November 13, 2013

VIA EMAIL

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

Re: CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure*

Alberta Investment Management Corporation, British Columbia Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, OMERS Administration Corporation, Ontario Teachers' Pension Plan and Public Sector Pension Investment Board (collectively, the **Funds**, **we** or **our**) are writing in response to the request of the Canadian Securities Administrators for comments on CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure* (the **Consultation Paper**).[1]

Collectively, the Funds represent over $800 billion of assets under management (as of December 31, 2012) and are active participants in Canada's equity markets. Last year, the Funds have collectively voted in a combined total of 2292 meetings of Canadian companies.

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[1] CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure* (August 15, 2013), 36 OSCB 8130.

Importance of voting rights to the Funds

One of the fundamental rights of shareholders is to vote their shares. As investors with significant long-term financial interests in the Canadian capital markets, we value the voting rights associated with the securities in which we invest. We devote considerable resources to engaging with boards, management and other stakeholders, carefully reviewing proxy circulars and other continuous disclosure documents and to casting our votes thoughtfully. Accordingly, it is important to each of us that our voting instructions reach the issuer and that those instructions are given their full weight.

We note that the role of shareholder voting has become progressively more important, as regulators and other parties have increasingly relied upon shareholder approval to address various governance issues, including those with respect to related party transactions, director elections and executive compensation. However, we believe that all of these developments will be undermined if market participants have less than full confidence in the integrity and reliability of the proxy voting infrastructure.

Concerns with the integrity of the proxy infrastructure in Canada

Concerns with the reliability of the proxy voting system have been raised by a number of parties over the last several years. We have taken note of publicly available examples of voting instructions not being appropriately captured or reported.[2] We have also reviewed commentary from and had discussions with a number of parties who play a role in the proxy voting infrastructure. All of this has led us to be concerned that there may be systemic issues that compromise the integrity of the proxy voting infrastructure. As investors, we are not in a position to resolve or even investigate these issues. They are systemic in nature and accordingly, must be addressed by the securities regulatory authorities.

Engagement by the Funds on proxy infrastructure issues

Over the last two years, we have met with members of the CSA to convey to them the importance we attach to a reliable and transparent proxy voting system and to ask the CSA to engage on the issues being discussed in the capital markets community. We identified to these members of the CSA the issues which are of the highest priority for the Funds.

Our first priority is that the lists of beneficial holders entitled to vote at a meeting which are submitted by the intermediaries in response to a notice of record date must be fully reconciled so that only one person may provide voting instructions with respect to each share. We were pleased to see that this issue has been raised in the Consultation Paper (Section 5.1).

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[2] Letter from Lara Donaldson, Computershare Trust Company of Canada and Chris Makuch, Georgeson Shareholder Communications Inc. to Robert Day, Ontario Securities Commission, (May 28, 2012) available at <http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20120528_11-766_donaldsonl_makuchc.pdf>. [**Computershare OSC Letter**]

The second priority is that beneficial holders must receive confirmation from the issuer (through the intermediaries as appropriate) that their voting instructions have been received and properly recorded at the meeting. We were pleased to see that this issue has also been raised in the Consultation Paper (Section 5.2). We have responded to the specific questions raised by the CSA on this point.

The third priority for the Funds is that the CSA commission an independent "end-to-end" operational audit of the proxy voting system on a regular basis (possibly every three years) to confirm the integrity of that system or to identify any material deficiencies and to ensure corrective actions will be taken. The results of this audit would be made public. The Consultation Paper does not raise this issue, but we have provided further comment on the operational audit in our response below.

We commend the CSA for undertaking this initiative. In preparing our response to the Consultation Paper, we retained counsel with expertise in this area and have met with various participants in the system, including Broadridge, transfer agents, custodians, proxy advisors and investment industry intermediaries. The significant resources we have devoted to this comment letter and to proxy infrastructure issues over the last two years reflect the importance we attach to our voting rights.

1. Vote Entitlements Must be Fully Reconciled (First Priority)

The Funds believe that it should never be possible for a vote to be cast more than once. Under the book based system, it is most often the case that an intermediary (such as CDS) is the registered holder of the shares and that a series of other intermediaries show those shares on their books as they pass beneficial ownership down the chain to the ultimate investor. Since a single share will be reflected on the records of more than one intermediary, the record keeping practices of the intermediaries (both individually and as a group) are essential to the integrity of the proxy voting system. In our view, regardless of the number of intermediaries in the chain (each showing a position in the same shares on their books), each share must only be voted once. As investors, we must rely on the intermediaries individually and collectively to ensure that their records reconcile all of the various entries so that each share is voted only once. If those records have not been properly reconciled, the result may be over-reporting or even over-voting.

(a) Why are over-reporting and over-voting a problem?

The Consultation Paper described "**over-reporting**" as the situation where an intermediary's records show more voting entitlements than are reflected in the intermediary's CDS participant account.[3] We describe the concept of over-reporting more broadly to refer to any situation where

[3] Consultation Paper, *supra* note 1 at 8145. The SEC Concept Release described "over-reporting" as a situation where the number of securities held in the intermediary's CDS account is less than the number of securities that the intermediary has credited in its own books and records to its clients' accounts. See, U.S., *Concept Release on the U.S. Proxy System, U.S. Securities and Exchange Commission*, Release No. 34-62495, (July 14, 2010), available at <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

the records of intermediaries indicate more than one beneficial owners with voting entitlements over the same share. This will consequently lead to over-voting (our understanding of over-voting is discussed below).

We understand there may be a number of factors that may contribute to over-reporting, such as how securities lending transactions are recorded, "failures to deliver" in the clearance and settlement system, or communication issues between the depositories such as CDS and DTCC for shares cleared through both depositories. In many instances, we understand that over-reporting situations are identified early and eliminated before voting instruction forms (**VIFs**) are distributed to beneficial owners.

