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May 10, 2011

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

VIA E-MAIL

Dear Sir,

We wish to thank the *Ontario Securities Commission* ("OSC") for allowing us to submit our comments after the close of the official comment period.

CGI Group Inc. ("CGI" or "we") submits the following comments in relation to the matters raised in Staff Notice 54-701 concerning Shareholder Democracy.

Our observations relate to the following areas of concern that the OSC identified in the Staff Notice:

- slate voting and majority voting for uncontested director elections;
- shareholder advisory votes on executive compensation; and
- the effectiveness of the proxy voting system.

We submit these observations because CGI is a company based on a solid foundation of good governance. In that regard we were among the first Canadian public companies to appoint a Lead Director to ensure that the CGI Board of Directors was well-equipped to function independently of management.

By good governance we mean not merely corporate governance, but operations governance as well. As an information technology ("IT") services firm, we have a long proven record of delivering complex projects that meet or exceed our customers' expectations and that are consistently delivered on time and on budget. We achieve that by applying management frameworks to ensure that quality, diligence and efficiency are the hallmarks of our execution, enterprise-wide.

We call those processes our *Management Foundation* which is the blueprint for the way we run our business. The *Management Foundation* guides all our management initiatives, from the first client contact, through the structuring of client engagements, to the execution and delivery of our services, including our quality control processes, and ultimately to the achievement of our business strategy and the disclosure of the results of our operations. All of our operations hold ISO 9001 certification based on the processes contained in our Management Foundation. This ensures that our processes are applied consistently in all of our worldwide operations.

We approach corporate governance with the same discipline and focus that we bring to our operations. We have taken great care to ensure that our corporate governance framework forms an integral part of our *Management Foundation*. In that way, CGI operates as an organic whole, and our governance processes are truly our nervous system.

This is why we believe that, in addition to financial literacy, our outside directors should also be operationally literate. By that we mean expertise in the industry vertical markets in which CGI operates. This key criterion is used to select candidates for our Board and to assess the performance of directors annually as part of the annual Board of Directors and standing committee self-evaluation process. The Board's objective in relation to its composition is to ensure that it has expert representation for each of the Company's targeted vertical markets.

With those considerations in mind, we offer the following comments.

The effectiveness of the proxy voting system

Fund Management, Investor Profiles and the Role of Proxy Advisors

As is the case for many CGI shareholders, most investors now participate in the capital markets indirectly through managed funds of one type or another. It is therefore vitally important in protecting the interests of investors that regulators focus on how compensation structures function for fund managers, and particularly whether their compensation aligns their interests with those of the investors for whom they act, namely whether their compensation is appropriately linked to their performance in creating value for investors.

We note that the vast majority of fund managers are remunerated based on a fixed percentage of the value of the portfolios that they manage regardless of their actual return on investment or performance against indices. We submit that it would be in the best interest of the Canadian investment community that measures be taken to ensure that the remuneration of portfolio managers be based on their ability to create value, as is increasingly being requested of corporate managers.

Another issue that ought to be taken into account is the investor's profile. The *Institute for Governance of Private and Public Organizations* has proposed, for instance, that investors be required to hold their shares for a minimum period of time before they become entitled to vote, so that important decisions that affect public companies are not left in the hands of investors who have no long term interest in the issuer. The *Institute* points out that investors now hold their shares on average for less than eight months.[1] Short term speculators cannot be said to have a serious interest in the long term development of companies and we are concerned that the initiatives under consideration would give them an increased role in the way companies are being managed. The regulator should consider measures to ensure that only investors who have a real, long term interest in companies be entitled to vote on significant corporate matters.

Many institutional investors often exercise their voting power based on recommendations by investor services firms such as the *ISS RiskMetrics* unit of *MSCI Inc.*, thereby essentially delegating their voting rights to such organizations. In that context, we believe that the role played by such firms must be scrutinized and provided with adequate structures to ensure that the interests of investors are served appropriately.

We attach a letter we addressed to *ISS* in January of 2010 that underscores how proxy advisors, who exercise an enormous influence on how many institutional investors vote their shares, sometimes base their recommendations on egregiously flawed analyses that deprive their recommendations of any real value. Institutions who then vote their shares in blind reliance on such recommendations do a disservice to the issuer, and by extension to its shareholders. We also enclose comments submitted by IBM to the U.S. *Securities and Exchange Commission* ("SEC") in response to the S.E.C.'s *Concept Release on the U.S. Proxy System* that addresses concerns related to the activities of proxy advisors.

We support the view that proxy advisory firms should be regulated. Our position is based on the reliance placed by institutional investors on recommendations made by such firms and their significant influence on overall corporate votes. Furthermore, conflicts of interest often arise as these firms provide corporate governance advisory services while also making voting recommendations to their clients. There is a concern that companies may have to retain the services of proxy advisory firms if they want to improve the governance scores they receive from those same firms. Companies that do not retain their services may receive a lower score. Regulation would ensure that such conflicts be disclosed or ideally that proxy advisory firms be prohibited from providing consulting services to companies that they provide recommendations on.

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[1] Institute for Governance of Private and Public Organizations – *Corporate Citizenship and the Right to Vote*, November 2006.

We support the position taken by IBM in its submission to the SEC:

> "Proxy advisory firms should also be required to disclose, at least annually, their proxy governance models, including the guidelines, processes and assumptions they make, as well as the methodologies and sources of information supporting their recommendations. Further, any proxy advisory firm that adopts a one-size-fits all approach on any significant issue should be required to disclose its rationale for the belief that every single company, regardless of its particular facts and circumstances should have the same policy. […] a one-size-fits-all approach is troubling because it will result in a policy that would benefit some issuers but is less suitable for other issuers and would therefore result in a voting recommendation that is not appropriate for many issuers in all situations."[2]

As indicated by numerous Canadian and U.S. issuers, the quality of the work performed by proxy advisory firms is often of dubious quality. Their analyses are based on a general overview of public information provided by issuers which is interpreted in light of their one-size-fits-all approach. There is no interaction with the issuers and companies are not given the opportunity to review and comment the resulting reports.

Therefore, in order to prevent misstatements of facts and flawed analyses, we would welcome the adoption of rules requiring proxy advisory firms to provide companies the opportunity to review recommendations concerning them and to include their comments in published reports.

By focusing on these issues, the regulators may be able to discern a path forward that can lead to improved processes and better results for all concerned.

Complexity of the existing system

We strongly welcome the focus on the current proxy voting system and its perceived weaknesses. There are, without doubt, great opportunities present for the many stakeholders to concert their efforts towards achieving a better understanding of the current system so that effective steps can be taken to ensure that all shareholders, registered and beneficial alike, are treated equally, and are afforded the same rights to exercise their votes.

CGI, from its inception 35 years ago, has placed a significant emphasis on share ownership on the part of its employees. Today some 87% of our employees are CGI shareholders and together make up the single largest block of our shareholders. The principal

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[2] Letter by IBM to the U.S. *Securities and Exchange Commission* in response to the S.E.C.'s *Concept Release on the U.S. Proxy System* dated October 15, 2010 (attached).

vehicle that serves to promote ownership of our shares by our employees is the *CGI Share Purchase Plan*. Under the Plan CGI matches, up to the employee's matching contribution limit, dollar-for-dollar, the cost of the employee's share ownership. The employee's contributions through payroll deduction and CGI's matching contributions are used by the Plan trustee to purchase CGI shares on the open market which are then held by the Plan trustee on the employee's behalf.

CGI's employees are therefore, for the most part, beneficial shareholders. They form part of the overwhelming majority of our shareholders. Today in excess of 98% of CGI's issued and outstanding Class A shares are held by depositories on behalf of beneficial shareholders. It is therefore extremely important to us, as a company, to ensure that our beneficial shareholders are given equal standing in every respect with the minority of our shareholders who hold their shares in registered form.

Our experience, particularly in the recent past, shows that our beneficial shareholders sometimes face substantial obstacles in exercising their voting rights.

We have found, for instance, that intermediaries routinely impose proxy voting cutoffs that are far more restrictive (in some cases by several business days) than our own policy that allows for the receipt of proxies until the close of business on the business day before the shareholders' meeting.

