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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
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Superintendent of Securities, Northwest Territories
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RE: Canadian Securities Administrators ("CSA") Consultation Paper 54-401 Review of the Proxy Voting Infrastructure (the "Consultation Paper")

The Investment Industry Association of Canada ("IIAC")[1] welcomes the opportunity to comment on the Consultation Paper dated August 15, 2013, published by the CSA to address concerns regarding the integrity and reliability of the proxy voting infrastructure.

[1] The Investment Industry Association of Canada (IIAC) is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 166 IIROC-regulated investment dealer Member firms in the Canadian securities industry. These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and

As recommended in the IIAC's previous submission to the OSC dated March 31, 2011, we believe that the CSA is the most appropriate organization to carry out an independent review of the proxy voting infrastructure in Canada, and we would like to commend the CSA for the leadership it continues to show by initiating this work. We hope that the information and perspectives contained herein will make a positive contribution to the CSA's consultation process, and as indicated in some of the sections below, we would like to provide feedback on an ongoing basis as we continue our internal consultations and discussions with other stakeholder groups.

GENERAL COMMENTS

1. Our members are committed to a well-functioning proxy voting system in Canada.

The members of the IIAC have a strong interest in ensuring that the shareholder communications and proxy voting system works efficiently and reliably for the benefit of shareholder clients, and in accordance with the requirements of National Instrument (NI) 54-101 and other related securities and corporate law requirements. As a recognized "first point of contact" for many investors, IIAC member employees and advisors receive the frustrated calls of shareholders when they experience voting issues. Our members have dedicated resources and teams of highly experienced professionals in corporate actions and proxy voting who identify and deal with various shareholder voting issues on a timely basis. It is in our members' best interests to ensure that the system functions efficiently and with integrity, because it means that our shareholder clients' best interests and those of the capital markets generally are also well-served.

2. The proxy voting system and infrastructure in Canada generally functions well; it requires improvement in the form of better communications between participants, not an infrastructure or regulatory overhaul.

We believe that the shareholder proxy voting system in Canada is generally well-functioning. It is very complex, and this presents a number of operational challenges, which our members and clients face on a daily basis – but these complexities have been built into the system for valid reasons, such as protection of personal information and privacy (see Questions 23 and 24). We are confident that all participants in the system strive to ensure that shareholder votes are conducted with integrity; however, there are always opportunities for industry enhancements to be made, some of which are already in progress. One of the keys to improve the system as a whole is for participants to work cooperatively and to communicate effectively with one another. The proxy voting system in Canada is not "broken", nor does it require a massive regulatory overhaul to address the challenges identified in the Consultation Paper. We say this based on the many years of industry experience of our members, who are often surprised and disappointed by the image often portrayed in the media of a shareholder voting system in crisis. With the exception of a handful of frequently publicized incidents, some of which

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underwriting in public and private markets for governments and corporations. The IIAC provides leadership for the Canadian securities industry with a commitment to a vibrant, prosperous investment industry driven by strong and efficient capital markets. For more information, visit **http://www.iiac.ca**.

occurred almost a decade ago and which prompted immediate corrective action by the participants involved, our working group members generally concur that in their collective experience, voting irregularities are very infrequent occurrences. ***We believe that these infrequent occurrences could be further reduced or eliminated in the future if communications between participants can be improved.*** However, we can understand, given the current absence of communications, why investors and issuers would be concerned about a lack of transparency and visibility into the process.

Furthermore, we believe that the instances of voting irregularities that have occurred in the past do not reflect the general state of proxy voting in Canada. They represent isolated instances, usually occurring in highly contested votes, where interested parties push what is normally a well-functioning proxy system to its operational limits. If securities regulators are concerned about the practices of stakeholders which might constitute abuse of the proxy voting process, they could consider issuing further guidance or introducing tougher sanctions on parties who wilfully abuse the system.

3. Any policy review process should consider and leverage industry initiatives already in progress.

We believe that any policy making decisions by the CSA to facilitate improvements should be based on more than isolated or purely anecdotal evidence, and should consider the most recent information available from the industry, including improvements to operations and procedures that have been developed by participants in response to particular challenges that have been identified. It is important that the significant work to improve the proxy system that has been undertaken by various participants over the past five years, including investment dealers, should be considered and evaluated as part of CSA's review.

4. Any policy review process should consider the impact on the capital markets as a whole, including a cost-benefit analysis.

Additionally, changes made to the proxy voting infrastructure, including the regulatory scheme overseeing the infrastructure, should only be contemplated after considering the impacts on the structure as a whole. Changes should improve the process for all shareholders, retail and institutional. Benefits must outweigh costs, taking into consideration how capital markets function and the stability of the capital markets generally. We believe that reasonable, incremental improvements to the existing proxy system make the most sense – enhancing the reliability and transparency of the existing system at a minimal cost to shareholders, issuers, intermediaries and the capital markets as a whole.

5. The CSA can play an important role in facilitating discussion and identifying pragmatic and targeted solutions, and we are committed to taking part in these discussions with other industry participants.

