Canadian Coalition for
GOOD GOVERNANCE
THE VOICE OF THE SHAREHOLDER

May 29, 2012

Mr. Robert Day
Manager, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

Dear Sir:

Re: Ontario Securities Commission ("OSC") Draft 2012-2013 Statement of Priorities

We have reviewed the above draft 2012-2013 Statement of Priorities and thank you for the opportunity to provide you with our comments.

Representing the interests of institutional shareholders, CCGG promotes good governance practices in Canadian public companies to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets. CCGG's members collectively manage approximately $2 trillion of savings on behalf of Canadians. A list of our members is attached to this submission.

In general, we agree that each of the five goals set out in the Statement of Priorities are important goals for the OSC to pursue. There are some areas, however, that we believe should be of particular focus for the OSC and we have outlined them below.

Shareholder Democracy Reforms

We appreciate that as part of its first goal, the OSC commits to "facilitate shareholder empowerment in director elections by advocating for the elimination of slate voting, the adoption of majority voting policies for director elections and enhancing disclosure of voting results for shareholder meetings". We believe, however, that the OSC should take a more direct role and should not simply advocate for these reforms, but should take active steps to ensure that they are enshrined in Canadian law. In particular, although requiring all Canadian public companies to adopt a majority voting policy would be a significant improvement, we maintain that the law should be changed so that in uncontested elections, directors cannot be elected as a matter of law without the support of a majority of the company's shareholders who vote on the matter. We believe that the OSC should implement a majority voting standard for all reporting issuers in

Ontario and should spearhead reform initiatives with other regulators and lawmakers so that a majority voting standard for uncontested director elections is required for all Canadian public companies.

For further detail on shareholder democracy reforms, we refer you to our submission in response to OSC Staff Notice 54-701: *Regulatory Developments regarding Shareholder Democracy Issues*, a copy of which is attached for your reference.

Reform of the Proxy Voting System

We agree that it should be a priority for the OSC to focus on the reform of the proxy voting system, but we think that its role should go beyond conducting an empirical analysis to review concerns about the accountability, transparency and efficiency of the proxy voting system. We believe that those concerns have already been comprehensively identified and the time has come for the OSC to take an active role in finding ways to address those concerns. The recent events involving Telus Corporation and Mason Capital Management demonstrate that empty voting is a serious threat to the integrity of our capital markets. Problems caused by over voting and the complexities of securities lending are also well-known by market participants. We encourage the OSC to take concrete steps in the upcoming year to develop proposals that will address systemic problems in the proxy voting system.

Our earlier submission in response to OSC Staff Notice 54-701 (referenced above and also attached) also contains further suggestions for the reform of the proxy voting system.

Enforcement

With respect to enforcement, CCGG believes that the vigorous enforcement of laws relating to the capital markets is essential to the stability and integrity of Canada's financial markets. We agree that the OSC should strive to reduce the amount of time it takes to complete investigations and initiate regulatory proceedings. We also agree that the OSC should use all enforcement mechanisms at its disposal and increase the number of quasi-criminal prosecutions it commences. In addition, we urge the OSC to continue to work cooperatively with federal authorities to ensure that existing Criminal Code offences relating to the capital markets are vigorously enforced.

The Office of the Investor

We applaud the decision to establish an Office of the Investor to ensure that the perspective of investors is considered in all policy and operational activities within the OSC. However, the legitimacy of this Office will depend on its mandate being to protect the rights of *all* investors – retail and institutional. Institutional investors play a critical role in the Canadian capital markets and accepted industry estimates are that they hold approximately 75% of the shares of Canadian public companies, most of which is ultimately held for the benefit of individuals. Although institutional investors are widely perceived as being powerful and capable of protecting their own interests, they can only do so if they have the requisite legal tools, which often is not the case in Canada.

We thank you again for the opportunity to provide you with our comments. Please feel free to contact our Executive Director, Stephen Erlichman, if you would like to discuss this matter further or if we can be of any assistance. Stephen can be reached at 416.868.3585 or serlichman@ccgg.ca.