The Consultation Paper defined "**over-voting**" narrowly to refer to a situation where intermediary proxy votes accepted by a tabulator are later determined to be invalid due to the votes exceeding the intermediary's actual position. The Funds have significant concerns with the definition used in the Consultation Paper, which does not consider situations where the same share may be voted by more than one person but otherwise did not exceed the intermediary's total CDS position. We believe that in a properly functioning proxy voting infrastructure, over-voting should never occur because accurately reconciled records at the record date would grant the right to only one person to provide voting instructions with respect to each share. We would, therefore, recommend that the CSA redefine over-voting more broadly to include any situation where more than one person has provided voting instructions with respect to the same share.

The Funds acknowledge that there is no consensus in the marketplace about the prevalence of over-reporting (and, consequently, over-voting) in Canada. The Investment Industry Association of Canada (**IIAC**) has stated that over-voting does not materially affect shareholder voting on a widespread basis and its members are able to be proactive and take action on possible over-reporting situations and correct discrepancies before the voting deadline. On the other hand, the Funds are aware of the analysis of voting discrepancies reported by Computershare, where unresolved over-voting occurs in at least 17% of shareholder meetings for which they act as transfer agent.[4] These findings are alarming and further suggest that over-voting is a systemic problem. The concern is compounded when one considers the expectation that there should usually be a large number of shares that are not voted at any particular meeting since the evidence suggests that only a fraction of retail beneficial owners return VIFs. As Computershare notes, their experience suggests the opposite based on the alarming number of unresolved over-voting occurrences.[5] As stated below, financial intermediaries and custodians submit that securities lending does not materially contribute to over-reporting. We recommend that the CSA investigate whether these claims are true and report on the situations causing unresolved over-voting, as reported in the Computershare analysis.

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4 Computershare OSC Letter, *supra* note 2. For example, in 2011, Computershare acted as transfer agent for 2,409 shareholder meetings and reported unresolved over-voted positions at 410 meetings (17.02%), which included over 523 million over-voted shares.

5 *Ibid*.

We are also concerned about the point in the process at which over-reporting issues are addressed. IIAC advises that it relies on Broadridge's Over-Reporting Prevention Service (**ORPS**).[6] Broadridge describes this service as follows:

> Canadian intermediaries representing 97% of all beneficial positions processed by Broadridge use our Over Reporting Prevention Service, which we provide at no cost. The service uses CDS and DTCC position files to ensure voting instructions that would exceed the number of voting shares held by that intermediary are not forwarded to the tabulator. Under this service, if a vote instruction is received by Broadridge that would result in an over reporting condition, that instruction is held in a pending file. The intermediary is alerted to reconcile the position before the vote will be reported to the meeting tabulator. This service has been significant in mitigating potential over vote situations in Canada and has been recognized by the SEC in the United States as having a significant role in all but eliminating over voted positions in that market since its introduction in 2007.[7]

We acknowledge the contribution being made by Broadridge on behalf of the intermediaries to prevent over-reporting. However, the need for this service suggests that the intermediaries may not be doing enough to reconcile their records before they are sent to Broadridge.

The Funds are also concerned that the manner in which over-votes are remedied is highly discretionary and opaque. The tabulator will review the proxy votes it receives and determine how a vote should be counted either by taking the instructions from the issuer, the issuer's governing statute, articles or bylaws, or applying the "presumptions" contained in the STAC Proxy Protocol.[8] The Funds have been advised that some tabulators accept votes on a "first in" basis up to the aggregate amount indicated in CDS's records and refuse to accept any excess votes subsequently remitted. For example, we have been advised that the Broadridge ORPS "pends" any excess votes received and, unless resolved by the intermediary, the last votes received are not reported to the tabulator. Another common last-minute solution to over-voting is to "pro-rate" the results by reducing the voting position of each shareholder.[9] We believe these discretionary solutions undermine shareholder democracy and are further problematic because they are not publicly communicated to shareholders, which contributes to a lack of integrity and

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6 See letter from Andrea Taylor, Director, Investment Industry Association of Canada to John Stevenson, Secretary, Ontario Securities Commission (March 31, 2011) at 10-11, available at <http://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20110331_54-701_taylora.pdf>. [**IIAC OSC Letter**]

7 Letter from Patricia Rosch, President Broadridge Investor Communication Solutions, Canada to John Stevenson, Secretary, Ontario Securities Commission, (March 31, 2011), available at <http://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20110331_54-701_roschp.pdf>. [**Broadridge OSC Letter**]

8 Securities Transfer Association of Canada, "Proxy Protocol" (March, 2012), available at <http://www.stac.ca/Public/PublicShowFile.aspx?fileID=199>

9 See, for example, comments of Bill Speirs, Director, Compliance & Risk, Canadian Stock Transfer Company, Inc. at RBC Dexia Investor Services, *A Case for Change: Shareholder Voting Symposium Summary Report* (October, 2011) available at <http://www.cscs.org/Resources/Documents/summit/Resources/RBC%20Dexia%20Shareholder_voting_report%20FINAL.pdf>.

transparency in the proxy voting infrastructure. We believe that meeting tabulators should be required to make publicly available their tabulation processes and related procedures and to disclose their reconciliation method when dealing with voting discrepancies. We understand that Broadridge has also made a similar recommendation.[10] We also believe that this requirement to disclose reconciliation methods used should be extended to intermediaries who have received a notification from Broadridge's ORPS.