We also note that the questions posed in the Consultation Paper do not canvass all issues impacting the efficiency and reliability of the proxy voting structure. The CSA's review should be comprehensive and consider all possible improvements to the system, and a critical role of the CSA should be to facilitate discussion and cooperation among all participants to (i) identify and prioritize the most material issues affecting the integrity of shareholder voting in Canada; and (ii) target and leverage improvements and enhancements (some of which may already be in development) to address the identified issues and

achieve the maximum benefit for shareholders. We strongly support the idea of CSA roundtables and advisory committees, and we are committed to actively participating. We urge other participants and service providers to participate fully in these discussions as well.

6. Education of shareholders and issuers is integral to a well-functioning proxy voting and corporate governance regime in Canada – and stakeholders can help.

Finally, we would like to re-iterate our comments from our previous submissions about the important role the CSA must play, along with participants, in investor and issuer education. The current focus on shareholder voting issues is a timely opportunity for Canadian securities regulators and other interested entities to educate investors and reporting issuers on the importance of voting to the corporate governance process, and the broad implications of NOBO and OBO elections and the choices made throughout the process by investors, issuers and participants. Stakeholders in the process should be involved in developing educational materials; however, regulatory bodies have an important role in ensuring that materials accurately reflect regulatory requirements and are coordinated at a national level.

GENERAL QUESTIONS

QUESTION 1: Is accurate vote reconciliation occurring within the proxy voting infrastructure?

Parties involved in the proxy voting process can only speak to the portions of the infrastructure to which we have access and which we maintain, based on information available to us. We generally cannot speak to processes or information that is beyond our access or control.

Canadian investment dealers, as members of the Investment Industry Regulatory Organization of Canada ("IIROC") must keep and maintain at all times a proper system of books and records[2], and must establish and maintain adequate internal controls in accordance with IIROC's Internal Policy Control Statements.[3]

IIROC Rule 2600, Internal Control Policy Statement prescribes the following requirements and guidance (edited for relevance):

> *3. Clearing*
>
> *(a) Clearing reports containing the settlement activity from the previous day are compared and balanced to company records promptly.*

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[2] IIROC Dealer Member Rule 17.2. "Every Dealer Member shall keep and maintain at all times a proper system of books and records".

[3] IIROC Dealer Member Rule 17.2A. "Every Dealer Member shall establish and maintain adequate internal controls in accordance with the internal control policy statements in Rule 2600."

(b) The reconciliation of the clearing or settlement of accounts should be performed by firm personnel independent of trading.

(c) Prompt action is taken to correct differences.

…

(g) Clearing records are reconciled regularly to clearing house and depository records to ensure agreement of securities and cash on deposit.

These requirements are subject to audit requirements and standards set by IIROC[4] and dealers may be subject to IIROC enforcement hearings as a result of non-compliance[5], which could result in a number of penalties, including suspension of certain rights and privileges or full termination and expulsion from IIROC membership.[6]

Investment dealers, as CDS participants, are also required by CDS rules to accurately reconcile their books of record at the end of every trading day.[7] A failure to satisfy the requirements of the CDS Rules could result in a discretionary suspension of a participant.[8]

As described in the Consultation Paper, it is the reconciled number of shares as of the record date in the dealer's book of record that is transmitted to Broadridge Investor Communication Solutions, Canada ("Broadridge"). Broadridge services could then be used to identify potential over-reporting situations on which dealers can take further remedial action in advance of the shareholder vote.

We question whether the position held by some advocates that establishing a "one-for-one" voting system that can trace each share voted back to a specific shareholder is the most appropriate way of introducing increased integrity into the proxy voting process. While well intentioned, this view does not take into account the complexities of the intermediated holding system, the fungible nature of shareholding, and the massive operational infrastructure that is required (and currently in place) to

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[4] IIROC Dealer Member Rule 16 and Rule 300. Rule 300.2(a)(iv): "Review the balancing of all security positions and open commodity and option contracts. Review the reconciliation of all mutual funds, brokers, dealers and clearing accounts. Where a position or account is not in balance according to the records (after adjustment to the physical count), ascertain that an adequate provision has been made in accordance with the Notes and Instructions for out of balance positions embodied in Statement B of the Joint Regulatory Financial Questionnaire and Report for any potential loss".

[5] IIROC Dealer Member Rule 20.30. "The Corporation may hold hearings, as set out under this Rule, in order to ensure compliance with and enforcement of the Rules and Rulings and federal or provincial statutes, regulations, rulings or policies relating to trading or advising in respect of securities or commodities."

[6] IIROC Dealer Member Rule 20.34(2).

[7] CDS Participant Rules (Release 2012.12.10), Rule 3.4.3 Verification of Securities Balances. "On each Business Day, CDS shall make available to each Participant its Ledger balance data, including Securities Balances. Each Participant shall review such data and verify the data against its own records. A Participant shall be deemed to have accepted the accuracy of the Ledger balance data unless the Participant informs CDS of the discrepancy before the end of the next Business Day after the day on which the data is made available."

