Broadridge's Over-Reporting Prevention Service. The over-reporting alert is generated when Broadridge recognizes an imbalance between the record date position sent by member firms and the ledger position at CDS. This reconciliation process allows intermediaries to be proactive and resolve any discrepancies before the voting deadline. This service has been cited by our members as playing a crucial role in identifying and correcting errors in advance of shareholder meetings.[12]

It has been incorrectly stated in public reports that shareholder lists produced by intermediaries are not reconciled and have not been adjusted to account for shares that have been loaned. In fact, our member firms have confirmed that standard industry procedure dictates that the lender is the beneficial holder of shares on loan and is entitled to vote; and therefore will receive the VIF. Agreements exist with the beneficial holder (lender) of the shares that provide that they are able to vote on the position ONLY if the dealer can obtain a broker proxy or an omnibus proxy (from the borrower) to allow them to vote. If the dealer is unable to obtain such a proxy, the record date position held by the lender will be adjusted to reduce to shares on loan. A discussion on this issue among the largest IIAC retail members

[12] Broadridge reports that 97% of Canadian beneficial records received by them pass through this service (i.e. there is a high level of subscription to this service by intermediary clients of Broadridge) (2011).

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indicated that there is a general consistency between firms in terms of what process is used to reconcile accounts. Our members have dedicated resources to this process and take it very seriously.

It is also worth noting that the *Business Corporations Act* (Canada) and other provincial corporate statutes do not allow intermediaries (including investment dealers) to vote shares unless (a) the intermediary has forwarded the proxy materials onto the beneficial owner on which behalf the intermediary holds that share; and (b) the intermediary has received written voting instructions from the beneficial holder (i.e. a completed Voting Instruction Form (VIF). NP 11-201 currently allows the "in writing" requirement for voting instructions to be satisfied by electronic delivery of a document, including telephone delivery, so long as the electronic format ensures the integrity of the information in the document and enables the recipient to maintain a permanent record of the information.

We do not believe that it makes sense for compliance and audit with respect to shareholder voting to be on a more stringent level than, for example, those for trading decisions (i.e. audit requirements under IIROC Member Rules). The myth being perpetuated that "regulation ends when investors give their voting instructions to their intermediaries" is factually incorrect. Our members strive to give effect to the voting intentions of their clients within a complicated system. As outlined above, our members cannot always control the information tracking and communications processes of other entities within the system – but they carry out their responsibilities under securities law and SRO rules.

No system will be perfect; but a system that catches material errors already exists. Improvements can always be made, but a complete overhaul of the principles and systems that run Canada's capital markets, along with additional costly and redundant regulatory audits (as proposed by some), is unnecessary. The system is complicated, but it has been designed to allow shareholders some choice in how they participate and to maintain their privacy, as well as to accommodate the vast technological changes that have taken place in securities trading.

We do not believe that this is an area where mandating a process by regulation will work well because there is a great deal of information flowing between multiple parties. In the same way that an issuer could not certify a vote because a large portion of the process is outside its control, an intermediary relies on information provided by CDS, Broadridge, transfer agents and shareholders. Certainly, no regulation should be contemplated without further study into the actual prevalence of over-reporting issues.

Finally, there is an issue which has been consistently identified by our members as a suspected major contributing factor to the appearance of over-reporting. Where issuers' shares are held in both Canada and the United States, both CDS and DTC will hold accounts with respect to these shares. However, since there is no electronic link between CDS and DTC for the transmission of votes on shares held in CDS in the name of DTC, DTC must report those votes separately to the tabulator. For example, without the DTC omnibus proxy, it may appear that an intermediary is over-reporting its position held through CDS; DTC will only provide its omnibus proxy directly to the issuer and not to its transfer agent. If the issuer is not aware that

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it must forward this DTC proxy onto the transfer agent, or does so too late, the voting cannot be reconciled correctly and in a timely fashion.

In a preliminary survey conducted by a few of our largest members, this problem could account for as much as 90% of the instances in which over-reporting appears to exist. For this reason, we believe that this communications problem involving CDS, DTC and the various intermediaries is one that should be investigated by regulators. Targeted guidance to alleviate the problems with this process could result in a measurable reduction in the appearance of voting irregularities.

We agree that there is not enough information available to prove that systemic voting irregularities exist. We recognize that the OSC and other regulators have already done extensive consultation in this regard and if more consultation is required, we would like to participate in this process. However, there are other significant identifiable and measurable issues with the system that are reducing its effectiveness, and steps that can be taken to address these problems. The regulators should not lose sight of these issues or delay implementation of changes to rectify these problems while assessing the prevalence and impact of other concerns with the system.