(b) Intermediaries' record-keeping obligations

The books and records of intermediaries are subject to a variety of regulations.[11] IIROC rules require every dealer member to keep and maintain at all times a proper system of books and records and establish and maintain adequate internal controls.[12] Most relevant to the proxy voting system is National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**), which creates the obligation for the intermediary to provide records as at a record date for a shareholder meeting. The Companion Policy provides that the records of an intermediary must reconcile accurately with the records of the person or company through whom the intermediary itself holds the securities, which could be another intermediary or a depository, or the security register of the relevant issuer if the intermediary is a registered security holder.[13] This guidance suggests that accurate voting entitlements must be prepared before an intermediary transmits record date information to Broadridge and before VIFs are distributed to beneficial owners. We believe the current guidance in the Companion Policy should be moved to the Instrument to strengthen the reconciliation requirement and provide a specific enforcement response to securities regulators for non-compliance.

However, neither securities laws nor IIROC rules specify procedures that intermediaries must follow to ensure that no share is voted more than once or requires that the procedures that are adopted be disclosed. There is a lack of understanding as to whether the intermediaries' records used to prepare the eligible voter list are adjusted to account for shares out on loan or pending trades and are reconciled to reflect the accurate total holding position at CDS (and DTCC for inter-listed issuers).

The 2010 SEC concept release on various aspects of the U.S. proxy system (the **SEC Concept Release**)[14] has provided helpful context about reconciliation practices in the U.S., characterizing these practices as being done on a "pre-mailing" basis, a "post-mailing basis" or some

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10 Broadridge OSC Letter, *supra* note 7 at 11.

11 For example, subsection 11.5(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* requires a registered firm to maintain records that accurately records its business activities, financial affairs, and client transactions, and demonstrate the extent of the firm's compliance with applicable requirements of securities legislation.

12 IIROC Dealer Member Rule 17.2 and 17.2A.

13 54-101CP, subsection 4.3(2).

14 U.S., *Concept Release on the U.S. Proxy System, U.S. Securities and Exchange Commission*, Release No. 34-62495, (July 14, 2010), available at <http://www.sec.gov/rules/concept/2010/34-62495.pdf>.

combination of these two approaches. Given the similarities between the Canadian and U.S. markets, and the fact that a number of market participants operate in both markets, the CSA should understand the extent to which these practices are mirrored here. Our understanding of the practices adopted by IIAC members and the custodians (as described below) is that the practices in the Canadian marketplace regarding securities lending may be varied, but this should be confirmed and the CSA should report on the practices adopted by intermediaries to reconcile their records with their CDS position.

(c) What are the potential causes of over-reporting and over-voting?

(i) Securities lending

Securities lending is often cited as creating an opportunity for a share to be voted more than once. The Funds acknowledge that there is no agreement in the marketplace about whether this opportunity exists largely in theory or whether it is an issue that should be of concern to issuers and investors. This supports the need for involvement of the CSA. The Funds have set out below observations on some aspects of the discussion and encourage the CSA to drill down and undertake a comprehensive review of securities lending practices and their potential impact on voting so that it is apparent to the marketplace the extent to which a problem exists (if at all).

In a comment letter to the 2011 OSC shareholder democracy notice, IIAC explained the standard industry practice among its members with respect to securities lending as follows:

> It has been incorrectly stated in public reports that shareholder lists produced by intermediaries are not reconciled and have not been adjusted to account for shares that have been loaned. In fact, our member firms have confirmed that standard industry procedure dictates that the lender is the beneficial holder of shares on loan and is entitled to vote; and therefore will receive the VIF. Agreements exist with the beneficial holder (lender) of the shares that provide that they are able to vote on the position ONLY if the dealer can obtain a broker proxy or an omnibus proxy (from the borrower) to allow them to vote. If the dealer is unable to obtain such a proxy, the record date position held by the lender will be adjusted to reduce to shares on loan. A discussion on this issue among the largest IIAC retail members indicated that there is a general consistency between firms in terms of what process is used to reconcile accounts. Our members have dedicated resources to this process and take it very seriously.[15]

This explanation from IIAC is helpful. The Funds have also discussed the securities lending issue with the custodians who they retain. Those custodians have explained the processes they use in order to ensure securities lending programs which they administer do not contribute to over reporting, as they pre-reconcile their records before any proxy mailing. We recommend that the CSA consider whether IIAC members and the custodians are the only parties who administer securities lending programs. The CSA should obtain empirical data from IIAC and from the custodian community (and anyone else who administers securities lending programs) to satisfy themselves that securities lending programs run by these organizations do not give rise to over

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[15] IIAC OSC Letter, *supra* note 6 at 10-11.

reporting issues that could be material for any particular shareholder meeting. The CSA should then disclose its conclusions and advise what, if any, remedial regulation it proposes.

(ii) Omnibus proxies

We have met with various service providers in the system to discuss the issue of missing or incomplete omnibus proxy documentation. We understand that the way in which voting instructions are handled is somewhat different from what is contemplated in NI 54-101. NI 54-101 contemplates proxy materials being passed from one intermediary to another until they reach the ultimate investor and then the investor's voting instructions being passed back up the chain until it reaches the intermediary who holds the proxy issued to it by the registered holder (CDS in many cases). However, very often an intermediary in the chain sends the voting instructions from its clients directly to Broadridge. This requires that a mini-omnibus proxy be issued in favour of that intermediary.

We understand that several problems can arise in connection with mini-omnibus proxies. The mini-omnibus proxy may not be issued if the records of the intermediary who must issue that document are not properly coded. This issue should be addressed together with other issues related to the books and records of the intermediaries raised in this response. In addition, the situation may be further complicated by the continued use of paper omnibus proxies that are transmitted by fax or through the use of .pdf files, as a result of the different technology platforms used by various market participants. While we do not have quantitative data to determine exactly how often these issues arise, anecdotally we understand that these issues are not uncommon. We recommend that the CSA encourage and facilitate the adoption of electronic file transmission of this data.