[8] CDS Participant Rules, Rule 9.1.2(i).

support the efficient functioning of the capital markets. ***It is proposing a systemic shift in how capital markets operate as a solution to suspected problems that may only require targeted improvements.*** Shareholders have an expectation of voting integrity, but they also have an expectation of efficiently run capital markets. The CSA should maintain perspective of the overall impact of any proposed changes on markets, participants and shareholders and find the right balance between accuracy and efficiency.

QUESTION 2: What type of end-to-end vote confirmation system should be added to the proxy voting infrastructure?

We support the concept of an end-to-end vote confirmation system, such as the one currently being developed by Broadridge for use in the U.S. marketplace, and would like to see a similar initiative supported by the CSA and other market participants and stakeholders in Canada. It is an industry-built solution that will meet the need for transparency and reliability for investors and issuers, balancing this with the concerns of all to avoid unnecessary costs by working within the existing proxy infrastructure. The Broadridge solution would allow the intermediaries to play a key role in providing the underlying access to confirmation for our client accounts. We urge other industry stakeholders, including the official tabulators who hold the important information about how the votes are actually cast at the meeting, to work towards and participate in this initiative. We recognize that as intermediaries, our members will also need to examine our communications practices in order to ensure the success of such an initiative.

VOTE RECONCILIATION

QUESTION 3: What processes do intermediaries implement to prepare their back office files for transmission to Broadridge? In particular what, if any, adjustments are made before the files are provided to Broadridge, e.g., in the case of retail clients, to address margin account shares that can be loaned by intermediaries, and in the case of institutional clients, shares that are part of a share lending program?

Intermediaries use different back-office services with different functionality, and therefore may approach account reconciliation in a slightly different fashion; however there are general processes and principles that can be consistently identified from our consultation with members. These processes are often characterized as “pre” or “post” reconciliation, depending on whether they occur before or after the meeting record date.

“Pre”-reconciliation: As mentioned in Question 1, all participants must reconcile their books and records daily. Reconciliation files are downloaded on a daily basis to ensure that all positions are accurately reflected and balance. Any exceptions are researched and documented (e.g. corporate transactions or failed trades). This daily reconciliation process, while not specific to proxy, is a process that is already subject to audit by regulators. On the voting record date, all dealers review file transmissions and records to ensure that they are complete and that all voting positions are accounted for.

"Post"-reconciliation: Subscribing dealers will review the Over Reporting Prevention Service report provided by Broadridge, investigate any discrepancies between the number of holdings reported by the dealer and the dealer's CDS position, and make adjustments to prepare for voting. A typical process involves reviewing trades, corporate actions, securities lending transactions, and shares held at multiple depositories. The most prevalent example of an adjustment that might be made is because of votes held in multiple locations (both at CDS and DTC). Please refer to our answer to Question 5 for more information. Once the dealer has identified the issue, the necessary adjustments are made through the use of the service provider's system, and the source of the issue and resolution are documented for the dealer's internal files. It is our understanding that the vast majority of beneficial shareholdings in Canada are held by dealers subscribing to the Over Reporting Prevention Service; however not all dealers in Canada are currently subscribed to the Service. Where dealers are not subscribed, they may be entirely dependent upon effective communications with tabulators to identify any potential voting irregularities. Despite the fact that this may only impact a very small number of shareholdings, it is worth further investigation to determine if this is an area where reconciliation practices can be improved.

What is also somewhat unclear from our members' discussions of "post" reconciliation adjustments is whether the tabulator of the meeting is receiving, monitoring and reconciling the updated adjustments made to the number of holdings prior to the meeting; if tabulators do not receive and reconcile the adjustments, it may appear as though an over-voting situation is occurring, when in fact the tabulator has not received and reconciled the most recently corrected number of holdings. If a better communications link was established between intermediaries and tabulators, this type of situation likely could be eliminated altogether.

Institutional Share Lending: In the case of institutional clients that are part of a share lending program, the share lending contract dictates whether the lender or borrower is entitled to vote, and it is more common for the vote to be transferred to the borrower with the loaned securities (see Question 9). Custodians and dealers who act as agents for lender clients generally require the lender to recall the loaned securities before the record date for the purposes of exercising the right to vote. Processes for recall are defined in the share lending agreement. Some dealers do allow lender clients to obtain a proxy from the borrower to vote, but in practice, it is rare for a dealer to receive a request for a proxy from a lender to vote on a lent position. If one is received, the position and counterparties are reviewed and verified before the dealer authorizes such a proxy to the lender. Because of these practices and because the position on the books and record of the dealer and at CDS is reduced by the number of shares lent (and is subject to the reconciliation processes described in question 1), the likelihood of any type of over-reporting or over-voting arising from this particular situation is considered to be very low. If any irregularities do arise, they could also be identified through tools such as the Over Reporting Prevention Service.

Despite this low likelihood, some dealers have also recently undertaken additional back office system upgrades that allow for more accurate netting by account of long and short positions, which should effectively deal with this issue. While we would urge other dealers to implement similar upgrades over time to provide better service to their clients, we believe that this should remain the choice of dealers and their services providers – systems changes may be more complex and costly to implement for some

than for others depending on their existing back office functionality, and we agree that generally, the risk that institutional lending poses to the integrity of the vote is very low.