Another example of problems our shareholders have faced in voting their shares is that of large, sophisticated institutional shareholders who have found they cannot vote significant portions of their portfolios because the shares they hold are enrolled in securities lending programs and have not been recalled for voting in time for the record date. We also learned of a very large block of shares for which the votes simply vanished in thin air somewhere between the shareholder and our transfer agent. We have also had a situation where our employees in the U.K. who participate in the CGI Share Purchase Plan never got to vote their plan shares because the voting instruction forms never reached them in time for the meeting, in spite of valiant attempts on our part and on the part of our transfer agent to remedy the situation.

Our experience has shown that the complexity and obscurity of the current system is so overwhelming that the ability to rectify a voting problem within the narrow window before a shareholders' meeting is practically nonexistent.

For these reasons we are encouraged by the OSC's focus on proxy voting effectiveness. We express our support for the work *Davies, Ward, Phillips and Vineberg* has done in publishing the *Discussion Paper on the Quality of the Shareholder Vote in Canada*. We take note as well that the *Canadian Society of Corporate Secretaries* ("CSCS") is preparing the

groundwork for an ambitious summit meeting of stakeholders to be held in Toronto in the fall of 2011 that may serve as a forum for all stakeholders to enable them to focus attention on these important challenges.

We express our support for these important initiatives that have the potential to address these complex issues effectively.

Slate voting and majority voting for uncontested director elections

CGI has, since its 2005 annual general meeting, given its shareholders the opportunity to vote individually for, or withhold their vote individually from, candidates presented for election to the CGI Board of Directors. Our position in this regard is consistent with the practices of most Canadian public companies and recognizes that each director is selected for service on our Board on the basis of the particular skill set that each possesses, and the distinct role that each of them is called upon to play.

More recently there has been a movement among institutional shareholders calling for issuers to adopt a majority voting policy so that directors who fail to receive a majority of votes cast in favour of their election to the Board are expected to tender their resignation.

We, like many Canadian public companies, have a controlling shareholder. As such, we feel that adopting a majority voting policy for CGI would serve no real purpose and, rather than helping to underscore our longstanding commitment to high standards of corporate governance, could easily be perceived as paying empty lip service to a governance measure that, in many cases, and for many other issuers, might contribute real value to shareholders.

Various Canadian organizations have recognized the important role that controlled companies play in Canada. We also note that the *Canadian Securities Administrators* (“CSA”) have in the past expressed their wish that securities regulation in Canada take into account the legitimate role that controlled companies play in our capital markets.

By promoting management stability and long-term value creation, it is not surprising that companies operating under such structures generally perform better than their peers. CGI therefore submits that the OSC should adopt rules that foster the pursuit of such objectives and refrain from imposing a mandatory requirement in that regard.

We believe that other issues pertaining to the various stakeholders’ roles and responsibilities discussed earlier in this letter should be addressed before consideration is given to the initiatives being considered as part of this consultation.

Shareholder advisory votes on executive compensation

Our compensation policy places a strong emphasis on the achievement of performance targets. We have always believed strongly in tying our employees' compensation to our overall corporate performance. This is one of the important steps that we take to seek a balance among the interests of our key stakeholders: our customers, our shareholders and our employees, whom we call our members.

Aligning our employees' compensation with our overall corporate performance results in aligning their interests closely with those of our shareholders. This is not simply a feature of our executive compensation policy, it is a key principle of our *Management Foundation.*

Performance-based compensation under CGI's short and long-term incentive plans (respectively the *Profit Participation Plan* and our stock option plan) is one of the primary linkages in our *Management Foundation* that serves to align the interests of our employees with those of our shareholders.

It is also a principle that institutional investors strongly believe in and, for that reason, there is constant pressure from institutional investors on issuers to adopt pay-for-performance as a principle in their compensation policies and programs.

We welcome changes in executive compensation disclosure that improve the quality of information that investors receive, while maintaining a level playing field among reporting issuers and industry competitors who may, or may not, be reporting issuers in their own right.

We also strongly subscribe to the principle that setting executive compensation policy and implementing it by determining the compensation that CGI senior executive officers receive, is within the strict purview of the Board of Directors acting on the advice and counsel of the Human Resources Committee. It is not a role that shareholders are equipped to play simply because they do not have the expertise or access to the level of detailed and confidential information required to allow them to make reasoned judgments in the context of the competitive reality of companies.

The advisory vote that shareholders may cast in that regard can only be a binary instrument that approves, or disapproves, of the issuer's compensation program in its entirety: from the governance structures that determine and implement it; to the policies that comprise it; to the way it is interpreted and applied; and finally, to the perceived outcome that has been obtained; all of which, of necessity, viewed through the imperfect lens of the company's financial results.

CGI therefore submits that the OSC ought to refrain from imposing a mandatory requirement in that regard.

Conclusion

The variety and complexity of these issues, compounded by the large and diverse number of stakeholders and self-regulatory organizations, should not deter the regulators from focusing on these matters

In some measure, the problems we see in the current system are rooted in the vast growth of the capital markets and its participants in the past few decades, in the ever-increasing pace of transactions, and in the complexity of investment instruments.

Just as IT serves the capital markets by facilitating the myriad data flows that underlie all market operations, IT can be brought to the service of the proxy voting process by enabling more efficient and robust business processes that can support transparency and reliable real-time audit trails to allow beneficial shareholders to vote their shares effectively with confidence in the results, and to participate fully as owners of the companies whose shares they hold.

We are available to answer any questions you may have on our submission.

Yours truly,

Benoit Dubé
Executive Vice-President and
Chief Legal Officer

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January 19, 2010

Mrs. Debra Sisti
Head of Canadian Research
RiskMetrics Group, Inc.
67 Yonge Street
Suite 1400
Toronto, Ontario M5E 1J8

Re : ISS Proxy Analysis – CGI Goup Inc.

Dear Mrs. Sisti:

Further to our telephone conversation of January 14, 2010, please find attached a letter from Towers Watson (formerly Towers Perrin) relating to the work that they performed in connection with the proposed increase in the number of shares reserved for issuance under our stock option plan. As you know, our shareholders will be asked to vote on this plan amendment at their next annual general meeting to be held on January 27, 2010.

In light of the significant differences in the assumptions and methodologies used by Towers Watson and by Mr. Ramakrishnan "RV" Viswanathan in RiskMetrics Group's report on our Management Proxy Circular, we asked our external human resources experts to provide further information on specific questions.

They concluded that the companies listed in GICS 4510, and that you used for the purposes of your report, cannot appropriately be used as comparators to CGI as they do not represent companies against which we compete, including in terms of recruiting talented managers. You will also note from Appendix C of Towers Watson's letter that, at the 75th percentile, the median revenue of the comparators that you used is less than 3% that of CGI while their total headcount is some 411 persons while CGI has 26,000 professionals around the world. These significant differences make it impossible to make any meaningful comparisons between this group and CGI.

Our external experts also confirm that, at 16.22%, the overhang dilution that would result from the proposed increase in the number of shares reserved for issuance under our stock option plan would be below the median of the peer group that they used. They conclude that our proposed plan amendment is reasonable and justified in light of the share utilization practices of our direct competitors.

Therefore, the "Company-Specific Allowable Cap" of 5% that you assign to CGI is clearly not in line with our industry's practice. Although such a cap may be used in evaluating companies in other sectors, it is clear from our conversations with institutional investors and from their voting practices that a dilution rate around 15% is within accepted norms in the IT sector.

For reasons explained in our Management Proxy Circular, if we were to align our stock option grant practices with a 5% dilution cap, our ability to attract and retain the key talent needed for our company to remain competitive in a challenging market and achieve continued and profitable growth for the benefit of our shareholders would be seriously prejudiced.

We believe that the application of the binomial model described in Towers Watson letter is a more appropriate methodology than the one you used as, instead of using arbitrary data, it applies an expected volatility that is based on the actual variations in our share price and an expected life assumption that is based on actual market observations. Had you used this approach, you would have arrived at a weighted average grant date fair value of $3.26, and a "Shareholder Value Transfer" of less than 6% (as opposed to 10%/15% as mentioned in your report).

It should also be noted that Towers Watson's assumptions are similar to the accounting fair value of the stock options that were determined in accordance with Section 3870 of the CICA Handbook using the Black-Scholes option pricing model as verified by our external auditors.