(iii) Restricted proxies

The Consultation Paper makes reference to restricted proxies being issued to cover shares acquired after the record date for voting, where the purchaser has made it a condition of purchase to receive voting authority. In the view of the stakeholders the Funds have consulted, that is not a common or likely scenario.

One transfer agent we contacted described the most common scenario where a restricted proxy is requested as one where a shareholder (most often a large holder and sometimes an insider of the issuer) contacts their broker to demand a proxy so they can vote directly or attend the meeting in person. The shareholder may not have received his VIF, lost it, or forgotten that they received it (and in some cases, already voted it). In these circumstances, the broker would give that account holder a restricted proxy that allows them to vote, either by submitting it to the tabulator or by attending the meeting in person. Broadridge has no role in issuing restricted proxies and would not know whether a restricted proxy was issued. The broker is responsible for recording the fact they have granted a restricted proxy and making the adjustments necessary to the records sent to Broadridge. Issues may arise because either the broker has not adjusted and coded the account on Broadridge systems as having received a restricted proxy. The transfer agent also advised that the use of restricted proxies has decreased, but they are still a source of issues related to

tabulating the votes. We recommend that the CSA investigate how often tabulation issues related to the issuance of restricted proxies occur.

(iv) Other factors

We also understand that other factors may contribute to over-reporting, such as communication discrepancies between CDS, DTCC and the intermediaries for issuers whose shares are clearing through both depositories. An imbalance between an intermediary's position reflected on the CDS records and the position reflected in its own books and records may also occur because of "failures to deliver" in the clearance and settlement system. These discrepancies, however, are often resolved before proxy materials are mailed.[16]

We are concerned about any circumstance in which a share can be voted more than once and encourage the CSA to focus more broadly on all of the circumstances in which this can occur.

(d) What solutions must be implemented?

We recommend that the CSA publish for comment amendments to NI 54-101 requiring that all intermediaries implement "pre-mailing" reconciliation practices in respect of all meetings to prevent over-reporting issues. We believe that improvement in the integrity of the proxy voting system must start with more accountability for reconciliation of all voting entitlements at the outset, including reviewing client data and making adjustments as necessary, before meeting materials are sent and voting instructions are solicited. Intermediaries should be held accountable for reconciling and maintaining accurate record date files for each shareholder meeting to ensure that only one person can provide voting instructions with respect to each share. Requiring that intermediaries undertake vote reconciliation practices at the beginning of the process would also materially reduce or eliminate discretionary late-stage vote tabulating and reconciliations tasks.

Whether over-reporting arises for reasons related to securities lending record keeping, incomplete proxy documentation, communication discrepancies or other factors, the Funds believe that the CSA should understand the reasons for its occurrence and adapt the regulatory framework to minimize these occurrences and make the system more transparent. This starts with greater transparency into the proxy voting infrastructure and more accountability for reconciliation of all voting entitlements at the outset.

Transfer agents, acting as official tabulators, have repeatedly stated that reconciliation of beneficial ownership voting entitlements used to prepare and send VIFs must be performed prior

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[16] For example IIAC notes that an issue which has been consistently identified by its members as a suspected major contributing factor to the appearance of over-reporting is a communications problem involving CDS, DTC and the various intermediaries. In a preliminary survey conducted by a few of its largest members, IIAC states that this problem could account for as much as 90% of the instances in which over-reporting appears to exist.

See IIAC OSC Letter, *supra* note 6 at 11-12.

to their distribution.[17] We agree with the recent statements of STAC in response to the 2013-14 OSC Statement of Priorities that even where the voting results may not indicate any problem, over-reporting brings the integrity of any vote into question, as "there is no assurance that only those entitled to vote shares were given the right to vote or, conversely, that two beneficial owners were not voting the same shares."[18]

2. End-to-End Vote Confirmation (Second Priority)

As noted above, our second priority is that beneficial holders must receive confirmation from the issuer (through intermediaries as appropriate) that their voting instructions have been received and properly recorded at a meeting, and that the votes cast have been given their full weight. We note that casting votes into a system that is unable to confirm votes and has no group or body assuming ownership over systemic integrity is fundamentally flawed and dilutes, or in some cases eradicates, the shareholder's right to vote.

(a) Current Lack of Meaningful Confirmation

The Funds currently use a variety of methods to access the proxy voting infrastructure, such as directly through Broadridge's proprietary platform ProxyEdge® ("**ProxyEdge**"), by way of custom data feeds provided to and from Broadridge, or via a platform offered through a proxy service provider.

ProxyEdge provides proxy information to the Funds through an automated electronic interface based on share positions provided directly to Broadridge by a custodian. For positions not held through a Broadridge client, Broadridge can take holdings directly from a Fund to provide a comprehensive view on ProxyEdge of all positions for that investor.[19] A Fund can log on to ProxyEdge to access meeting materials, to cast their votes and to receive "confirmation". However, at present, Broadridge can only routinely confirm to a Fund that its voting instructions have been received by Broadridge and forwarded to the tabulator. There is no confirmation that the tabulator ultimately received, accepted and tabulated the voting instructions as instructed. As a result, even though a vote has been "confirmed", a Fund has no way in which to determine if

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[17] In its response to the SEC Concept Release and the Weinberg Centre Roundtable on Proxy Voting, the Securities Transfer Association, Inc. was firmly of the opinion that in order to have an unimpeachable voting result, there must be pre-mailing reconciliation and a methodology for working through other depositories. See letter from Charles V. Rossi, President, Securities Transfer Association, Inc. to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission, (February 16, 2012), available at <http://www.sec.gov/comments/s7-14-10/s71410-308.pdf>.