Retail Margin Accounts: The situation of retail margin accounts presents a very different challenge for reconciliation purposes. It has been standard industry practice not to reduce each individual margin account by the percentage of shares that might be lent out of these accounts on an individual basis (a number which could change frequently), and as such, full retail margin account positions are transmitted to Broadridge as part of the dealers' response date file. This practice developed on the basis that reconciling individual retail accounts separately to account for any shares that might be loaned under a margin agreement is a very complex systems change (there are currently no systems available that can make this operational link) to deal with a relatively insignificant number of shareholdings (it is estimated that retail shareholders represent only 20% of all shareholdings, and an even smaller subset would be subject to share lending under margin accounts). Because of this, and because the voting rates for retail shareholders are typically very low, it would be extremely unlikely for an unreconciled retail margin account to affect the outcome of a proxy vote.

However, as an overall comment, we recognize that securities lending programs have been identified as an area of potential risk for over-reporting, and we believe that the CSA is correct to engage in further consultation with industry participants to further pinpoint potential areas for industry development of best practices with respect to share lending account reconciliation.

QUESTION 4: How frequently do intermediaries' back office files transmitted to Broadridge reflect share positions that exceed their CDS reported position? What percentage of their positions are being voted?

The industry views tools such as the Over Reporting Prevention Service provided by Broadridge as part of the dealers' reconciliation process. It is a tool designed to identify and work through reconciliation issues that exist, well in advance of the shareholder meeting.

It is not clear exactly what is being asked in the second part of the question – if it is asking what percentage of the position that exceeds the CDS position is being voted, we would purport that it would be 0%. Provided that a CDS or omnibus position has been provided to Broadridge, and that the dealer is subscribed, the Over Reporting Prevention Service will not allow a vote that exceeds the CDS position to be passed on to the official tabulator without intervention by the intermediary. At the meeting, the official tabulator should not be allowing more than 100% of the shares held to be voted. IIAC members are not aware of situations where they have been contacted by tabulators reporting reconciliation problems that have not been resolved.

We do note that under section 7 of the STAC Proxy Protocol[9] it doesn't appear that tabulators are required by the Protocol to request a revised reconciliation of votes where the transfer agent doesn't carry out the mailing of proxy materials, only where the transfer agent receives a NOBO list that exceeds

[9] STAC Proxy Protocol, March 2012, p. 11, section A7 http://www.stac.ca/Public/PublicShowFile.aspx?fileID=199

the registered position. As such, it is not clear what actions are typically taken by tabulators when suspected over-reporting and over-voting problems arise. ***More transparency about the processes used by tabulators at meetings could be extremely helpful to determine how problems are addressed and what presumptions are made.***

However, if this question is asking generally what percentage of dealers' holdings are typically voted, this can vary widely depending upon the issuer and the type of meeting; however, in our members' experience, it is extremely rare for 100% of a position to be voted by a dealer. Information provided by Broadridge indicates that overall voting rates for all meetings is typically around 40%, depending on the size of the issuer.

QUESTION 5: If Broadridge notifies an intermediary that the share position in its back office file exceeds its CDS position, what, if any processes does the intermediary implement to reconcile the share position?

Please see our answer to Question 3 ("post"-reconciliation). As mentioned above, if tabulators do not receive and reconcile the adjustments, it may appear as though an over-voting situation is occurring, when in fact the tabulator has not received and reconciled the most recently corrected number of holdings. We believe this could be resolved through better communications between intermediaries and tabulators.

One other issue has been consistently identified by our members as a suspected major contributing factor to the appearance of over-reporting. Where issuers' shares are held in both CDS (Canada) and DTC (United States) accounts, irregularities have occurred (and continue to occur) in the reporting of the DTC position to the tabulator. Initially (and as reported in previous IIAC submissions in 2010-2011), these irregularities were presumed to occur for two reasons:

1. It was suspected that the DTC position was not fully reconciled into the CDS position provided to Broadridge because of a lack of an electronic link. In conducting discussions to prepare this submission, we have learned that DTC positions held through CDS as NYLink or DTC Direct are provided by CDS to Broadridge and presumably to the official tabulator.

2. Without a DTC omnibus proxy, it may appear that an intermediary is over-reporting its position held through CDS; it was understood by our members that DTC will only provide its omnibus proxy directly to the issuer and not to its tabulator (presumably in instances where the positions are not transmitted as described above). If the issuer is not aware that it must forward this DTC proxy onto the transfer agent, or does so too late, the voting cannot be reconciled correctly and in a timely fashion.

In a preliminary survey conducted by a few of our largest members back in 2011, it was estimated that this problem could account for as much as 90% of the instances in which over-reporting appears to exist. During IIAC working group discussions to prepare our response to the Consultation Paper, it was again estimated that this issue could still account for the vast majority of suspected over-reporting issues. Because IIAC members still report this DTC reporting issue as an ongoing problem affecting

reconciliation, we would like to investigate it further to determine what remedial steps might have to be taken by industry, and what assistance, if any, regulators might be able to provide.