Growing Public Concerns about Privacy

As mentioned previously, investors are increasingly concerned about protection of their personal information and potential unwanted solicitation, and are opting for OBO status, now accounting for more than half of all beneficial securityholders. However, there are also privacy concerns about the use of personal information of Non-Objecting Beneficial Owners (NOBOs).

We do not believe that the commitment to the OBO/NOBO distinction should be revisited by regulators. It is incorrect to characterize this as merely a matter of OBOs wishing to "conceal" their identity from the issuer, or of brokers maintaining "control" over their clients. In Canada, NOBO lists, and the information about shareholders contained therein, are also available to third parties. In their role, our members receive numerous complaints from their retail clients who receive unsolicited communications from third parties who have obtained NOBO lists under NI 54-101. It makes sense that frustrated investors, when faced with the choice, would choose the "do-not-call"-like option, and it is one that is often promoted by our members because they are aware of their clients' privacy concerns. Unfortunately, as described above, this choice has resulted in the loss of the ability to vote for many shareholders.

The NOBO/OBO distinction creates a complex system, and has required the creation of back-office functions and systems and required a great deal of resources to implement. However, eliminating this distinction would have an equal number of complex consequences that need to be considered:

- There will be effects on shareholder privacy and the use of and distribution of shareholder information, especially with third parties (see below).

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- There will be an impact on institutional shareholders and the way that they operate.
- There will be an impact on discretionary money management services offered by investment dealers to clients that require shareholders to be OBOs in order to receive those services.
- There will be serious impact and costs relating to operational issues (coding changes, KYC and other account opening procedures and disclosures).
- There will be implications for the entities that will have to provide notice to 51% of shareholders who currently have OBO status – that they no longer have OBO status, and what that means.

Ultimately, regulators must weigh the benefits of changing the system against the costs, and determine whether the benefits will accrue to the shareholder.

With respect to NOBOs, the IIAC was pleased to see that the proposed amendments to NI 54-101, released in April 2010, provide stricter rules on the use of NOBO lists by third parties, and the matters for which the indirect sending procedures may be used.

Limiting the instances in which non-reporting issuers can gain access to shareholder information, and communicating this change to shareholders may be an important incentive for them to choose to be NOBOs, increasing the transparency and reducing complexity in the shareholder communication process.

In general, we believe that reporting issuers should have the broad ability to obtain NOBO lists for uses relating to the affairs of their own organizations, provided that they do not traffic information contained in the list and complete the undertaking provided in Form 54-101F9. This undertaking is already required by s. 2.5 of NI 54-101, and as such, we do not believe that any amendments are necessary in respect to the use of information by reporting issuers.

However, we continue to recommend that Part 7 of NI 54-101 be amended specifically to limit the scope of third party persons and companies to gain access to shareholder information or to contact beneficial shareholders, except in relation to shareholder meetings or an offer to acquire securities of the reporting issuer.

Limiting the instances in which non-reporting issuers can gain access to shareholder information, and communicating this change to securityholders may be an important incentive for them to choose to be NOBOs, increasing the transparency and reducing complexity in the shareholder communication process. Tightening the language in NI 54-101 will provide shareholders with greater comfort that their information is being protected and used only with respect to certain specific shareholder matters. Furthermore, if there is a rare instance in which parties other than reporting issuers require shareholder information for reasons other than these purposes, exemptive relief can be made available.

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The Need for Issuer and Investor Education

The current focus on shareholder voting and communication issues is a timely opportunity for Canadian securities regulators and other interested entities to educate investors and reporting issuers on the broad implications of NOBO and OBO elections and how they affect the corporate governance process. In particular, the issue of shareholder engagement, along with building awareness of the rights and responsibilities that accompany financial rights, should be a key component of the programs currently being contemplated by policymakers in response to the report released by the Federal Task Force on Financial Literacy.

Education is also a critical step in helping issuers to understand the importance of treating all shareholders equitably – for example, many reporting issuers may simply not be aware that by choosing not to mail to OBOs that they may be effectively disenfranchising half of their shareholders. This may require some changes to forms promulgated under NI 54-101, but should more likely take the form of a proactive educational effort aimed at reporting issuers and coordinated by regulators, leveraging the expertise of the various entities that manage the proxy voting process.

Stakeholders in the process should be involved in developing educational materials; however, shareholder education should ultimately be coordinated and approved by regulatory bodies to ensure that materials accurately reflect regulatory requirements and are distributed on a coordinated, national level.

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