[18] Letter from William J. Speirs, President, Securities Transfer Association of Canada to Robert Day, Senior Specialist, Business Planning and Performance Reporting, Ontario Securities Commission (May 31, 2013), available at <http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20130531_11-768_securitiestransferassofcan.pdf>. [**2013 STAC OSC Letter**]

[19] Broadridge Financial Solutions, Inc., ProxyEdge®, (visited November 12, 2013), available at <http://www.broadridge.com/mutual-fund-retirement-solutions/proxy-regulatory/institutional-voting/proxyedge>.

its votes were cast, or if they were ultimately diluted through over-voting or perhaps even entirely discarded by the tabulator.

Not all of the Funds use ProxyEdge to manage their proxy processes. For example, a Fund may receive "custom" data feeds directly from Broadridge. Other Funds utilize the services of Institutional Shareholder Services Inc. or Glass, Lewis & Co., which operate proprietary electronic platforms for managing client proxy services. However, such services are ultimately reliant on data feeds from Broadridge and other providers, and therefore cannot provide any greater degree of confirmation than is available through ProxyEdge.

During our recent discussions with Broadridge, we were advised that, starting November 5th, Canadian custodians are now able to provide vote confirmations for the very few issuers offering the end-to-end vote confirmation functionality. However, in its current form, this end-to-end functionality relies on Broadridge being appointed the "master" tabulator for the meeting by the issuer, which includes distributing materials to both registered and beneficial owners and tabulating the votes received from them. In Canada, only the official tabulator, which is typically the issuer's transfer agent, can confirm that a vote has been received, accepted and voted at a meeting. We are not aware of any Canadian reporting issuer, as of this time, as having designated Broadridge to act as tabulator for a shareholder meeting.

While some of the current developments in the U.S. and Canada are encouraging, there are several challenges which need to be addressed in both markets before end-to-end vote confirmation can be broadly relied upon by investors.

The first challenge relates to difficulties in implementing the end-to-end vote confirmation service for shareholders who use voting platforms other than Broadridge's as well as to issuers who utilize other meeting tabulating agents. We question whether any end-to-end vote confirmation solution which relies upon Broadridge being "master" tabulator and distributor of all materials represents an appropriate solution for the Canadian marketplace. Among other things, this could compromise competitive tensions in the marketplace that operates for the benefit of issuers and investors. The Funds understand that Broadridge has taken steps to extend their end-to-end vote confirmation service to include "… shareholders who use voting platforms other than Broadridge's as well as to issuers who utilize other meeting tabulating agents." For example, we have been advised by Broadridge that four transfer agents in the U.S. will participate in a pilot initiative for the 2014 proxy season with approximately 20 issuers. We also understand that transfer agents need to implement new IT communication tools that deliver acceptance and rejection data and a description of the issue(s) behind any rejection. Wide acceptance of Broadridge's service will not be forthcoming until these issues and concerns are resolved.

The second challenge relates to a lack of adoption of the end-to-end vote confirmation service from the issuer community. In its current form, the reporting issuer must request the end-to-end vote confirmation service for its shareholder meeting. We have been informed by Broadridge that of the approximately 1,900 U.S. issuers who have appointed Broadridge as a tabulator, only six reporting issuers in the U.S. have elected to use Broadridge's end-to-end vote confirmation

service for the upcoming proxy season. Vote confirmation by investors should not rely on opt-in by the issuer.

(b) What functionality should be part of an end-to-end vote confirmation system?

As a starting point, we believe the integrity of any end-to-end vote confirmation service relies on early reconciliation of each intermediary's beneficial ownership data prior to providing those records to Broadridge. As described above, unless each intermediary's ledger positions are reconciled prior to mailing, the voting instructions sent through the proxy voting infrastructure will be inaccurate and the integrity of any vote will be brought into question.

The Funds have identified as one of their three priorities in connection with the proxy infrastructure system, end-to-end vote confirmation. The importance of end-to-end vote confirmation stems from the lack of transparency in the proxy voting infrastructure and the Funds' concern that their votes may not always be given their full weight.

In the Funds' view, a meaningful end-to-end vote confirmation system must have the six following essential features:

- Vote confirmation must be provided to the ultimate investor casting the vote, not to the financial intermediary or nominee through which the beneficial owner holds the shares;

- Vote confirmation must be transmitted electronically to investors, not in a paper-based format;

- Vote confirmation must be sent to the investor at the three following stages in the voting process:

  i) The voting instructions have been received by the tabulator

  ii) The voting instructions have been accepted and processed by the tabulator, as instructed by the investor, and

  iii) The voting instructions have been confirmed as voted at the shareholder meeting;

- Voter anonymity must be preserved for all votes cast;

- The end-to-end vote confirmation system must be practical, accessible and compatible for investors that use third-party service providers to access their meeting materials and vote electronically; and

- The end-to-end vote confirmation system must be auditable.

We believe that private sector efforts to provide an end-to-end vote confirmation solution are commendable. However, we also believe that any meaningful end-to-end vote confirmation system should be mandated in all circumstances, regardless of Broadridge's involvement, so as to permit all investors to determine that their votes have been given their full weight.

3. "End-to-End" Operational Audit of the System (Third Priority)

(a) How can we increase confidence in the proxy voting infrastructure?

(i) Why is an audit necessary?

Given the growing perception that Canada's proxy voting infrastructure may not be reliable, the Funds have identified as their third priority that the CSA commission an independent "end-to-end" operational audit of the system (possibly every three years). Many of the participants in the proxy voting infrastructure currently audit their systems (whether for themselves or to report to clients), but there is no process by which the system as a whole is audited in order to provide assurance that only beneficial owners who are entitled to vote receive VIFs and that their votes are given their full weight at the meeting. We believe an "end-to-end" operational audit is necessary because there are multiple participants involved in the system and no one body has complete access to information regarding, or control over, significant portions of the system to assess the reliability of the proxy voting infrastructure as a whole.