Furthermore, as described in Question 3, even if intermediaries are able to identify and correct any DTC reporting irregularities, if the tabulators do not receive and reconcile these adjustments, it may appear as though an over-voting situation is occurring.

QUESTION 6: How do the dealer members of IIAC in practice ensure that no vote is submitted for a lent share unless they have received a proxy from the dealer who borrowed the shares?

As mentioned above in Question 3, some dealers do allow lender clients to obtain a proxy from the borrower to vote (or the borrower in the rare instance where the lender retains the vote), but in practice, it is rare for a dealer to receive a request for a proxy from a lender to vote on a lent position. If one is received, the position and counterparties are reviewed and verified before the dealer authorizes such a proxy to the lender.

QUESTION 7: Where do intermediaries document the relevant processes, and is a client investor or an issuer able to access this information?

The policies and procedures of each investment dealer are not publicly accessible, but would be documented internally at each firm. We are not convinced that the public accessibility of reconciliation processes would be likely to have an effect on the integrity of the voting process, or would be particularly valuable to retail clients – it would likely either be so technical that it would be difficult for clients to understand, or so generalized and simplified that it wouldn't be providing enough information to clients. However, the IIAC is investigating whether there is merit in producing an industry document outlining the functions undertaken by investment dealers to support the proxy process, or other types of informational support that could be made publicly available. We note the excellent work that has been undertaken in this regard by SIFMA in the United States.[10]

QUESTION 8: Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

No system will be perfect; but we believe that most of the components are already in place to identify and remedy any situations that could result in over-reporting or over-voting. A complete overhaul of the principles and systems that run Canada's capital markets is unnecessary, and perhaps the biggest improvement that could leverage the best of the existing components (and minimize existing gaps where information might be lost) is a system of open communication among participants. The existing system is complicated, but it has been designed to allow shareholders some choice in how they participate and to maintain their privacy, as well as to accommodate the vast technological changes that have taken place in securities trading, and these principles should be preserved.

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[10] For more information, see SIFMA's Proxy Resource Center at: **http://www.sifma.org/education/proxy-resource-center/proxy-resource-center/**.

As mentioned in Question 4, it would be helpful to better understand the presumptions and actions taken by the tabulators in the rare instances when a suspected over-voting situation arises. There is not one mandated presumption or approach that can be identified in the STAC Proxy Protocol, and as noted above, no requirement to contact the intermediary to alert them to the situation. We would support an industry or policy initiative designed to ensure that tabulators pursue a consistent approach when resolving vote reconciliation issues, and to consistently contact the dealers in question as part of this approach. Our members would be happy to work with tabulators to resolve any rare reconciliation issues that have not already been identified and resolved by the time of the voting cut-off deadline; the general feedback from IIAC members is that when they are contacted by tabulators, voting irregularities can be resolved efficiently; otherwise, our members have no knowledge of how suspected over-reporting situations are resolved by the tabulator at the meeting. The proxy voting advisory group suggested by the CSA in the Consultation Paper would be an excellent place to start identifying and promoting industry "best practices".

SHARE LENDING

QUESTION 9: Which party (the lender or the borrower) should have the right to vote in a share lending transaction? Should securities regulators specifically address which party to a share lending transaction should have the right to vote?

Most dealers and custodians in Canada are using the international securities lending agreements (GMSLA, ISLA) as their preferred master agreements, and not the IIROC share lending agreement (other than where there are only Canadian counterparties, or outstanding legacy agreements). The provisions in the international share lending agreements state that the right to vote moves to the borrower with the lent share.

Our members' concern is that if regulators specifically address which party to a share lending transaction should have the right to vote, it could create inconsistencies with existing agreements which reflect global market practice.

Additionally, this aspect of the share lending and proxy systems is not in need of remedy (i.e. determining which party has the vote). We believe that the CSA should focus on the back office mechanisms and practices that track that entitlement to vote – and even in that area, it is not entirely clear what improvements might be required to enhance the integrity of the proxy voting process.

OMNIBUS PROXIES AND RESTRICTED PROXIES

QUESTION 10: How often are tabulation issues caused as a result of missing or incomplete omnibus proxy documentation? How could this be remedied?

Please see our answer to Question 5 with respect to securities held in DTC accounts. However, where our members are not contacted by tabulators, they do not have knowledge of tabulation issues. As

mentioned above, we would support an industry approach to develop more consistent communications between tabulators and intermediaries when resolving vote reconciliation issues.

QUESTION 11: How often, and in what circumstances, are restricted proxies being used?

Canadian investment dealers rarely encounter requests for restricted proxies from their clients, but our understanding is that when they are requested, it is generally to deal with situations where an investor provides late instructions to a dealer, and the vote is expedited, by-passing the Broadridge system, going directly to the transfer agent acting as the tabulator. Examples include where an investor, for whatever reason, has not had access to shareholder meeting materials, or where shares are purchased after the record date, and the purchaser would like to vote. The process for restricted proxies is similar to the process that would be used for shareholders of physical securities where there are tight time constraints. However, we would like to emphasize that in our members' collective experience, restricted proxies are extremely rare, and in fact some of our members have never encountered a request for a restricted proxy.