Yours very truly,

Daniel E. Chornous, CFA
Chair of the Board
Canadian Coalition for Good Governance

CCGG MEMBERS

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Ontario Pension Board
Ontario Teachers' Pension Plan (Teachers')
OPSEU Pension Trust
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Russell Investments
Scotia Asset Management
SEAMARK Asset Management Ltd.
Sionna Investment Managers Inc.
Standard Life Investments Inc.
State Street Global Advisors, Ltd.
Teachers' Retirement Allowance Fund
TD Asset Management Inc.
UBS Global Asset Management (Canada) Co.
United Church Pension Plan
University of Toronto Asset Management Corporation
Workers' Compensation Board - Alberta
York University Pension Plan

Canadian Coalition for
GOOD GOVERNANCE
THE VOICE OF THE SHAREHOLDER

March 31, 2011

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

Dear Sir:

Re: OSC Staff Notice 54-701: Regulatory Developments regarding Shareholder Democracy Issues

We have reviewed the above Staff Notice and thank you for the opportunity to provide you with our comments.

Representing the interests of institutional shareholders, CCGG promotes good governance practices in Canadian public companies to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework, to strengthen the efficiency and effectiveness of the Canadian capital markets. CCGG has 45 members who collectively manage in excess of $1.6 trillion of savings on behalf of most Canadians. A list of our members is attached to this submission.

We applaud the OSC for considering the important issues outlined in Staff Notice 54-701. We note, however, that the Staff Notice is very preliminary and only indicates that regulatory proposals will be considered. We urge the OSC to be prepared to adopt measures without delay in each of the areas discussed below to ensure that the basic rights of Canadian shareholders are respected and to bring Canada up to an international standard of good governance.

I. BASIC SHAREHOLDER DEMOCRACY NORMS

Majority Voting

Majority voting is critically important

A majority voting standard to elect directors is critically important to investors. Without it, shareholders have no meaningful way to remove underperforming or unqualified directors. As you are aware, as a result of the plurality standard currently used in Canada, shareholders of public companies do not have the power to vote by proxy "for" or "against" directors. Their only right is to vote "for" them, or "withhold" their vote and a"withhold" vote has no practical effect. As a result, directors in a public company can be elected if they receive only one vote – and if they are a shareholder (which they often are), that vote can be their own.

A fundamental element of the Canadian corporate law paradigm is that shareholders elect directors and directors are accountable to the shareholders. Allowing directors to be elected without receiving a majority of votes in their favour is contrary to that paradigm.[1] Under the current system, a director can lose an election by any normal measure – receiving less than 50% of the votes or even receiving just one vote – and not have to vacate their seat on the board. There are many examples from the United States and Canada where a majority of votes were withheld from directors and those directors refused to leave the board. A system that respects basic shareholder democracy should not allow such a result.

Securities regulators have the power to implement majority voting

We are of the view that the form of voting for director elections for public companies has effectively been delegated to securities regulators, either acting alone or through the CSA structure. Section 54 of the CBCA Regulations previously required that votes for directors had to be in the form of either "for" or "withhold". However, that regulation was amended to provide that the form of proxy must be as required by s. 9.4 of CSA National Instrument 51-102, thereby giving securities regulators the power to stipulate how directors are elected by proxy. Currently, section 9.4 simply replicates the previous CBCA requirement that votes for directors must be in the form of either "for" or "withhold".

We note that other sections of the CBCA support a majority voting standard. Section 106(3) of the CBCA provides that shareholders can elect directors by "ordinary resolution". That wording implies that shareholders can vote for or against directors, which s. 9.4 states they cannot, at least in respect of voting by proxy. It is inconsistent to allow registered shareholders who attend a meeting to vote against directors and not to allow shareholders who vote by proxy to do the same. We note that the OBCA contains the same inconsistency.

We understand, however, that staff of the OSC have been reluctant to establish rules in this area since the structure of director elections has historically been a matter of corporate law. We think that this concern is misplaced. In our view, the OSC should insist on higher standards of shareholder democracy and corporate governance for reporting issuers in Ontario and has the legal power to do so, irrespective of the minimums set out in federal or provincial corporate law.