We also believe that the audit must be independent of the participants and third party service providers who operate in the proxy voting infrastructure. We are concerned that securities regulatory authorities have been too dependent on these third party service providers for information about the operation of the system and the problems that may exist. While each of these providers makes a significant contribution to the operation of the system, they are also heavily invested in the current model and in any changes that might be made to that model. The CSA must understand the issues that may exist without regard to the agendas of those whose business is dependent on the system.

The Funds believe that the CSA are the most appropriate body to assume this audit of the system. The CSA already have authority over most of the significant participants and the objective of the audit is consistent with the objective of securities regulation to foster fair, efficient and transparent capital markets.[20] The purpose of the initial audit would be to determine where the problems exist within the system, or assure the marketplace that the system is functioning with reliability and integrity. The frequency of any subsequent audit may be reviewed as result of the findings from this initial audit. An independent audit will require a significant expenditure of funds, but without such a review we do not believe that the CSA will be able to develop a clear understanding of the effectiveness of the proxy voting infrastructure as a whole and the major issues that need to be investigated further.

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[20] Canadian Securities Administrators Mission Statement, available at <http://www.securities-administrators.ca/our-mission.aspx>.

We recognize that the OSC or any other regulator may not currently have the financial and human resources to effectively conduct a review of each intermediary's compliance with NI 54-101 and report the results of such routine (or spot) audits. However, we think that is sufficiently important that steps must be taken to identify appropriate sources of funding to undertake this audit.

(ii) Other solutions proposed

The Funds have also identified additional mechanisms that could support market confidence that the proxy infrastructure system is working as it was intended.

We recommend that each financial intermediary subject to NI 54-101 (including proximate intermediaries) should file a quarterly certification indicating that the intermediary has reconciled their beneficial ownership information to their depository record date positions as of the record date provided by the issuer and has submitted files containing only the positions of holders entitled to vote as of the record date. This recommendation has also been supported by other participants in the system and would mitigate some of the over-reporting concerns expressed above.[21] While there are general enforcement and remedial provisions available under securities legislation, there are no specific enforcement mechanisms or consequences for non-compliance with NI 54-101 and, consequently, we believe there is a lack of focus and enforcement with respect to these requirements. The quarterly certification would cause the compliance departments within the intermediaries to turn their minds to the issue of compliance with NI 54-101 on a regular basis and, in many cases, in advance of any possible over-reporting situations. In this way, effective enforcement and compliance is best served by preventing non-compliance rather than identifying and dealing with non-compliance after the fact.[22]

The Funds also believe the requirement for a quarterly certification is consistent with the current guidance in section 4.3 of 54-101CP concerning the accuracy of records required to be maintained by intermediaries and will greatly assist in ensuring that only those beneficial owners entitled to vote receive a VIF. In turn, this will facilitate the reduction, or timely management, of the occurrences of over-reporting (and, consequently, over-voting).

We recognize that there will be challenges from intermediaries to the certification process and we acknowledge that intermediaries may be reluctant to adopt such a requirement out of concern of being held liable for any mistakes in their own record keeping. As IIAC notes in respect of mandating a process through regulation, a large part of the process is outside the intermediaries' control as "there is a great deal of information flowing between multiple parties" and "an intermediary relies on information provided by CDS, Broadridge, transfer agents and

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[21] See, for example, letter from William J. Speirs, President, Securities Transfer Association of Canada to John Stevenson, Secretary, Ontario Securities Commission (March 31, 2011), available at <http://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20110331_54-701_speirsw.pdf>.

[22] Computershare OSC Letter, *supra* note 2 at 4.

shareholders."[23] However, we submit that our proposal is simply in line with the obligations of intermediaries. Further, we recognize that a standard of perfection may not be realistic to expect in the circumstances. A certificate could be designed to reflect that the intermediary has designed systems to provide "reasonable assurance" that their beneficial ownership information is accurate and reconciled for each applicable record date. Such an approach would ensure that the record keeping of intermediaries is not held up to a standard of perfection.

We believe that the quarterly certification requirement should be imposed regardless of whether securities regulators mandate a particular pre-mailing reconciliation approach. Similar to the regulatory approach taken in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* for reporting issuers, certification would require intermediaries to disclose their conclusions about the effectiveness of their reconciliation policies and practices and remediate any control deficiencies. Absent a complete audit of the system, which would be our preferred approach, we believe this recommendation would be a cost effective solution to ensure compliance by intermediaries, and any third-party contracted by the intermediaries to provide proxy-related services, with the requirements imposed in NI 54-101.

(b) All service providers should be subject to securities regulation

As noted in the CSA Consultation Paper, numerous service providers are utilized by issuers and investors in connection with the proxy voting infrastructure. These parties include depositories, transfer agents, intermediaries, proxy agents, proxy solicitors and proxy advisory firms. Moreover, some of these parties can play multiple roles within the system: for example, transfer agents frequently act as tabulators and scrutineers at corporate meetings.

While certain service providers are currently subject to some degree of regulation,[24] no single regulator is responsible for the oversight of all players within the system. We consider this to be problematic, as it makes regulatory monitoring of compliance within the system difficult if not impossible.

We believe this problem can be rectified by designating all major service providers as "market participants" within the meaning of securities legislation. For example, under the Ontario *Securities Act* (**OSA**), an entity that is a "market participant" is subject to certain specific provisions of securities law, namely:

- the Ontario Securities Commission (**OSC**) may order such examination of the financial affairs of a market participant as it considers expedient "for the due administration of Ontario securities law or the regulation of capital markets in Ontario";[25]

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23 IIAC OSC Letter, *supra* note 6 at 11.

24 For example, reporting issuers, CDS, broker-dealers, custodians and the transfer agents are "market participants" under securities laws.