QUESTION 12: Do intermediaries have documented policies and procedures regarding when they will issue a restricted proxy for a client?

There are internally documented policies and procedures at investment dealers for the voting of physical securities; this would generally be similar to the process used for restricted proxies. Generally, because it is a very rare occurrence, a restricted proxy would require management review and approval.

QUESTION 13: An intermediary who submits a restricted proxy should ensure that the same position is not also being voted through the tabulation report submitted by Broadridge. Are intermediaries doing so, and how do they document that they have done so?

In general, members that have encountered requests for restricted proxies have procedures in place and would internally document these processes. In the example above where a shareholder purchases shares after the record date but would like to vote, the dealer would contact the seller of securities (who is on the record to vote) to obtain their proxy and ensure that they will not be voting the shares. Broadridge is also notified in the instance of a restricted proxy to "block" the account in question so that it cannot be voted twice.

However, as outlined in questions 4 and 8, where multiple proxies are submitted to a tabulator – and in particular where the submission of multiple proxies might result in a potential over-voting situation – it is not clear under the STAC Protocol how the tabulator will resolve the situation, or whether the tabulator is even required to contact the intermediary to reconcile any discrepancies.

QUESTION 14: Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

Generally, we believe that further regulation is not required in this area, however; as recommended in question 8, we would support an industry approach to develop more consistent communications between tabulators and intermediaries when resolving vote reconciliation issues. The proxy voting advisory group suggested by the CSA in the Consultation Paper would be an excellent place to start identifying and promoting industry "best practices".

OVER-REPORTING AND OVER-VOTING

QUESTION 15: How often do over-reporting and over-voting occur (including over-votes that are ultimately resolved)?

Please see answers to questions above with respect to over-reporting. As mentioned in those questions, where IIAC members are not contacted by tabulators, they do not have any visibility into whether suspected over-reporting and over-voting issues are encountered by tabulators and how these are reconciled by the tabulator.

QUESTION 16: To what extent to over-reporting or over-voting situations actually reflect a situation where an investor is attempting to vote when it does not have the right to vote (e.g., because it has lent shares and has no voting entitlement as at the record date), as opposed to other reasons such as missing omnibus proxy documentation?

Please see our answer to question 15. However, as articulated in many of our responses, we suspect that there are a few targeted areas where the passing of information and communications could be improved, and these areas should be further reviewed by regulators.

QUESTION 17: Is over-reporting or over-voting more common for certain types of intermediaries than others, e.g., smaller intermediaries, intermediaries who do not subscribe to Broadridge's services? Are NOBO solicitations by issuers a factor in the frequency of over-reporting or over-voting?

We do not have any evidence as to whether suspected over-reporting or over-voting is more common among certain types of intermediaries. We have identified that the appearance of over-reporting and over-voting seems to be more common where shares are held in multiple locations (DTC/CDS) (see question 5). We also suspect, as mentioned in our general introduction that voting reconciliation issues seem to be more prevalent in isolated instances where a shareholder meeting is particularly contentious and where many interested parties are attempting to access the system, perhaps very close to proxy voting deadlines. Targeted review and reform in these instances may prove effective at curbing practices that the CSA believes are not in the best interests of the capital markets.

QUESTION 18: If Broadridge notifies an intermediary of a pending over-vote? What processes does the intermediary implement to reconcile the share positions?

Please see answers to questions 3, 5 and 6 above with respect to over-reporting.

QUESTION 19: Where do intermediaries document these processes, and is a client or an issuer able to access this information?

Please see our answer to question 7.

QUESTION 20: Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these concerns?

Please see our answer to question 8. We reiterate our support for an industry approach to develop more consistent communications between tabulators and intermediaries when resolving vote reconciliation issues.

END-TO-END VOTE CONFIRMATION

QUESTION 21: Broadridge has advised the CSA that it has started to develop end-to-end vote confirmation functionality. What is the current formulation and development status of end-to-end vote confirmation functionality in Canada?

It is our understanding that Broadridge will provide the CSA with status on the development of their proposed end-to-end vote confirmation service in Canada. Please also see our answer to question 2.

QUESTION 22: What functionality should be part of an end-to-end vote confirmation system? For example, should voter anonymity be built into the functionality, or is disclosure of voter identities necessary for an effective system? At what point in the proxy voting process should investors receive confirmation as to whether their vote will be accepted, and at what level, e.g., at an intermediary level or at an investor account level?

As mentioned in our answer to question 2, the most critical aspect to ensure the functionality of an end-to-end vote confirmation system in Canada is for all parties holding information about the shareholder vote to participate – otherwise it cannot function as a true "end-to-end" system. To achieve this, the official tabulators must disclose that votes have been received, accepted and counted, and communicate any presumptions that have been applied where there has been a dispute about acceptance at the meeting. Disclosure of voter identity is not necessary for an effective system, and the NOBO-OBO concept should be retained (see question 23 below). In general, the confirmation should be received at the investor account level; but for managed accounts the confirmation should be received at the account manager level.

