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Ontario Securities Commission
20 Queen Street West
19th floor, Box 55
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Attention: John Stevenson, Secretary

Dear Sirs/Mesdames :

OSC Staff Notice 54-701 Regulatory Developments Regarding Shareholder Democracy Issues dated January 10, 2011 (the "Staff Notice")

We are writing in response to the invitation in the Staff Notice to comment on whether it is desirable that staff develop proposals in the areas set out in the Staff Notice. We believe that it is appropriate for regulators to review the regulatory approach to corporate governance matters from time to time in light of accumulated experience and the evolution of corporate governance practices over time.

We acknowledge that the Staff Notice states that staff at the Ontario Securities Commission intend to coordinate their review and the development of any proposals with other members of the Canadian Securities Administrators (CSA). We support a coordinated approach to any regulatory review of corporate governance matters and strongly believe that changes in the regulation of corporate governance should reflect a consensus view of all of Canada's securities administrators.

Slate voting and majority voting for uncontested director elections

Several issues under this heading are identified in the Staff Notice which need to be addressed separately. The first issue is whether shareholders are given the option of voting for or withholding from voting on the entire slate of director nominees (slate voting) or whether shareholders are given the option of voting for or withholding from voting on each director nominee (individual voting). The second issue, which only arises if individual voting is made available to shareholders, is whether if any one or more director nominees fail to receive more votes in favour of their election than votes withheld from their election the directors either may be required by board policy to tender a resignation for consideration by the board (a majority voting policy) or are not treated as having been elected (a majority election standard).

Slate Voting versus Individual Voting for Directors

We support individual voting for directors. It is integral to Canada's corporate governance regime that directors are elected by shareholders. We think it enhances accountability and shareholder involvement in the election process if shareholders have the opportunity to cast votes for the election of each director. It can also provide additional feedback to directors - shareholders who disapprove of a particular director nominee or the decisions of a particular committee of directors can make their dissatisfaction known by withholding from voting for that nominee or the members of that committee. It is also a common practice – for example, 157 of the 187 corporations in the Globe & Mail 2010 Board Games analysis provided for individual voting for directors. We note that it does not impose any significant additional costs compared to slate voting and, by itself, does not adversely affect the election process or give rise to a risk that shareholders will fail to elect a sufficient number of directors to satisfy corporate and securities law requirements regarding board composition. Finally, we note that mandating individual voting for directors could easily be accomplished by making simple changes to the form of proxy prescribed under National Instrument 51-102 – Continuous Disclosure Obligations.

Majority Voting Policies and a Majority Election Standard

Canadian issuers which have adopted majority voting for directors have generally done so as a board policy. Under the typical Canadian policy, a director who receives less "For" votes than "Withhold" votes is required to tender his or her resignation conditional upon the board determining whether or not to accept it in the circumstances.

We note that some of the underlying causes of investor frustration in the U.S. which led to shareholder proposals on majority voting generally do not exist in Canada. Although SEC proposals to permit shareholders to submit the names of director nominees to be included in the management proxy circular have been the subject of fierce debate in the U.S., shareholders of corporations incorporated under the *Canada Business Corporations Act* (CBCA) or provincial corporate statutes modeled on the CBCA holding at least 5% of the outstanding shares have long been able to submit shareholder proposals which include nominations for directors. Moreover, under such Canadian corporate statutes shareholders may at any time, by ordinary resolution, remove a director from office and fill the resulting vacancy, while many U.S. corporate statutes do not give shareholders such power. These differences may account for the fact that although the adoption of majority voting in the U.S. has largely been as a result of shareholder proposals, Canadian companies which have adopted majority voting have done so voluntarily.

Although the number of Canadian issuers which have adopted majority voting policies continues to increase, we do not think that majority voting policies are appropriate for all

issuers. For example, a significant proportion of Canadian public companies are controlled companies, for which a majority voting policy will have little or no impact. In addition, the existence of such a policy may adversely affect the ability of smaller issuers to recruit talented directors. We note that despite considerable momentum on the issue of majority voting in the U.S. over the last several years, the final version of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* did not include a requirement for companies to have a majority voting threshold in uncontested board elections as had been proposed in earlier versions of the legislation. As flexibility is necessary in this area, if any regulatory response is to be taken in this area it should be limited to a requirement to disclose whether or not the issuer has adopted a majority voting policy and, further, any such requirement should not be applied to venture issuers.

We note that director election standards for Canadian companies are a corporate law matter and, accordingly, the CSA do not have jurisdiction to require Canadian companies to replace the plurality voting standard with a majority election standard. We are also sympathetic to the concern that a director election standard may result in "failed elections" – i.e. that no directors are elected or that an insufficient number of the directors are elected with the attributes necessary to meet statutory director residency requirements or requirements to have an audit committee comprised of at least three independent directors - or might result in the loss of directors with a particular skill set which the board believes is necessary or desirable.

Shareholder advisory votes on executive compensation

We do not support the introduction of a mandatory requirement that issuers provide shareholders with a separate advisory vote on executive compensation or on "golden parachute" payments. Oversight of the company's compensation strategy and practices is clearly within the purview of the board's responsibilities and the board is in a better position than shareholders to make determinations on pay. Moreover, the board has a fiduciary responsibility to discharge such oversight responsibility with care, diligence and skill in a manner consistent with the board's fiduciary duty to act in the best interests of the company. Shareholders have no such fiduciary duty. Although directors should consider the interests of shareholders when discharging their responsibilities with respect to executive pay, a shareholder advisory vote on the executive compensation report provides little information regarding shareholder views since directors will not know why shareholders voted for or against the resolution. There are other and better mechanisms through which shareholders may make their views known to management and the board.

The effectiveness of the proxy voting system

We support a review by OSC staff of the proxy voting system. The exercise of shareholder voting rights, and the confidence of corporate stakeholders in our system of corporate governance, hinges on the efficiency and integrity of the system by which shareholders exercise their voting rights.

Any changes to the rules underlying Canada's proxy voting system need to provide for flexibility to address the myriad ways in which investors hold interests in Canadian issuers and should take into consideration preferences of beneficial owners with respect to the disclosure of their names, addresses and holdings.

Flexibility is also needed because the exercise of shareholder voting rights is not merely a national issue as many Canadian issuers have large numbers of non-Canadian investors and may be subject to foreign securities laws and stock exchange and other rules. In this regard, any review should also take into consideration the results of the SEC's initiative to examine the proxy voting system in the U.S.

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We are pleased to have had an opportunity to provide you with our comments. If you have any questions regarding our comments, please contact the undersigned. If you have any questions regarding our comments or wish to discuss them with us, please contact Andrew MacDougall (416-862-4732).

Yours very truly,

"Osler, Hoskin & Harcourt LLP"