25 OSA, s. 12(1).

- market participants are required to keep books and records for the proper recording of their business transactions and financial affairs and the transactions they execute on behalf of others and must provide them to the OSC upon request;[26] and

- the OSC may make an order "that a market participant submit to a review of his, her or its practices and procedures and institute such changes as may be ordered by the Commission".[27]

Designation as a market participant would bring each party within the jurisdictional scope of a single regulator (in this case, the OSC), allowing the regulator to access information about the party. At the same time, it represents a limited regulatory burden to be imposed upon these parties. Such a designation could be done either by statutory amendment or by way of rule. This would represent a crucial first step in ensuring the accountability of all major participants in the proxy voting infrastructure.

We also recommend that the CSA review NI 54-101 and propose amendments for comment to ensure that the instrument regulates all functions that are integral to the effectiveness of the proxy voting infrastructure. NI 54-101 provides detailed requirements for issuers, intermediaries, depositories and transfer agents designed to allow communications flow between issuers and their non-registered shareholders. However, since NI 54-101 came into force in 2002, the instrument has not been updated to reflect the evolution in commercial practices and flow of information between the intermediaries and Broadridge.

4. Other Issues

(a) Impact of the OBO/NOBO concept on voting integrity

One of the tenets of NI 54-101 is the ability for shareholders to control access to their personal and proprietary information and conceal their identity from an issuer by designating themselves as an "objecting beneficial owner" (or **OBO**) rather than a "non-objecting beneficial owner" (or **NOBO**). The Funds are aware of the recent public debate regarding the OBO/NOBO distinction. We submit that much of this debate is occurring in the context of "shareholder communication", with a focus on the ability of an issuer to identify its shareholders and to contact those investors directly. While the manner of shareholder communication (and the corresponding level of investor transparency) remains an important question, we believe this question should be examined separately. In addition, we believe the OBO/NOBO distinction with regard to shareholder communication and voting should not be confused with other disclosure requirements under securities regulation such as the early warning regime, which requires disclosure of holdings of securities that exceed certain prescribed thresholds in order to ensure that the market is advised of accumulations of significant blocks of securities that may influence

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[26] OSA, s. 19(1) and (3). The OSC may also conduct a comprehensive compliance review of these books and records under section 20.

[27] OSA, s. 127.

control of a reporting issuer. We note that the CSA is currently engaged in a separate consultation process regarding the early warning regime.

In contrast, the questions raised in the Consultation Paper do not address shareholder communication; instead the CSA has commenced its review to consider the integrity of the proxy voting infrastructure. Some commenters have argued that the OBO/NOBO distinction adds a layer of complexity to the system. However, there is no evidence that this distinction itself is an impediment to an efficient and reliable proxy voting infrastructure. As noted in the Consultation Paper, a complex system does not necessarily lack integrity.[28] We submit that the OBO/NOBO distinction does not stand in the way of reforms to the system. We note that measures such as mandatory pre-mailing reconciliations by intermediaries would not require a change to the OBO/NOBO system. Similarly, the implementation of an end-to-end vote confirmation system would not necessarily require OBOs to disclose their identity. By way of example, an end-to-end vote confirmation system that was considered at the Weinberg Centre Roundtable on Proxy Voting would utilize confidential control numbers instead of names to identify the appropriate investors and their accounts.[29]

Notwithstanding the potential for enhanced shareholder-issuer communications, the proposed removal of the OBO designation does not improve or simplify the proxy voting process as it stands. The Funds believe that the removal of the OBO/NOBO distinction would only marginally reduce the complexity of the system, as a significant degree of that complexity can be attributed to the use of "intermediation," and its inherent multiple layers of beneficial holding. Any efforts made by a reporting issuer to determine the identity of its shareholders as of a particular record date would still require the cumbersome process of searching the records of each intermediary, and those intermediaries would still need to reconcile their own records against those provided by intermediaries further up the chain of ownership. From a proxy voting process perspective, the removal of the OBO concept would simply assist issuers in that, once the identity of the investors were determined, issuers would be free to mail their proxy materials through their own transfer agents (or other third parties), presumably at a cost savings over using Broadridge to deliver the same material.

However, any such marginal reduction in the complexity of the system or potential cost savings to the issuers must be weighed against the potential costs and loss of efficiency to the market and to its participants. The Funds regard the privacy enjoyed by them as a result of the OBO/NOBO

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[28] Consultation Paper, *supra* note 1 at 8133.

[29] The University of Delaware's John L. Weinberg Center for Corporate Governance convened a roundtable on proxy voting convened and published a report (the **Report**) setting out recommendations for providing end-to-end vote confirmation. The Report mentioned that, in developing a vote confirmation functionality through electronic means, the process could be accomplished by the use of secure websites with security protections and other controls to maintain confidentiality.

See University of Delaware, "Report of Roundtable on Proxy Governance: Recommendations for Providing End-to-End Vote Confirmation" (August 2011), available <http://www.sec.gov/ comments/s7-14-10/s71410-300.pdf>.

distinction as significant. The current distinction affords a degree of anonymity considered essential to protect the Funds' proprietary trading strategies from competitors or from others who may attempt to "front run" their strategies, as well as from other adverse impacts on a share's price that may result from their identity as an investor being known. In some cases, the success of these strategies depends on this anonymity. Moreover, the shareholder list is prepared once a year, specifically for voting purposes, and may not reflect the extent of all economic exposure an investor may have to an issuer.

The loss of the OBO/NOBO distinction may result in costs to the Funds and other institutional investors who may choose to restructure and maintain their holdings through nominee accounts in order to continue to preserve their anonymity. Alternatively, the Funds may review and reassess certain of their investment strategies in light of the loss of anonymity. The Funds also suggest that the OBO/NOBO distinction in the context of shareholder-issuer communication is a policy issue that merits separate discussion. Maintaining the OBO/NOBO distinction does not stand in the way of reforms to the proxy voting infrastructure.