As indicated in our Management Proxy Circular, the services of Towers Watson have been retained to assist us in ensuring that our directors' compensation is aligned with best practices. We are committed to continue following a balanced and reasonable approach in this area. We note that you seem to approve of most of our executive and director compensation practices as you conclude that "the company's compensation programs do not include any significant problematic pay practices as highlighted in our policy".

We believe that the participation of our outside directors in our stock option plan is an appropriate and effective way of aligning their interests with those of our shareholders. However, as discussed during our telephone conversation of last week, CGI is open to the possibility of exploring a future plan amendment that would impose limits on the participation of outside directors along the lines that you suggested.

In response to comments made in your email to Mr. Lorne Gorber dated January 15, 2010, we also asked our external human resources consultants to comment on the appropriateness of the undersigned's remuneration. Their conclusion is contained in their attached letter.

In light of the significance of the matters raised above and of the impact that your conclusions may have on the proposed amendment to our stock option plan, we strongly suggest that your report be reviewed in light of the conclusions contained in Towers Watson's letter. As our Annual General Meeting of Shareholders will be held on January 27, 2010, such review should be conducted at your earliest convenience.

Do not hesitate to contact us if you have any questions with respect to the above.

Sincerely,

Serge Godin
Founder and Executive Chairman of the Board

c. Ethan Berman – Chief Executive Officer and Chairman, RiskMetrics Group
Rene M. Kern, Managing Director, General Atlantic
Ramakrishnan "RV" Viswanathan – Lead Analyst, RiskMetrics Group
André Bourque – Executive Vice-President and Chief Legal Officer, CGI

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Private and Confidential

January 18, 2010

Mr. Serge Godin
Executive Chairman
CGI Group Inc.
1130, Sherbrooke Street West, Suite 700
Montreal, Quebec
H3A 2M8

Mr. Godin,

We are writing this letter in response to your questions on some of the professional work we delivered to CGI Group with respect to the compensation of its executives. We understand that you need us to explain some of our methodology and findings so that you may respond to the report on the Management Proxy Circular that RiskMetrics Group ("RMG") prepared in connection with CGI Group Inc.'s ("CGI") Annual General Meeting of Shareholders to be held on January 27, 2010.

Your Question 1: In your report titled "Share Utilization Analysis" and dated October 31, 2009, why did you not consider some or all of the companies in the Canadian Industry Group "GICS 4510" to perform your analysis?

To perform our analysis in the above mentioned report, we used the companies included in CGI's Peer Group as approved by CGI's Human Resources Committee (see list in Appendix A). Towers Watson endorsed the selection of this Peer Group as, in our opinion, it represented CGI's best comparators.

The Peer Group, which includes companies like Accenture, ACS, CACL, CSC, DST Systems, Perot Systems, SAIC, SRA Int'l, are the companies CGI consistently competes against not only in the U.S. but also in Canada and in Europe. These companies are also the ones that solicit your talent. It is known that IT service firms compete for the best talent globally.

The companies included in GICS 4510 (the list of these companies is in Appendix B), in our opinion, do not qualify as valid comparators or competitors of CGI as the operational nature of these companies are clearly different from CGI's and hence do not compete for the same talent. Furthermore, as shown in Appendix C, the companies included in this group are very small in comparison to CGI. Their median revenues are $55M, their median market cap is $58M and their median employee population is 260. It would therefore seem quite inappropriate and misleading for CGI to be compared with this group of companies.

CGI is a $3.8B company with 26,000 employees throughout the world and of which, 10,000 are serving the US market alone. It is primarily a consulting company in IT services and should not be compared to GICS 4510 companies which contain mainly software vendors and product resellers. It is clear that CGI's growth will come from the US and outside North America and their talent will be recruited in the US or Europe.

Your Question 2: In your report titled "Share Utilization Analysis" and dated October 31, 2009, what were your findings with respect to share utilization practices in that group of companies?

The information to perform our analysis was taken from publicly available information and based on the most recent annual reports of the 20 U.S. based companies that now constitute CGI's comparator group.

The following table shows the results of our analysis and its most important finding with respect to fully diluted overhang:

Fully Diluted Overhang

Percentile rank	All companies in peer group	Only Companies not offering a Pension Plan
25th	13.3%	10.2%
50th	17.0%	19.1%
75th	21.4%	28.3%

The proposed increase would bring fully diluted overhang at 16.22% which would be just below the 50th percentile.

We believe that the proposed share increase is reasonable and justified in light of the share utilization practices of their direct competitors.

Our methodology used to conduct this analysis is the same we have used with all our clients (i.e. at Towers Watson) to perform such analyses.

We define fully diluted overhang as,

- Outstanding Stock Options and Stock -Settled SARs + Outstanding Full-Value Shares + Shares Available for Future Grant

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- Outstanding Stock Options and Stock -Settled SARs + Outstanding Full-Value Shares + Shares Available for Future Grant + Common Shares Outstanding

Your Question 3: What was the basis for your assumptions used to determine a binomial value of .35 (or 9.31$ X .35 = 3.26$)?

The assumptions contained in your proxy circular are the same we provided to you. The following table outlines the key assumptions used to value CGI options;

Binomial Valuation Model Assumptions	
Performance based vesting discount (%)	15
Dividend Yield (%)	0
Expected Volatility (%)	25.436
Risk Free Interest Rate (%)	3.70
Expected Life (years)	6.0
Weighted Average Grant Date Fair Value ($)	3.26

The risk free rate and expected life assumptions that we used are Towers Watson set assumptions that are used in all of our Binomial valuations.

The basis used to determine the expected volatility is the average volatility of the CGI share over the last three years.

The basis for the expected life of the option is based on the average exercise period in the market in general.

Our method to evaluate stock options is actually very similar to the method used for accounting purposes in Canada as prescribed by the CICA Handbook which also uses a projected exercise period as opposed to the actual term of the option.

We obviously believe that our stock option valuation model is the most appropriate method to value stock options for compensation purposes and therefore are more than comfortable with the Binomial value we have provided CGI for your stock options.

Your Question 4: What methodology did you use to value the position of Executive Chairman?

Over the last few years we have benchmarked the position of Executive Chairman to the market. To do this, we analyzed similar positions in the market. This is a rare position in the market but we have found that for Executive Chairmen that stay very active in their companies, our analysis revealed that they are generally paid at the same level as the CEO.

The Human Resources Committee insisted that you are very active and involved in the day-to-day strategic direction and operations of the company. In fact, its members thought that shareholders are undoubtedly attributing a lot of value to the fact that you are actively involved.

We therefore remain very comfortable with our assessment of this position.

Mr. Godin, I hope this answers your questions.

Please do not hesitate to contact me if you have other questions.

Yours truly,

Pierre Geoffrion CA, F.Adm.A., Pl. Fin.

Towers Watson

514 982 2093

Company	Market Capitalization (US $MM)	Revenues (US $MM)	Employees
Accenture Ltd.	21,525	25,314	186,000
ACS Inc.	4,627	6,523	65,000
ADP Inc.	18,685	8,777	47,000
Apple Computer Inc.	146,354	32,479	35,100
Broadridge Financial Solutions Inc.	2,406	2,155	5,060
CACI	1,385	2,730	12,400
Computer Sciences Corp.	7,302	16,740	92,000
Convergys Corp.	1,315	2,786	75,000
DST Systems Inc.	2,203	2,285	10,900
Fair Isaac Corp.	938	745	2,480
Fidelity National Information Services	4,483	3,446	26,000
Fiserv Inc.	7,339	4,739	20,000
Hewlett-Packard	103,530	118,364	321,000
IBM Inc.	154,593	103,630	398,455
Jack Henry & Associates Inc.	1,793	743	3,824
Oracle Corp.	110,761	23,252	86,000
Perot Systems Corp.	1,926	2,779	23,100
SAIC	3,708	10,070	45,400
SRA International Inc.	1,113	1,541	6,977
Western Digital Corp.	6,806	7,453	45,991
1st quartile	1,893	2,619	12,025
Median	**4,555**	**5,631**	**40,250**
3rd quartile	19,395	18,368	77,750
CGI	**4,276**	**3,825**	**26,000**