[1] As noted by Lucian Bebchuk, "The power of shareholders to replace the board is a **central element in the accepted theory of the modern public corporation** with dispersed ownership. This power, however, is largely a myth. …shareholders do not in fact have at their disposal those "powers of corporate democracy." As a result, the shareholder franchise does not provide the solid foundation for the legitimacy of directorial power that it is supposed to supply…" (emphasis added). He adds that, "the importance of shareholders' power to replace directors in the corporate legal structure is reinforced by the legal system's choice to insulate directors' decisions from judicial review". See L. Bebchuk, "The Myth of the Shareholder Franchise Discussion" Paper No. 565, John M. Olin Centre for Law, Economics and Business, Harvard, available at http://ssrn.com/abstract=829804. See also L. Bebchuk, "The Case for Increasing Shareholder Power" 118 Harvard Law Review 833.

120 Adelaide Street West, Suite 2500, Toronto, Ontario M5H 1T1
Telephone: (416) 868-3576 Fax: (416) 367-1954 Web Site: www.ccgg.ca

Objections to majority voting are not tenable

There are no credible arguments against majority voting. Opponents of majority voting often put forward a technical objection by arguing that majority voting could lead to "failed elections", i.e. elections where an insufficient number of directors are elected to achieve the required quorum for the board. However, even without majority voting, all public companies already operate with the risk that they will lose directors to the point where they no longer have quorum or have any directors at all (such as through a resignation en masse).

Moreover, corporate law statutes establish a process to follow if one or more directors are not re-elected at an annual meeting. For example, under s. 111 of the CBCA, if a director is not re-elected, the remaining directors (as long as they constitute a quorum) can appoint a director to fill that vacancy for the remainder of the term of the original director. If an election results in less than a quorum of directors elected or if there has been a failure to elect the number of directors required by a company's articles, then the directors are required to call a special meeting of the shareholders without delay in order to fill the vacancy. In the very unlikely event that an election results in no directors being elected, the special meeting can be called by any shareholder.

Similarly, if a director is removed from office at a special meeting called for the purpose of removing directors, s. 109 of the CBCA allows that vacancy to be filled by a resolution of the shareholders at that meeting. Alternatively, a new director may be appointed by the remaining directors according to the process established under s. 111, as set out above.

In any event, we acknowledge that a majority voting requirement should allow an issuer an appropriate amount of time to deal with transition issues in the event that an existing director is not re-elected to the board.

CCGG Majority Voting Policy

As a 'workaround' to the current law, CCGG has developed a "majority voting" board policy which provides a framework to allow companies to establish majority voting in a practical way that addresses the above concerns. In general, the policy provides that a director who fails to win a majority of votes in their favour must resign their seat on the board, although most boards retain the discretion whether to accept that resignation. Attached to this letter is a copy of the CCGG majority voting policy.

Our policy has already been substantially adopted by 131 of Canada's largest companies, which demonstrates that majority voting can be implemented without business interruption. Although adoption of majority voting has been significant, that number only represents 57% of the S&P/TSX Composite and seems to have plateaued over the last few years, although some companies have adopted it after we pressed them to do so. The rate of adoption of majority voting by smaller companies is much lower and is unlikely to increase without regulatory action.

Slate Voting

Some companies continue to propose a slate of directors and require shareholders to vote for all or none of them, commonly referred to as "slate voting". Slate voting does not allow shareholders to hold individual directors accountable and is particularly inappropriate once a majority voting standard is implemented.

Slate voting should be abolished so that shareholders can cast their votes in respect of each individual director.

Although CCGG has urged companies to abandon this practice, approximately 17% of companies in the TSX/S&P Composite Index still have slate voting and it is especially common in smaller companies.

Annual Director Elections

Currently, the law allows directors to be elected for differing terms of up to three years, thereby allowing companies to create "staggered boards". Staggered boards reduce director accountability and can impede the ability of shareholders to make needed changes to the board, since not all directors come up for re-election each year. For example, if an issue regarding compensation arises and there are three members of a compensation committee, each of whom has a different three year term, it can take up to four years for shareholders to be able to register their concerns through their votes in respect of the entire committee (unless a special meeting is requisitioned).