(b) Next steps proposed by the CSA

The Funds understand that the CSA intends to engage in targeted consultations with stakeholders to study the issues discussed in the Consultation Paper. The Consultation Paper states that these external consultations may include holding a roundtable and forming an advisory committee to serve as a forum for sharing data and discussing possible policy initiatives. We are encouraged to see the announcement by the OSC on November 5, 2013 concerning the roundtable it will hold on January 29, 2014 to further explore the issues identified in the Consultation Paper and we would be pleased to participate in this roundtable.

In addition, we urge the CSA to undertake an end-to-end review of the proxy voting infrastructure and believe this review can be facilitated by forming an advisory committee comprised of the key players in the system (*e.g.*, issuers, investors, intermediaries, custodians, transfer agents and proxy service providers). The primary purpose of the advisory committee would be to address the responses received regarding the integrity of the proxy voting infrastructure discussed during the regulators' consultations, and outline an agenda to propose specific solutions for comment. While a roundtable can help moving the discussion forward on certain issues (a recent example included the Weinberg Centre Roundtable on end-to-end voting confirmation in the U.S.), the Funds believe an advisory committee will provide continued attention on these issues and evaluate the progress made to address the concerns discussed in the Consultation Paper. The Funds would also welcome the opportunity to participate in any future targeted consultations organized by the CSA.

5. Summary of Recommendations

As outlined in the previous sections of this letter, the Funds propose the following:

(a) Vote Entitlements Must be Fully Reconciled (First Priority)

(i) Vote reconciliation

- The CSA should publish for comment amendments to NI 54-101 requiring that all intermediaries implement "pre-mailing" reconciliation practices in respect of all meetings to prevent over-reporting issues.

- NI 54-101 should be further amended by moving the current guidance in the Companion Policy into the Instrument to strengthen the requirement that intermediaries must provide reconciled and accurate records as at a record date for a shareholder meeting.

- The CSA should investigate all of the circumstances in which a share may be voted more than once and advise what, if any, remedial regulation it proposes.

- The CSA should report on the practices adopted by intermediaries to reconcile their records with their CDS position.

- Intermediaries should be required to disclose the policies and procedures used to reconcile voting entitlements after they receive a notification from Broadridge's ORPS.

- Meeting tabulators should be required to make publicly available their tabulation processes and related procedures and to disclose their reconciliation method when dealing with voting discrepancies.

(ii) Securities lending

- The CSA should investigate whether securities lending by financial intermediaries and custodians materially contributes to over-reporting and over-voting, and report on the situations causing unresolved over-voting and advise what, if any, remedial regulation it proposes.

- The CSA should investigate whether IIAC member firms and the custodians are the only parties who administer securities lending programs and report its findings.

(iii) Omnibus proxies and restricted proxies

- The CSA should encourage and facilitate the adoption of electronic file transmission of mini-omnibus proxies.

- The CSA should investigate how often tabulation issues are related to the issuance of restricted proxies and report its findings.

(b) End-to-End Vote Confirmation (Second Priority)

- The CSA should mandate end-to-end vote confirmation in all circumstances, regardless of Broadridge's involvement, so as to permit all investors to determine that their votes have been given their full weight.

(c) "End-to-End Operational Audit of the System (Third Priority)

(i) Audit

- The CSA should commission an independent "end-to-end" operational audit of the proxy voting infrastructure (possibly every three years).

(ii) Other solutions to increase confidence in the proxy voting infrastructure

- Each financial intermediary subject to NI 54-101 should be required to file a quarterly certification indicating that the intermediary has reconciled its beneficial ownership information to its depository record date positions as of the record date and has submitted files containing only the positions of holders entitled to vote as of the record date.

- The CSA should ensure that all service providers whose functions are integral to the effectiveness of the proxy voting infrastructure are designated as "market participants".

- The CSA should review NI 54-101 to reflect the evolution of commercial practices and propose amendments for comment to ensure that the Instrument regulates all service providers whose functions are integral to the effectiveness of the proxy voting infrastructure.

(d) Impact of the OBO/NOBO concept on voting integrity

- The CSA should continue to maintain the OBO/NOBO distinction provided for in NI 54-101 and should keep the debate concerning shareholder communication and other issues related to the identity of shareholders separate from its review of the integrity of the proxy voting infrastructure.

(e) Next steps

- The CSA should form an advisory committee comprised of the key players in the system to undertake an end-to-end review of the proxy voting infrastructure.

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We would once again like to thank the Canadian Securities Administrators for publishing the Consultation Paper and seeking to advance discussions surrounding the proxy voting system in Canada. If you would like to discuss any of our comments, or if we can be of any further assistance to you, please do not hesitate to contact us.

Yours very truly,

ALBERTA INVESTMENT MANAGEMENT CORPORATION

by 

Darren Baccus
Associate General Counsel

OMERS ADMINISTRATION CORPORATION

by 

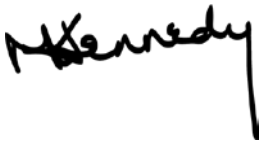
Blair Cowper-Smith
Executive Vice President & Chief Legal Officer

BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

by 

Doug Pearce
Chief Executive Officer/Chief Investment Officer

ONTARIO TEACHERS' PENSION PLAN BOARD

by 

Melissa Kennedy
General Counsel and Senior Vice-President, Corporate Affairs

CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

by 

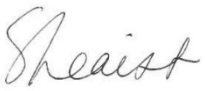
Ginette Depelteau
Senior Vice-President, Compliance and Responsible Investment

PUBLIC SECTOR PENSION INVESTMENT BOARD

by 

Stéphanie Lachance
Vice President, Responsible Investment and Corporate Secretary

CANADA PENSION PLAN INVESTMENT BOARD

by 

Stephanie Leaist
Director, Responsible Investing