GICS 4510	
Company Name	
01 Communique Laboratory Inc.	Momentum Advanced Solutions Inc.
20-20 Technologies Inc.	Northcore Technologies Inc.
Absolute Software Corp.	Open Text Corp.
Axia Netmedia Corp.	Points International Ltd.
Belzberg Technologies Inc.	Redknee Solutions Inc.
Brainhunter Inc.	Resolve Business Outsourcing Income Fund
Bridgewater Systems Corp.	Solium Capital Inc.
Burntsand Inc.	Tecsys Inc.
Calian Technologies Ltd.	Tucows, Inc.
Call Genie Inc.	Voice Mobility International Inc
CGI Group Inc	Xenos Group Inc.
Chartwell Technology Inc.	
Computer Modelling Group Ltd	
Constellation Software Inc.	
Corel Corp.	
CriticalControl Solutions Corp.	
CryptoLogic Ltd (formerly CryptoLogic Inc)	
Cyberplex Inc.	
Descartes Systems Group Inc.	
Enghouse Systems Ltd.	
ESI Entertainment Systems Inc.	
Espial Group Inc.	
Genesis Worldwide Inc.	
Hosted Data Transaction Solutions Inc.	
Komunik Corp.	
MacDonald, Dettwiler and Associates Ltd.	
March Networks Corp.	
Matrikon Inc.	
Maximizer Software Inc.	
Mediagrif Interactive Technologies Inc.	
MKS Inc.	

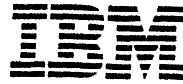
In Canadian Dollars

Company Name	Ticker	Current Year ended	Sales	Employees	Current Month ended	Market Cap - Monthly
			Current Yr	Current Yr		Current Mnth
01 Communique Laboratory Inc	ONE.	Oct08	$414,000	-	Dec09	$10,794,840
20-20 Technologies Inc	TWT	Oct08	$95,564,000	600	Dec09	$57,727,350
Absolute Software Corp	ABT.	Jun09	$53,219,000	301	Dec09	$242,424,000
Axia NetMedia Corp	AXX	Jun09	$69,847,000	-	Dec09	$101,375,220
Belzberg Technologies Inc	BLZ.	Dec08	$41,761,000	110	Dec09	$10,367,000
Brainhunter Inc	BH	Sep08	$234,025,999	220	Nov09	$1,395,810
Bridgewater Systems Corp	BWC.	Dec08	$44,178,000	-	Dec09	$204,615,300
Bristol Hotel & Resort Inc	BH.	Dec99	$1,125,189,438	12,900	Mar00	$244,248,882
Burntsand Inc	BRT.	Dec08	$25,442,000	115	Dec09	$5,086,200
Calian Technologies Ltd.	CTY.	Sep09	$227,229,999	2,400	Dec09	$134,375,750
Call Genie Inc	GNE	Dec08	$4,267,000	76	Dec09	$16,576,000
Chartwell Technology Inc	CWH	Oct08	$23,481,000	140	Dec09	$22,505,340
Computer Modelling Group Ltd	1868B	Mar09	$43,941,000	117	@NA	-
Constellation Software Inc	CSU.	Dec08	$404,571,000	1,891	Dec09	$778,806,000
Corel Corp	CREL	Nov08	$280,967,312	1,040	Dec09	$107,811,021
CriticalControl Solutions Corp	CCZ.	Dec08	$25,985,000	274	Dec09	$33,509,300
Cryptologic Ltd	CRYP	Dec08	$65,648,563	276	Dec09	$48,974,531
Cyberplex Inc	CX.	Dec08	$57,280,000	86	Dec09	$78,631,250
Descartes Systems Group Inc (The)	DSGX	Jan09	$71,657,145	374	Dec09	$380,909,658
Enghouse Systems Ltd	ESL.	Oct09	$78,418,000	346	Dec09	$213,933,600
Espial Group Inc	ESP.	Dec08	$10,111,000	-	Dec09	$6,063,860
Genesis Worldwide Inc	GWI.	Dec08	$21,262,000	84	Dec09	$7,115,220
Hosted Data Transaction Solutions Inc	HDX	Dec08	$8,010,000	56	Dec09	$14,175,000
MacDonald Dettwiler and Associates Ltd	MDA.	Dec08	$1,168,490,999	3,540	Dec09	$1,725,427,800
March Networks Corp	MN.	Apr09	$101,191,000	-	Dec09	$68,804,000
Matrikon Inc	MTK.	Aug09	$72,583,000	523	Dec09	$88,892,000
Mediagrif Interactive Technologies Inc	MDF.	Mar09	$47,940,000	350	Dec09	$83,422,730
Merrill Lynch & Co Inc	ESY.	Dec08	$17,878,739,453	-	Aug06	-
MKS Inc	MKX	Apr09	$69,745,000	311	Dec09	$100,051,360
Northcore Technologies Inc	3NTLNF	Dec08	$741,000	15	Dec09	$30,279,013
Open Text Corp	OTEX	Jun09	$916,646,709	3,411	Dec09	$2,402,004,196
Points International Ltd	3PTSEF	Dec08	$91,405,000	97	Dec09	$59,674,756
Redknee Solutions Inc	RKN.	Sep09	$53,250,000	360	Dec09	$58,809,000
Solium Capital Inc	SUM	Dec08	$17,039,000	128	Dec09	$35,213,060
TECSYS Inc	TCS.	Apr09	$41,017,000	245	Dec09	$25,356,450
Tucows Inc	TCX	Dec08	$83,725,766	150	Dec09	$48,371,452
Voice Mobility International Inc	3VMII	Dec08	$501,492	11	Dec09	$5,157,899
Xenos Group Inc	XNS	Sep09	$17,247,000	88	Dec09	$34,717,350

Statistics	Ticker	Current Year ended	Sales	Employees	Current Month ended	Market Cap - Monthly
			Current Yr	Current Yr		Current Mnth
25th Percentile	-	-	$23,971,250	106.75	-	$21,023,005
50th Percentile	-	-	**$55,265,000**	**259.5**	-	**$58,268,175**
75th Percentile	-	-	$94,524,250	411.25	-	$114,452,203
CGI Group Inc.	**GIB**	**Sep09**	**$3,825,160,991**	**26,000**	**Dec09**	**$4,276,574,391**

Companies Missing

ESI Entertainment (ESY)
Komunik Corporation (KOM)
Maximizer Software Inc. (MAX.)
Momentum Advanced Solutions Inc. (WWW)
Resolve Business Outsourcing Income Fund (RBO)



Office of the Vice President
Assistant General Counsel and Secretary

New Orchard Road
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October 15, 2010

File Reference No. S7-14-10
Concept Release on the U.S. Proxy System
Release No. 34-62495

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Murphy:

We are writing to comment on the concept release published by the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") on July 14, 2010, entitled *Concept Release on the U.S. Proxy System* (the "concept release"). International Business Machines Corporation ("IBM" or the "Company") welcomes the opportunity to share its views on some of the important matters raised by the concept release. We applaud the Commission for considering these numerous complex issues that affect issuers and shareholders. IBM previously shared its views on several of the items raised by the SEC in this concept release when we submitted a comment letter on the SEC's proxy access proposal.[1] Fixing these problems will ensure a better voting system, allow for greater communications between an issuer and its shareholders, and generate more accurate voting processes. We continue to believe that the Commission should have addressed these significant "proxy plumbing" issues before issuing final proxy access rules; we note that there is currently a stay of effect of these rules.[2]

[1] *See* IBM's August 12, 2009 comment letter to SEC Release No. 33-9046, "Facilitating Shareholder Director Nominations," June 18, 2009, 74 Fed. Reg. 29,025, *available at* http://sec.gov/comments/s7-10-09/s71009-108.pdf.

[2] Order Granting Stay of Effect of Commission's Facilitating Shareholder Director Nominations Rules, October 4, 2010, *available at* http://www.sec.gov/rules/other/2010/33-9149.pdf.

I. Proxy Advisory Firms must be Subject to Greater Regulation.

As noted by the SEC, over the last twenty-five years, institutional investors have "substantially increased their use of proxy advisory firms."[3] This has resulted in shareholder votes that have become increasingly affected by the power of these firms that, in many instances, exert significantly more influence on the outcome of votes than an issuer's largest shareholder. Despite the evidence of their influence over the election of directors and other votes at U.S. public companies, the proxy advisory industry remains largely unregulated. The SEC must take action now so that these firms are subject to the necessary checks and safeguards to ensure that companies and their shareholders are adequately protected.