Most large Canadian companies have already moved to annual director elections without any disruptions to boards or their ability to engage in long-term planning. However, the practice should be prohibited for all public companies.

Reporting Detailed Vote Results

The law currently allows voting at a meeting of shareholders to take place by show of hands, unless a shareholder or proxy holder entitled to vote at the meeting demands a ballot.

If a matter is passed by way of a show of hands, a company is only required to record and disclose the fact that a resolution was carried or defeated, without disclosing the number of votes cast for or against the resolution. In contrast, if a vote is conducted by ballot, a company must provide much more detailed information including the votes cast in person and by proxy and the number or percentage of votes cast for, against or withheld from the vote.

Several problems result from the lack of transparency of this process. A report that only states whether a matter was passed or defeated does not give shareholders any information through which they can assess the level of shareholder support for matters on the ballot (such as director elections), nor can they ascertain any trends in changing levels of support.

In addition, companies are not under any obligation to confirm to shareholders who submit their votes by proxy that their votes have been received and tabulated. This lack of confirmation, when coupled with the fact that the vote results are not reported, makes it virtually impossible for shareholders to independently confirm that their votes have been counted.

CCGG does not take issue with show of hands voting and summary reporting of whether the matter was carried or defeated for routine procedural matters related to the conduct of the meeting. However companies should be required to report detailed and accurate voting results for all matters listed on the proxy, including director elections.

CCGG has been urging companies to provide detailed voting results as a matter of best practice. Many of Canada's largest companies voluntarily report their voting results for director elections, but 38% of companies in the S&P/TSX Composite still do not. (That number would likely be much higher if smaller non-index companies were considered.) All public companies should be required to disclose the detailed results of shareholder votes for all substantive matters listed on the proxy.

We note that a company would already have all of the detailed results of any vote (other than a show of hands vote) in a report that is prepared by the scrutineer who attends the meeting and tabulates the vote. Requiring companies to disclose that information would not impose any additional administrative burden.

Proxy Access

We believe that shareholders should have the ability to nominate their own candidates for election to a board and have those nominees included in management's information circular, commonly known as "proxy access".

Canadian shareholders do not have meaningful proxy access

There is a misconception that under Canadian law shareholders already have a meaningful right to propose their own director nominees. In fact, it is difficult and prohibitively expensive for a shareholder to propose alternate directors for election and to actively solicit other shareholders to vote for their nominees. Currently, shareholders of Canadian public companies who wish to do so have the following four options under the CBCA and similar provincial statutes:

1) A shareholder could prepare and mail its own dissident proxy circular in advance of the annual meeting. The dissident circular would include the names and backgrounds of the directors proposed for election and a statement as to why they should be elected. The estimated cost of doing so is a minimum of $500,000 (including legal fees, printing and mailing costs) and would be considerably more for a large company or if a proxy solicitation service is used. These costs are prohibitive for most shareholders. While a successful shareholder can seek reimbursement of its expenses, there is no guarantee that the company will agree to do so.

Any shareholder that does incur the expense of preparing a dissident circular is also at a considerable economic disadvantage vis-à-vis management and an incumbent board which are able to use the company's resources to prepare the management information circular urging the election of their preferred directors.

2) If a shareholder holds 5% or more of the shares (which is rarely the case for an individual or institutional investor) the shareholder can:

a. Request that the management circular include a shareholder "proposal" calling for the election of different directors. A shareholder is limited to a 500 word statement in support of its directors, whereas management can issue a responding statement of unlimited length. A shareholder can issue a general public statement explaining its position, but can only directly solicit up to 15 other shareholders unless it prepares a dissident proxy circular at the prohibitive expense noted above, or

b. Requisition a special meeting to elect new directors and issue a proxy circular at its own expense. A shareholder is entitled to be reimbursed for its reasonable expenses unless the shareholders at the special meeting resolve otherwise.