THE OBO-NOBO CONCEPT

QUESTION 23: Are there any specific instances where the existence of the OBO-NOBO concept has compromised the accuracy and reliability of proxy voting?[11]

a. Support for the OBO-NOBO Concept

The Consultation Paper states that "there has been some suggestion that the OBO-NOBO concept reduces the reliability of proxy votes"; however, we believe that the OBO-NOBO concept itself does not compromise the vote reconciliation process. There are certain instances which we have identified where the OBO-NOBO concept has created specific situations where shareholders have been disenfranchised (rather than impacting the accuracy of the vote reconciliation itself), but we believe that these issues can be remedied while maintaining the OBO-NOBO concept. We also reiterate our point made in previous questions that the protocol followed by tabulators to reconcile votes prior to and at the shareholder meeting should be transparent and consistent regardless of the procedure chosen for distribution of meeting materials (i.e. whether NOBO list is provided to transfer agent for mailing or whether NOBO/OBO distribution carried out by intermediaries or agents).

We do not believe that the commitment to the OBO-NOBO concept should be revisited by regulators. Retail investors continue to be concerned about protection of their personal information and potential unwanted solicitation, and more than half of all beneficial shareholders still maintain OBO status. IIAC members still receive complaints from their retail clients who receive what they perceive to be annoying and unsolicited communications from third parties who have obtained NOBO lists under NI 54-101. It makes sense that frustrated investors, when faced with the choice, would choose the "do-not-call"-like option, and it is one that is often suggested by IIAC members if they are aware of their clients' privacy concerns.

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

- There will be effects on shareholder privacy and the use of and distribution of shareholder information, especially with third parties (see below).
- There will be an impact on institutional shareholders and the way that they operate, as it is our understanding that virtually all institutional shareholders are OBOs.
- There will be an impact on discretionary money management services offered by investment dealers to clients that require shareholders to be OBOs in order to receive those services.

[11] The IIAC's answers to Question 23 have been adapted from our March 31, 2011 submission to the OSC and updated where applicable to reflect current conditions and industry discussions.

- There will be serious impact and costs relating to operational issues (coding changes, KYC and other account opening procedures and disclosures).

- There will be implications for the entities that will have to provide notice to over 50% of shareholders who currently have OBO status – that they no longer have OBO status, and what that means.

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

Related to this issue, we note that recent amendments to NI 54-101 (effective February 11, 2013) provide stricter rules on the use of NOBO lists by parties other than the reporting issuer. Limiting the instances in which third parties can gain access to shareholder information, and providing shareholders with greater comfort that their information is being protected and used only with respect to certain specific shareholder matters may be an important incentive for them to choose to be NOBOs.

b. Disenfranchisement of Objecting Beneficial Shareholders (OBOs)

All beneficial shareholders should be entitled to receive proxy materials and to vote at shareholder meetings. However, this principle must be carefully balanced with consumer privacy. Investors are increasingly aware of privacy issues, and are interested in protecting their personal information and limiting the ability of issuers and their agents to contact them directly. OBOs have not opted out of the shareholder communications and proxy voting process, but have been given the option under NI 54-101 to object to the intermediary disclosing ownership information about the beneficial owner.

NI 54-101 remains silent with respect to which party should pay for the sending of shareholder materials to OBOs who have opted to receive the materials. While we appreciate the amendments made to NI 54-101 in February 2013 that provide more disclosure to the shareholder about the choice of the issuer to pay for mailings to OBOs, we still believe that NI 54-101 should be further amended to clarify that the reporting issuer must pay for mailings to OBOs as outlined below.

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

We believe that there may also be considerable confusion among parties who interpret NI 54-101 – effectively a mix-up between shareholders that have chosen to be OBOs and shareholders that have chosen not to receive materials. Enough anecdotal experience exists indicating that various parties mistakenly believe that OBOs have “opted out” of the shareholder communications and voting process

or that they do not want to receive materials, that it merits further attention by the regulators. Issuers may believe that they are following the wishes of OBOs by choosing not to mail to these shareholders, when in fact they may be effectively shutting these shareholders out of the proxy process.

This emerging scenario has been proven by the statistics: As at the end of June 2013, 37% of issuers were not paying for delivery of proxy-related materials to OBOs. Where issuers acquire NOBO lists and mail directly with the assistance of their transfer agent, 48% of issuers choose not to pay for delivery to OBOs. In our opinion, this is an identifiable, measurable disenfranchisement of shareholders – in these instances, issuers have chosen not to send shareholder meeting materials to shareholders who have not opted out of the proxy process.

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

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

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

One of the fundamental principles of NI 54-101 is to "equitably and clearly define the obligations of each party in the securityholder communication process"; the first step in this process is to recognize that issuers should view the cost of communicating with all of their shareholders as a basic cost of doing business as a public company. Intermediaries facilitate this process, but should not be responsible for the costs of the issuers to carry out their corporate duties; likewise, shareholders should not be penalized for choosing to protect their personal information. The implementation of new technologies, including notice-and-access, should greatly offset the costs of these communications, so it seems reasonable for issuers to ensure that all shareholders who want materials should receive them. Newly released statistics from Broadridge state that over 160 issuers implemented Broadridge's Notice and

Access solution for their proxy communications in 2013, and that print and postage costs for issuers under Notice and Access are reduced by over 80%.[12]

QUESTION 24: Would temporarily allowing issuers and official tabulators access to the identity of OBOs for purposes of tabulation improve the reliability and accuracy of proxy voting? Would it make the reconciliation process more effective? Would this prejudice investors?