A. Proxy advisory firms exert too much control over shareholder voting decisions.

It is important as an initial step to recognize the significant influence that proxy advisory firms have over corporate matters. As of December 31, 2009, one such firm, Institutional Shareholder Services ("ISS") (formerly known as RiskMetrics Group) had approximately 3,500 clients, including 70 of the 100 largest investment managers, 43 of the 50 largest mutual fund companies, and 42 of the 50 largest hedge funds (in each case measured by assets under management).[4] ISS provides corporate governance and specialized financial research and analysis services to approximately 2,970 clients.[5] The SEC notes that as of June 2007, ISS's client base was more than the four other major firms in the industry combined.[6]

To be clear, the troubling part is not the sheer number of clients that ISS, for example, has, but rather the significant influence it exerts over the millions of votes cast each year by its clients. This influence is felt by companies in all industries almost immediately upon release of the ISS report on the company's proxy statement. To illustrate, within one business day after ISS releases its report on a particular company, a significant number of shares held by institutions are voted in a lock-step manner (i.e., 100% in accordance) with the ISS recommendation. We submit that this phenomenon is evidence of *de facto* control by ISS of these votes and of how institutional holders outsource their voting decisions to ISS.

Below is a chart that shows a cross-section of Fortune 500 companies in different industries in the 2009 and 2010 proxy seasons, with each company receiving more

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[3] SEC Release No. 34-62495, "Concept Release on the U.S. Proxy System," July 14, 2010, 75 Fed. Reg. 42982, *available at* http://sec.gov/rules/concept/2010/34-62495fr.pdf (hereinafter referred to as the "Release" or "concept release").

[4] RiskMetrics Group, Inc., Annual Report on Form 10-K for the fiscal year ended December 31, 2009, *available at* http://www.sec.gov/Archives/edgar/data/1295172/000104746910001246/a2196648z10-k.htm (hereinafter referred to as "ISS 2009 Form 10-K").

[5] Id.

[6] Release, 75 Fed. Reg. at 43,011, n. 271.

than 10% of its total votes cast lock-step with ISS's recommendations within one business day after the ISS report was released.[7]

Company	Votes Cast Lock-Step Within One Business Day after ISS Recommendations as an Approximate Percent of Total Votes Cast
2009	
Company A	17.8%
Company B	15.7%
IBM	13.5%
Company C	12.9%
Company D	12.4%
Company E	11.9%
Company F	11.6%
2010	
Company G	12.9%
Company H	12.7%
IBM	11.9%
Company I	11.5%
Company J	10.9%

Note: We believe that ISS's influence is far greater than what is shown in the "one business day" amounts in the table above; however, that additional influence is difficult to quantify because institutional investors are not required to publicly disclose when they in essence "outsource" decision making over proxy matters to third parties.

For IBM, an estimated 13.5% and 11.9% of the total votes cast in each year were cast lock-step with ISS's recommendations within one business day after the release of ISS's report on IBM in 2009 and 2010, respectively. By comparison, for the previous five business days, no more than 0.20% and 0.27% of the total IBM votes cast in any one day in 2009 and 2010, respectively. **To put that into proper perspective, the IBM voting block essentially controlled by ISS has more influence on the voting results than IBM's largest shareholder. And this voting block is controlled by a proxy advisory firm that has no economic stake in the company and has not made meaningful public disclosures about its voting power, conflicts of interest or controls.**

This influence directly and significantly affects the election of directors. For example, in 2006, ISS recommended a "withhold" vote against one of IBM's directors because a family member of the director was employed by IBM in a non-officer capacity. That year, 22.59% of the votes cast were withheld for this director. In 2007, ISS flipped its voting recommendation on this director, and he instead received a "for" recommendation from ISS; as a result, that year this director received only an 8.78% "withhold" vote. The

[7] Data provided by one of the Company's proxy service providers.

underlying facts had not changed nor had the make-up of IBM's institutional shareholders changed significantly. This nearly 14% swing in the vote outcome is clearly attributable to ISS's changed recommendation and is consistent with the information above regarding ISS exercising control over IBM's votes cast.

B. The SEC should adopt regulations providing for more oversight of and public disclosure by proxy advisory firms.

1. The SEC should prohibit certain conflicts of interest and require disclosure of other significant conflicts.

As discussed by the SEC in the concept release, many advisory firms meet the definition of an investment adviser and are therefore subject to the Investment Advisers Act.[8] The SEC also notes in the concept release that the Supreme Court has construed Section 206 of the Investment Advisers Act as Congress' recognition of the fiduciary nature of an investment advisory relationship as well as a congressional intent to eliminate, or at least to expose all conflicts of interest.[9] As SEC Commissioner Kathleen Casey has noted, "proxy advisory firms often face conflicts of interests arising from providing corporate governance advisory services to registrants and providing voting recommendations to their institutional investor clients, and have been reported on occasion to make voting recommendations based on inaccurate analyses of registrant corporate governance or other data."[10] As discussed in more detail below, one example of these conflicts relates to corporate governance scores. Firms like ISS provide governance ratings to issuers based on ISS's perceptions of the issuers' corporate governance practices, but also provide consulting advice to the same issuers on how to improve the score. Commentators have raised concerns about whether this allows companies to influence ISS's ratings if they are willing to pay for it.[11]

This concern about proxy advisory firms having significant conflicts is exacerbated by inadequate disclosure in their voting recommendation reports about conflicts. Institutions relying on these advisory firms' advice should be made aware of such conflicts. Without any disclosure to the contrary, institutions presumably assume that the firms are free of conflicts with regard to recommendations they make about issuers. The SEC notes in the concept release that certain proxy advisory firms include boilerplate disclosure in their voting recommendation reports that they "may" have a consulting relationship with the issuer.[12]

[8] Release, 75 Fed. Reg. at 43,010.

[9] Release, 75 Fed. Reg. at 43,010, n. 249.

[10] Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission, Statement at SEC Open Meeting, July 1, 2009, *available at* http://sec.gov/news/speech/2009/spch070109klc.htm.

[11] *See* Paul Rose, *The Corporate Governance Industry*, 32 Iowa J. Corp. L. 887, 903 (2007), citing Troy Wolverton, A Warning About eBay's Options 'Giveaway,' TheStreet.com, June 16, 2003, *available at* http:// www.thestreet.com/stocks/troywolverton/10093761.html.

[12] Release, 75 Fed. Reg. at 43,012.

This "disclosure" is clearly inadequate because it provides no specific or meaningful information to the institutional investor about any current or former relationship the firm has with the issuer. By not adequately disclosing their specific conflicts of interest, these proxy advisory firms are likely violating their fiduciary duty to deal fairly with their clients.[13]

a. Proxy advisory firms should be subject to similar oversight by the SEC as Nationally Recognized Statistical Rating Organizations.

We believe that because of the significant role and influence of proxy advisory firms, they should be subject to oversight similar to that of nationally recognized statistical rating organizations (i.e. credit rating agencies). Investors rely on these credit ratings as part of their investment decisions and therefore need to know whether there are any conflicts in order to properly assess the validity of the specific ratings. Similarly, given the level of influence if not outright control that advisory firms have, comparable requirements must be imposed on these firms. In fact, similar regulations are even more imperative with regard to proxy advisory firms because there is a single dominant proxy advisory firm – in contrast, there are at least three significant credit rating agencies.

In terms of oversight, rating agencies are required to establish, maintain and enforce written policies and procedures to address and manage conflicts of interest.[14] Furthermore, because some activities necessarily result in a conflict, they are prohibited outright by rule. For instance, rating agencies are prohibited from issuing or maintaining a credit rating for an issuer in which the rating agency made recommendations about the corporate or legal structure, assets, liabilities, or activities of such issuer.[15] Other prohibited activities include stock ownership of an issuer by a credit analyst who participates in the determination of a credit rating.[16]

Clearly, similar rules should be adopted to prohibit proxy advisory firms from providing consulting services to companies for which they make voting recommendations or issue governance scores. As noted by the SEC, there is an inherent conflict where an issuer utilizes the consulting services of an advisory firm where such services are used to improve governance scores.[17] Necessarily, such scores will be skewed and not be a proper comparison against companies that do not utilize such advisory firms for consulting services. These examples are the most commonly referenced conflicts of interest for proxy advisory firms as noted by the GAO report cited in the concept release.[18] In short, proxy advisory firms should

[13] *See* Release, 75 Fed. Reg. at 43,013.