Although shareholders may be permitted to aggregate their holdings to reach the 5% threshold, those shareholders may then be considered to be "acting in concert" which may have ramifications under provincial securities law and may require those shareholders to make onerous filings in the U.S. In most public companies, this option is of little use and would still not permit the broad solicitation of other shareholders without the preparation of a dissident proxy circular.

3) A shareholder can ask the company to agree to include the shareholder's alternative director nominees in the management proxy circular, but it is highly unlikely that such consent would ever be given.

4) Subject to a company's specific by-laws, a shareholder could attend the annual meeting and propose alternative directors. However, most shareholders vote their shares in advance of the annual meeting by proxy so this strategy would rarely be successful. Moreover, many shareholders grant discretionary authority to management in their proxies who would inevitably vote in favour of management's director nominees.

Meaningful proxy access should be provided

Securities regulators should make it easier for significant shareholders to nominate alternative directors, if they deem it necessary to do so. A significant shareholder (either individually or in combination with other shareholders) should be able to require a company to include in its management proxy circular a shareholder's alternative nominees for directors, together with a description of their backgrounds and a statement from the shareholder as to why they should be elected. That shareholder should be able to freely solicit the support of other shareholders without the need to file a dissident proxy circular.

The inclusion of a shareholder's nominees in the management proxy circular should be at no cost to the shareholder and the shareholder should be reimbursed by the company for its reasonable solicitation costs, unless the shareholders resolve otherwise.

We think there could be merit in securities regulators determining a threshold ownership level and hold period for proxy access eligibility, for example, by requiring a shareholder to own 2% of an issuer's shares for a period of one year.

II. BASIC GOVERNANCE NORMS

Separation of CEO and Chair

One of the key roles of the board of a public company is to oversee management, particularly the CEO. If the chair of the board is also the CEO, the board may have difficulties adequately carrying out its supervisory function. The chair of the board sets the agenda for board meetings and ensures that directors have the necessary information. The chair is also responsible for conducting board meetings in a way that fosters constructive debate and appropriate challenges to management. Good governance generally requires the chair of the board to be someone other than the CEO and to be independent of management. If there is a controlling shareholder of the company who is also actively involved in management (or

someone related to the controlling shareholder is actively involved in management), the chair of the board should be independent of that shareholder.

CCGG has been urging companies to voluntarily separate the role of the CEO and the chair of the board. Of the 228 companies in the S&P/TSX Composite, only 132 have a chair of the board that is independent of management and the level of adoption would be much less for smaller companies. We believe that the time has come for securities regulators to require all companies to comply with this basic governance norm.

We would not be opposed to securities regulators giving companies an appropriate amount of time to separate the roles of CEO and board chair. In the interim, companies could be allowed to appoint a lead director independent of management and/or the controlling shareholder to carry out the functions of the chair of the board as the board moves towards fully separating the two roles.

Shareholder Approval of Dilutive Acquisitions

Shareholders have the right to approve certain fundamental changes to the corporation including the sale, lease or exchange of substantially all of the assets of the corporation, the issuance of a new class of shares, changes to the rights associated with certain shares, an amalgamation with another corporation and a going private transaction.

Shareholders should similarly have the right to approve a significant corporate acquisition that is paid for in shares if it will dilute the value of the shares held by existing shareholders by more than 25%. As you are aware, in 2009 the TSX changed its listing requirements to require all TSX listed companies to obtain shareholder approval in those circumstances. A similar requirement is found in the listing standards of most major exchanges and/or in the corporate law of the jurisdictions in which the exchanges operate. In our view, securities regulators should make this a requirement for all reporting issuers in Ontario.

III. SAY ON PAY

CCGG regards annual 'say on pay' votes as an important best practice and part of an ongoing, integrated engagement process between shareholders and a board of directors. 'Say on pay' advisory votes give shareholders an opportunity to express their satisfaction with the board's approach to executive compensation in the current year as well as over a longer period of time. Securities regulators should require annual 'say on pay' votes for Canadian public companies or, at a minimum, require them on a 'comply or explain' basis.