We believe that most issuers and tabulators are already aware of the identity of most of their major institutional shareholders (which account for the vast majority of OBO shareholders) because of insider filings already required by securities law. As mentioned above, IIAC members receive frequent complaints from NOBO clients who are contacted by issuer's agents and proxy solicitors. The number of complaints would skyrocket if the identity of OBOs – who specifically requested not to have their identity disclosed – were to be released to issuers or their agents, even on a temporary basis. Once disclosed, it would be extremely difficult, if not impossible, to limit the use of the private information. In our opinion, providing this kind of disclosure (and dealing with the potential negative public perception) is unwarranted for the information that would be gained for a relatively small pool of retail OBO shareholders.

INVESTMENT MANAGERS/MANAGED ACCOUNTS

QUESTION 25: Are managed accounts in fact experiencing the issues that have been identified? If so, what are the causes for an investor not receiving or receiving a request for voting instructions late?

Our members generally are not aware of, and have not been contacted about the specific issues identified, although we have read the report referred to in the Consultation Paper and are taking active steps to meet with our counterparts in the portfolio management industry to better understand their concerns. As part of the CSA's further consultation, we believe that portfolio managers/investment counsel and custodians should be included in these discussions.

QUESTION 26: Are clients made aware of these issues, and, if so, what are the remedies?

As mentioned above, we are generally not aware of the issues mentioned in the Consultation Paper, and would like to investigate and discuss the prevalence of these issues before determining any possible remedies.

QUESTION 27: Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable to address these issues?

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[12] For more details, see: **http://media.broadridge.com/documents/Broadridge-Proxy-Season-Stats-2013-Canada.pdf**.

As we have not been able to verify whether the specific issues identified in the Consultation Paper exist we do not believe that there is a need for regulation at this time. Again, we believe that discussions should take place to determine the prevalence of any issues, and for industry to identify possible best practices as a means of addressing any concerns.

We would also like to reiterate the point made in question 23 above that maintaining the OBO-NOBO concept in current regulation is important for institutional and retail shareholders, portfolio managers and investment dealers who offer discretionary money management services. Elimination of this concept would impact all of these stakeholders and the way that they operate.

ACCOUNTABILITY OF SERVICES PROVIDERS

QUESTION 28: What mechanisms are in place to support the accountability of the various service providers in proxy voting? How effective are these mechanisms?

Ultimately we believe that most service providers are also operating with the integrity of the shareholder vote in mind. Market mechanisms and existing rules and policy guidelines have generally worked well to date to support accountability. Broadridge's development of its end-to-end vote confirmation system, and other tools and reports that they have provided to facilitate the vote reconciliation process (e.g. Over Reporting Prevention Service, etc.) are examples of market demand creating services for better accountability. As mentioned in question 2, we would like other industry stakeholders and service providers, including dealers and tabulators, to participate in this initiative so that it can be effective. As mentioned in question 8, we would also support an industry or policy initiative designed to ensure that dealers and tabulators pursue a consistent approach when resolving vote reconciliation issues.

We believe that greater demands from our members and their clients for information and better communication flow will generally result in an overall demand to service providers for more and better information, products and services. The proxy voting infrastructure (and corresponding rules) have already adapted to the shareholder clients' demands for better and more efficient service, more electronically and paper free services, stronger privacy – these demands also in turn raise the standards of best practices for our members, and for their service providers. Where industry participants do not keep up with these standards, or are consistently acting against the best interests of shareholders or in a manner that impedes the integrity of the system – that may be an opportunity for the regulators to provide further guidance.

QUESTION 29: Is there a need for further regulation in this area, or can concerns be addressed through the existing regulatory framework? What changes would be desirable?

We re-iterate the point made in the opening comments of this letter that a critical role of the CSA should be to facilitate discussion and cooperation among all participants to (i) identify and prioritize the most material issues affecting the integrity of shareholder voting in Canada; and (ii) target and leverage improvements and enhancements (some of which may already be in development) to address the

identified issues and achieve the maximum benefit for shareholders. This mechanism for dialogue about the proxy voting infrastructure must include the various service providers, and could be an important step towards greater accountability. We would not recommend further regulation or policy to be developed without first engaging in this dialogue.

CONCLUSION

The IIAC believes that continued engagement with the CSA is fundamental to the development of a regulatory framework that strikes a balance between accountability and effective use of resources to achieve a well-functioning proxy process in Canada. We urge the CSA to consider the general themes set out in the introductory section of this letter, as well as our more detailed answers to the questions, when determining its next steps in this policy area. We hope that the CSA takes into account the practical implications (including costs) for all market participants who will be subject to any developments in regulation in this area, and we welcome the opportunity to discuss this response with representatives from the CSA.

Yours sincerely,

"Andrea Taylor"
Director
Investment Industry Association of Canada (IIAC)