[14] 17 CFR 240.17g-5(a)(2).

[15] 17 CFR 240.17g-5(c)(5).

[16] 17 CFR 240.17g-5(c)(2).

[17] Release, 75 Fed. Reg. at 43,012.

[18] Release, 75 Fed. Reg. at 43,011-12, n. 275.

be prohibited by rule from providing consulting services to an issuer about which it makes voting recommendations. These prohibitions are important because as also noted in the GAO report, the firm might recommend a vote in favor of a client's shareholder proposal in order to keep the client's business, which would threaten the integrity of the vote.[19]

Additionally, ISS's most recently filed Form ADV discloses that it buys or sells securities of issuers that it also recommends to advisory clients.[20] ISS also disclosed that it recommends securities to advisory clients in which it has other ownership interests.[21] Similar to the existing rating agency rules, these types of activities should be prohibited for proxy advisory firms. Further, employees of proxy advisory firms who work on vote recommendations or governance scores of a particular company should be prohibited from owning or trading in the stock of that company.

b. The SEC should require additional disclosure of proxy advisory firms' Form ADVs.

We applaud the recent changes that the SEC adopted to Form ADV, including requiring increased narrative disclosure of conflicts of interest and the processes in place to manage those conflicts.[22] This will provide more meaningful disclosure to investors. We believe the SEC should consider making further changes consistent with providing vital information to investors. As explained in more detail below, this should include a requirement that any institutional investor who subscribes to a proxy advisory firm must disclose this in its Form ADV. Further, the institution should be required to post the advisory firm's Form ADV on its website so that interested stakeholders of the institutional investor would be adequately notified of any potential conflicts.

2. The SEC should require disclosure of beneficial ownership by proxy advisory firms.

Given the level of *de facto* control over voting exercised by proxy advisory firms such as ISS, the SEC should conclude that these advisors are beneficial owners of the shares in question. "Beneficial owner" is defined in Rule 13d-3 under the Securities Exchange Act of 1934 as having sole or *shared* voting and/or dispositive power over the shares in question.[23] The aforementioned evidence of lock-step voting shows that proxy

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[19] Release, 75 Fed. Reg. at 43,012.

[20] ISS Governance Services, Inc., Form ADV, dated March 31, 2010, *available at* http://www.adviserinfo.sec.gov/%28S%28jhz3g255jzxzzo55qfaieu45%29%29/IAPD/Content/ViewForm/ADV/Sections/iapd_ADVIdentifyingInfoSection.aspx.

[21] Id.

[22] Investment Advisers Act Release No. IA-3060 (July 28, 2010), *available at* http://www.sec.gov/rules/final/2010/ia-3060.pdf.

[23] 17 CFR 240.13d-3.

advisory firms "share" voting power with certain of their clients. Therefore, the advisory firm should be required to disclose its beneficial ownership in any company in which it shares voting power of more than 5% of a class of registered equity securities.

3. The SEC should require disclosure of proxy advisory firms' proxy governance models.

Proxy advisory firms should also be required to disclose, at least annually, their proxy governance models, including the guidelines, processes and assumptions they make, as well as the methodologies and sources of information supporting their recommendations. Further, any proxy advisory firm that adopts a one-size-fits-all approach on any significant issue should be required to disclose its rationale for the belief that every single company, regardless of its particular facts and circumstances, should have the same policy. As the SEC notes, a one-size-fits-all approach is troubling because it will result in a policy that would benefit some issuers but is less suitable for other issuers and would therefore result in a voting recommendation that is not appropriate for many issuers in all situations.[24]

Concurrently, proxy advisory firms should be required to publish all of this information in a prominent location on their website and update the information periodically. This information would allow the thousands of proxy advisory firm clients to properly assess the bases for these firms' recommendations and, more importantly, enable these institutions to make more informed decisions about whether the firms' procedures yield recommendations that are in the best economic interests of their holders.

C. The SEC should reexamine proxy advisory firms' exemption from the proxy solicitation rules.

1. Background.

The SEC should also reexamine the exemption from the proxy solicitation rules given to proxy advisory firms. In 1979, the SEC adopted Exchange Act Rule 14a-2(b)(3), which exempted proxy advisory firms from the requirement to publicly furnish their proxy voting advice so long as certain requirements were met. The exemption was adopted well before the proxy advisory industry experienced substantial growth in size and influence. In fact, ISS was not founded until six years *after* the exemption was in place.[25] Other major proxy advisory firms have been established only in the past few years, including Glass, Lewis & Co., LLC, which was founded in 2003 and PROXY Governance, Inc., which began providing proxy advisory services in 2005.[26] Because the influence of these firms has grown

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[24] Release, 75 Fed. Reg. at 43,012.

[25] *See* ISS 2009 Form 10-K.

[26] *See* About Glass Lewis, *available at* http://www.glasslewis.com/company/; *See* PROXY Governance History, *available at* https://www.proxygovernance.com/content/pgi/content/history.shtml.

significantly since the exemption was first promulgated, it is time for the SEC to reexamine the exemption.

For instance, the exemption does not require that proxy advisory firms adopt specific procedures to ensure that their research or analysis is materially accurate or complete prior to recommending a vote. Additionally, when proxy advisory firms provide voting services, they are not required to verify that all votes are cast correctly. To retain the benefit of this exemption, proxy advisory firms should be required to adopt written procedures to ensure that their controls, as they relate to accurate research and analysis and voting services, are adequate.

2. Proxy advisory firms should be required to have their work audited annually.

Just as public companies are subject to strict auditing requirements and assurances regarding internal controls, so too should proxy advisory firms be required to provide more assurances and public disclosure regarding the reliability and accuracy of the voting services they provide. Over the years, there has been a growing concern about the reliability of the voting services provided by proxy advisory firms. In a 2008 article about a material voting tabulation error by another service provider, ISS's special counsel admitted that voting errors are not rare and that "[t]here's plenty of room for slippage."[27] The concept release referenced an example of a "technical error" in the transmission of a proxy vote by ISS to another service provider that caused a shareholder's position to be voted incorrectly with respect to the 2009 annual meeting of a financial services company. In fact, this "error" initially caused the company to report to its shareholders that a shareholder proposal received a majority vote, when in fact the proposal had not received such majority.

Against that backdrop, proxy advisory firms should be required to have their work audited periodically, no less than once per year, by independent audit firms to assess the accuracy of the votes they have cast on behalf of their institutional investor clients. Management of the proxy advisory firms should be required to provide publicly-disclosed certifications regarding the internal controls for the voting services they provide. Furthermore, proxy advisory firms should be required to immediately publicly disclose any significant errors made in executing voting instructions on a particular proxy vote.

3. Proxy firms should be required to give companies a meaningful opportunity to comment on their draft recommendations.

Additionally, in light of the significant influence proxy advisory firms exert, the SEC should adopt rules requiring proxy advisory firms to give companies a meaningful opportunity to comment on draft recommendations to correct any misstatements or omissions in the draft report. It is surprising and disappointing that this item needs to be required by

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[27] Nicholas Rummell, *Institutional Investors Chafe Under Power of Big Shareholder Vote Counter*, PENSIONS AND INVESTMENTS (August 26, 2008).

regulation. However, some proxy advisory firms do not allow any opportunity for issuers to review or comment on draft recommendations, and others only allow one or two days. This is clearly insufficient and therefore the rules must ensure that issuers have ample opportunity to adequately review these reports and provide meaningful input. Furthermore, there should be a formal appeals process available to issuers who have disagreements with factual statements that are contained in draft recommendation reports. In light of the considerable weight given to these recommendations, any unresolved disagreements between a proxy advisory firm and a company should be published in a separate section in the final recommendation report.

D. The SEC should adopt regulations providing for more oversight of institutional investors' activities with respect to proxy voting.

