MASON CAPITAL MANAGEMENT LLC
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November 1, 2013

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial and Consumer Affairs Authority
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Financial and Consumer Services Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

Re: Consultation Paper 54-401 (the "Paper")

Mason Capital Management LLC ("Mason") is a New York-based investment fund manager, registered with the U.S. Securities and Exchange Commission, with offices in New York, London and San Francisco. Mason has been in business since 2000, and has a long history of investing in Canada.

Mason wishes to comment on only one aspect of the Paper.

A premise of the Paper seems to be that some parties borrow equity securities to hold and vote them rather than to satisfy delivery obligations in short sale transactions or to satisfy delivery obligations when securities lenders recall securities from borrowers. For example, the Paper says[1]:

> "Share lending results in investors retaining economic exposure to lent shares without corresponding voting rights. This aspect of share lending generally only becomes important when a meeting is about to occur, and an investor decides that it wants to vote. Unless the lender (or its lending intermediary) has made appropriate arrangements, such as arranging to recall equivalent shares from the borrower or some other source in time for the record date, or contracting with the borrower that voting authority remains with the lender, the lender will not be legally entitled to vote. Nevertheless, the investor may still be noted as an 'owner' in the intermediary's records. Without mechanisms in place to properly track lending activity and prevent investors who have lent shares from voting, therefore, there is a risk that a lent share may be voted by both the lender and whoever is the owner of that share on the record date".

[1] (2013), 36 OSCB 8138

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If the implication of the passage quoted above is that parties such as hedge funds borrow securities to vote them, Mason submits that the premise is patently incorrect. Borrowing securities to hold and vote them, although not illegal or explicitly prohibited by most securities lending agreements, simply does not happen in practice, as it is not commercially reasonable to do so with borrowed shares. Securities lenders do not, in practice, permit borrowing shares for the purposes of voting them; furthermore, securities borrowers do not typically pay to borrow shares and not consummate a short sale transaction. The value and purpose of borrowing shares is in the short sale transaction, *not* in paying for shares and attempting to vote them, which securities lenders would, by and large, prohibit of their own accord.

Attempting to regulate proxy voting in the manner proposed by this Paper would have the unintended effect of regulating securities lending and/or regulating, or even banning, short-selling.

We welcome the opportunity to comment on the Paper.

Yours very truly,

Michael E. Martino, Principal
Mason Capital Management