1. Institutions have a fiduciary obligation to maximize the economic value of their investors when they make voting decisions.

SEC rules require investment companies and investment advisers to adopt policies and procedures to ensure that proxies are voted in the best interests of their shareholders and clients,[28] but it is clear that many of these investors, who are extremely sophisticated, appear to be outsourcing their voting decisions to proxy advisory firms, i.e., to third parties that do not bear any responsibility for, or share any economic risk with regard to, the issuer in question. As recently noted by the Commission, "institutional investors, whether relying on proxy advisory firms or not, must vote the institutions' own shares and, in doing so, must discharge their fiduciary duties to act in the best interest of their investors and avoid conflicts of interest; institutions are not relieved of their fiduciary responsibilities simply by following the recommendations of a proxy advisor."[29] Similarly, in 2008, the Department of Labor noted that when pension plan fiduciaries vote, they have a duty to consider only the factors that relate to the economic value of the plan's investment and "shall not subordinate the interest of the participants and beneficiaries in their retirement income to unrelated objectives."[30] This clearly supports the notion that these investors have a fiduciary duty to vote in a way to maximize the economic value of their fund; merely outsourcing their proxy voting decisions does not satisfy this duty.

[28] Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, SEC Release No. IC-25922, 68 Fed. Reg. 6,564 (February 7, 2003), *available at* http://www.sec.gov/rules/final/33-8188.htm; and Proxy Voting by Investment Advisers, SEC Release No. IA-2106, 68 Fed. Reg. 6,585, *available at* http://www.sec.gov/rules/final/ia-2106.htm.

[29] SEC Release No. 34-60215 (approving amendments to NYSE Rule 452), July 1, 2009, p. 26, *available at* http://www.sec.gov/rules/sro/nyse/2009/34-60215.pdf (hereinafter "Rule 452 Release").

[30] Department of Labor Interpretative Bulletin Relating to Exercise of Shareholder Rights, October 17, 2008, *available at* http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=21630&AgencyId=8.

2. Institutions have inadequate controls and processes to ensure that the proxy advisory firms they hire are voting as directed.

Equally troubling are the concerns raised by the SEC in a 2008 Compliance Alert, which was the result of the SEC's staff compliance examinations of investment advisers, investment companies, broker-dealers, transfer agents, and other types of registered firms to determine the level of these firms' compliance with federal securities laws and rules.[31] While reviewing the internal controls at these firms, the SEC found instances of inadequate internal controls, lack of proper documentation and inadequate public disclosure.[32] The Alert concluded that some institutions had policies and procedures that contained inaccurate information or were not followed.[33] The Alert also noted that processes were not always in place to ensure that the proxy advisory firms hired by investors to handle the physical mechanics of voting were doing so consistent with the policies and procedures of the investor.[34] It is obviously very troubling that certain funds' votes are not being voted consistent with their voting guidelines. This has the effect of skewing the results of annual meeting votes, which in the case of a close vote could be the difference between a proposal passing or failing.

3. The SEC should amend Form N-PX to require increased disclosure of institutions' voting patterns.

Against the backdrop of the aforementioned influence of proxy advisory firms and the insufficient public disclosure by these investment advisers, Form N-PX should be amended to require institutional investors to disclose the proxy advisory firm(s) to which they subscribe with respect to their holdings. Further, the form should be amended to add an additional column requiring disclosure of whether the institution voted "with" or "against" the recommendations of the proxy advisory firm(s) to which they subscribe with respect to each matter voted.

By way of explanation, Form N-PX currently includes a column that requires institutional investors to disclose if their vote on each item was consistent with management's recommendation. Even though management's recommendation is disclosed in a company's proxy statement, the SEC nevertheless requires this specific line item information in Form N-PX to highlight publicly if the investors are merely voting the "company line." The logic for similar disclosure is even stronger when applied to proxy advisory firms, whose voting recommendation reports are not publicly disclosed. To be clear, we do not endorse the position that institutions should not be able to subscribe to proxy advisory services that

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[31] U.S. Securities and Exchange Commission, Compliance Alert (July 2008), *available at* http://www.sec.gov/about/offices/ocie/complialert0708.htm.

[32] Id.

[33] Id.

[34] Id.

provide recommendations and advice on proxy matters; however, the institution itself should carefully consider all of the issues presented in order to make decisions based on maximizing the economic value of its shareholders' investments and disclose to its holders the role that advisory firm(s) play in voting decisions.

II. The SEC Should Address Issues Related to Institutional Voting, Including Reforming the NOBO/OBO System and Addressing the Separation of Economic Value and Voting Interest.

A. The SEC needs to reform the NOBO/OBO system.

1. Background.

Paramount to the exercise of good corporate governance is a strong line of communication between a company and its owners. The Commission has recognized this essential fact and has introduced several initiatives designed to increase communications. For instance, the SEC has facilitated the use of shareholder forums aimed at increasing the dialogue among issuers, shareholders and other interested third parties.

Currently, beneficial owners have the option to allow information related to their names, addresses and holdings to be provided to issuers (these "non-objecting beneficial owners" are often referred to as "NOBOs"). By contrast, a beneficial owner can object to the disclosure of this information to the issuer (and such "objecting beneficial owners" are often referred to as "OBOs"). These archaic NOBO/OBO distinctions developed due to the takeovers of the 1970s and 1980s where there was concern about information becoming available to corporate raiders. This is no longer the hot button issue it once was over twenty years ago.

According to a report cited in the concept release, it is estimated that between 52% and 60% of all shares are held by OBOs.[35] Thus, the average issuer cannot easily communicate with a majority of its shareholders. Even though OBOs may be contacted by an issuer's agent, this mode of communications is time-consuming, ineffective and inefficient. Furthermore, as it relates to NOBOs, obtaining their information often comes at a great expense, which may present an economic barrier to communications. Depending on the number of beneficial owners of a company, it can cost over $100,000 to obtain a NOBO list.

Communications difficulties are especially troublesome against the backdrop of significant corporate governance developments over the last several years, including the elimination of broker discretionary voting in uncontested director elections, the increased use of majority voting in uncontested director elections and the increasing number of contested issues at shareholder meetings. Most recently, in the last few months, the SEC issued final rules allowing for shareholder proxy access, and "Say on Pay" has now become a legislated requirement for all U.S. public companies. All of these developments have made it even

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[35] Release, 75 Fed. Reg. at 42,999.

more important for issuers to have the ability to communicate directly with their shareholders and to communicate throughout the entire year, not just in the period immediately preceding the annual meeting.

2. The SEC should eliminate NOBO/OBO distinctions. Short of this step, the SEC should adopt the "annual NOBO system" discussed in the concept release.

The recent developments regarding proxy access and "Say on Pay" underscore the necessity of significantly reforming the NOBO/OBO system. While we believe that suggested incremental steps such as requiring that NOBO be the default position when a beneficial owner opens an account and having investors periodically reaffirm their status are steps in the right direction, we believe that the time has come to eliminate these distinctions altogether.

Short of eliminating NOBO/OBO distinctions, we would also support the SEC's suggestion to implement an "annual NOBO system," whereby at one point each year, the record date, shareholders cannot hide their identities. This is not unduly burdensome to institutional investors that elect OBO status because it would be similar to existing obligations they have to disclose their holdings quarterly on Form 13F. In essence, this would create only one additional checkpoint for these institutions to disclose their holdings at a point in time that would facilitate company communications on annual meeting matters.

The SEC notes that the majority of OBOs are institutional investors.[36] So while personal privacy has been a cited rationale for maintaining these distinctions, there is no such concern as it relates to large institutions. Therefore, we believe that issuers should be allowed to obtain information about shareholders who would otherwise be OBOs from the period between the record date and the annual meeting date. It is important to note that this compromise is not a perfect solution because it would still be difficult for issuers to communicate with a large percentage of their shareholders for a majority of the year, which is increasingly troublesome in light of the new proxy access rules and "Say on Pay" vote.

B. The SEC should address issues related to the separation of voting rights and economic ownership, including increased disclosure of certain hedging activities.

The SEC should also take steps to ensure that companies and their shareholders are better informed about the holdings of institutional investors, particularly given that institutional investors may more actively trade their shares than individual shareholders.

As discussed above, registered institutional investment managers are required to submit a Form 13F filing on a quarterly basis. In addition to the incremental disclosure pursuant to the annual NOBO system discussed above, we suggest that the SEC require more

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[36] Release, 75 Fed. Reg. at 42,999, n. 153.

frequent Form 13F filings to allow companies to identify their major shareholders more accurately. It is our view that a monthly reporting mechanism would strike the appropriate balance without causing undue burden on money managers, given advances in technology and the bookkeeping requirements already in place for broker-dealers and investment advisers.

There also needs to be a more level playing field between institutions with obligations to submit Form 13F filings and unregistered institutions such as hedge funds. This is consistent with SEC Chairman Mary Schapiro's testimony last year before the House Capital Markets Subcommittee, where she noted the SEC's continued focus on increasing transparency and oversight of meaningful market transactions.[37]

Currently any shareholder who owns 5% or more of a company's outstanding stock must disclose its holdings on a Schedule 13D or Schedule 13G. To further level the playing field, any shareholder who has an interest in a company's equity in this amount, whether through the traditional net long position or via a short sale or any other hedging activity, should similarly be required to publicly disclose these holdings.

Finally, in light of the recently-adopted proxy access rules, the SEC should also impose a requirement on shareholders who nominate directors at a company under these new rules to provide certain information to the market and to their fellow shareholders. New Schedule 14N requires that nominating shareholders disclose their share ownership in the company.[38] However, they are not required to disclose whether they have hedged their position. We suggest that the Commission mandate that any person nominating a director pursuant to the proxy access rules publicly disclose to what extent they have hedged their economic interest during the requisite holding period.

III. The SEC Should Not Change the Requirements for Publication of Annual Meeting Agenda Items

A. The SEC should not propose rules that would require earlier disclosure of a company's annual meeting agenda.

The Company does not believe that the Commission should require earlier disclosure of the annual meeting agenda. The Commission cites no empirical evidence to indicate that shareholders in general desire this information or would make different investment decisions if they had this information any earlier than the public release of the

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[37] Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, "Testimony Concerning SEC Oversight: Current State and Agenda, July 14, 2009, *available at* http://sec.gov/news/testimony/2009/ts071409mls.htm; *see also* SEC Press Release 2009-165, *SEC Charges Perry Corp. With Disclosure Violations in Vote Buy Scheme*, July 21, 2009, *available at* http://sec.gov/news/press/2009/2009-165.htm (regarding hedge fund failure to disclose beneficial ownership in public company).

[38] SEC Release No. 33-9136, "Facilitating Shareholder Director Nominations," September 16, 2010, 75 Fed. Reg. 56,668, *available at* http://sec.gov/rules/final/2010/33-9136fr.pdf.

proxy materials. The SEC's sole stated driver for raising this issue is that some institutional securities lenders may have proxy voting policies in place that require the recall of loaned securities in the event of a "material vote."[39] We firmly believe that director elections are by their very nature "material" matters and therefore, institutional securities lenders who have such a policy should call back their loans automatically. In fact, the SEC itself in the Rule 452 Release stated that the election of directors is a "critical" matter to be voted upon by shareholders.[40] Further, the election of directors will only continue to increase in importance now that the SEC has promulgated final proxy access rules.

In any event, requiring earlier disclosure of the annual meeting agenda would also not be practical. As the SEC notes in its concept release, "it can be difficult for issuers to disclose complete meeting agendas in advance of the record date because the agenda may not be established."[41] Many public companies set their record date for the annual meeting as close to 60 days prior to the meeting as possible, the maximum period permitted by Delaware and New York state laws, to ensure maximum flexibility with complex printing and distribution schedules.[42] For example, IBM's record date is typically in late February. Under a new regime, IBM would likely have to publish its agenda at the beginning of February. However, many matters are not necessarily settled by this time. For instance, management and the Board may still be considering initiatives in the form of management proposals. Also, the full slate of director nominees proposed for election might not yet be definite.

Additionally, often no-action requests related to Rule 14a-8 shareholder proposals are still pending at the Commission, including the opportunity to timely file reconsideration requests and/or appeals. At IBM, over the last ten years, there have been six no-action requests that were not resolved until February, including one as late as March 2, 2000, which was only twelve days prior to the filing of the proxy statement and one day *after* the record date.[43] Last year, IBM had a pending reconsideration of a no-action request open until February 22, just four days prior to the record date.[44]

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[39] Release, 75 Fed. Reg. at 42,993.

[40] Rule 452 Release at p. 45.

[41] Release, 75 Fed. Reg. at 42,994.

[42] NY BCL Section 604(a); Del. General Corporation Law Section 213(a).

[43] *See* International Business Machines Corporation (Publicly Available February 22, 2010) (reconsideration denied - Boston Common Asset Management et al - Say on Pay); International Business Machines Corporation (Publicly Available February 2, 2005) (granting no-action request to incoming letter request dated November 26, 2004); International Business Machines Corporation (Publicly Available February 18, 2003) (denying no-action request to incoming letter request dated December 18, 2002 -- regarding proof of beneficial ownership); International Business Machines Corporation (Publicly Available March 2, 2000) (granting no-action request to incoming letter request dated December 22, 1999 -- regarding ordinary business matter); International Business Machines Corporation (Publicly Available February 27, 2000) (granting no-

Recognizing the inherent limitations of requiring an issuer to publish a final agenda in advance of the meeting record date, the SEC requests comments on whether it should instead propose rules requiring issuers to publish an agenda that could be "subject to change."[45] We believe that this alternative confirms the notion that early publication of an annual meeting agenda would not ensure that institutional securities lenders receive timely and accurate notice of all items to be considered at the annual meeting. For instance, many of the proposals that are the subject of 14a-8 challenges may be the very proposals these shareholders deem "material." Following the SEC's logic, if shareholders recalled loans for the sole purpose of voting for or against that certain proposal, they would not have that opportunity if the SEC grants no-action relief after the meeting record date. Moreover, if a preliminary agenda was required to include all items that remain open, companies could be disadvantaged by having to disclose a potential management request for approval, which may not be ultimately included in the final proxy statement. Therefore, in light of the foregoing, we believe that the decision as to whether to publish a meeting agenda before the filing of a proxy statement should not be mandatory and instead should be at the discretion of the issuer.

B. IBM would support earlier disclosure of a company's annual meeting record date.

Currently, the New York Stock Exchange requires companies to notify the exchange of their annual meeting dates and the corresponding record dates for establishing which shareholders are entitled to vote at their meetings.[46] A minimum of ten days' notice is required prior to the record date.[47] However, the rules do not include a requirement to publicly disclose this information. In the concept release, the SEC discussed whether they should propose rules requiring issuers to publicly disclose their annual meeting record date earlier. If proposed, we would support such a rule change.

IV. Conclusion

In summary, we recognize the complexity of the issues presented by the SEC and applaud the Commission for taking up so many of these matters at this critical juncture. Since the SEC has seen fit to promulgate final proxy access rules prior to addressing these

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action request to incoming letter request dated December 21, 1999 -- regarding the legality of the course of action proposed by the shareholder); and International Business Machines Corporation (Publicly Available February 16, 2000) (denying no-action request to incoming letter request dated November 22, 1999 -- regarding cash balance pension plans).

[44] *See* International Business Machines Corporation (Publicly Available February 22, 2010) (reconsideration denied - Boston Common Asset Management et al - Say on Pay).

[45] Release, 75 Fed. Reg. at 42,994.

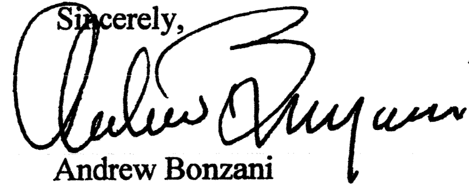
[46] NYSE Listed Company Manual § 401.02.

[47] Id.

significant issues, we urge you to address these "proxy plumbing" requirements as soon as possible, in particular increasing the regulatory oversight of proxy advisory firms.

As the Commission proceeds with its next steps, we would be pleased to discuss with the Commission or its staff any questions you might have about this letter or to provide you with any other assistance. Please feel free to contact me at 914-499-6118.

Sincerely,



Andrew Bonzani
Vice President, Assistant General
Counsel and Secretary