There have already been several benefits resulting from 'say on pay' votes. First, we have noted significant improvement in the clarity of CD&A disclosure for numerous issuers that have adopted 'say on pay'. For example, several issuers have provided a plain language overview of their compensation plans, including a description of the goals for the company and how the compensation system is designed to motivate management to achieve those goals.

In addition, 'say on pay' advisory votes encourage companies to engage with their shareholders, both large and small. Numerous companies that have adopted 'say on pay' have committed to engage with their shareholders and have disclosed in their circular the engagement process they will follow.

CCGG released its Model Shareholder Engagement and 'Say on Pay' Policy for Boards of Directors in January, 2010. CCGG worked with the 14 companies that were the first to agree to hold 'say on pay' votes to develop its model policy which contains a recommended form of resolution to be put to shareholders. That resolution reads as follows:

Resolved, on an advisory basis and not to diminish the role and responsibilities of the board of directors, that the shareholders accept the approach to executive compensation disclosed in the Company's information circular delivered in advance of the [insert year] annual meeting of shareholders.[2]

To date, 48 Canadian issuers have voluntarily adopted 'say on pay'. Adoption of 'say on pay' has been broad-based and includes companies from virtually all industries and market capitalizations.
All companies that have held 'say on pay' votes have used our recommended form of resolution[3]. We think a common resolution is important, as it provides clarity for investors and assists them in comparing vote results across issuers. If 'say on pay' votes are mandatory or required on a "comply or explain basis" we strongly encourage securities regulators to require this form of resolution which, as noted above, was developed in cooperation with leading Canadian companies and has become accepted by companies of all sizes.

IV. REFORM OF THE PROXY PROCESS

We think that the time has come for securities regulators to take action to address the numerous deficiencies in the proxy voting process and to take ownership of the issue. Those deficiencies have been extensively documented in the discussion paper "The Quality of the Shareholder Vote in Canada" released by Davies Ward Phillips & Vineberg which will provide an excellent foundation for your analysis.

We think this is an area in which securities regulators could ideally adopt a principles-based approach by articulating an appropriate series of principles that must be reflected in an effective proxy voting system. Given the complexity of the issues, we recommend that the OSC formulate draft principles and then seek further public comment on them. In developing those principles, you may wish to refer to the *Statement on Principles for an Effective and Efficient Proxy Voting System* adopted by the Council of Institutional Investors in the United States which provides that an effective proxy voting system should be characterized by:

- **Timeliness**. Voting related communications should reach eligible voters in sufficient time to allow for careful review of the materials and to facilitate voter participation.
- **Accessibility**. Technology should be used to improve the proxy voting process. However, mechanisms should be in place to ensure that shareowners receive proxy materials and can vote even if they do not use electronic voting and communications methods.

[2] In French: *Il est résolu, à titre consultatif et sans que soient diminués le rôle et les responsabilités du conseil d'administration, que les actionnaires acceptent l'approche en matière de rémunération de la haute direction divulguée dans la circulaire de sollicitation de procurations de la Société transmise en vue de l'assemblée annuelle [année] des actionnaires.*

[3] There was one non-material variation: Thompson Reuters shortened the resolution slightly, removing the phrase "not to diminish the role and responsibilities of the board of directors" as they thought it was unnecessary given their experience with 'say on pay' in the United Kingdom.

- **Accuracy**. All votes properly cast should be correctly tallied.
- **Certainty**. The proxy voting system should provide for end-to-end confirmation enabling both companies and shareowners to confirm that votes properly cast were included in the final tally as directed.
- **Cost-effectiveness**. The costs of transmitting proxy materials and votes should be reasonable.

You may also wish to refer to Davies' description of the five criteria for an effective proxy voting system set out in their paper referred to above.

Once securities regulators articulate the appropriate principles, they should work with issuers and market participants to reform the detailed rules governing the proxy system to ensure that they conform to those principles. Once the principles and rules are finalized, reporting issuers should bear the ultimate legal responsibility to ensure compliance with those rules and principles. It may also be necessary for some market intermediaries to assume some legal responsibility. After a reasonable time for transition, reporting issuers/market intermediaries should be required to certify to securities regulators that their policies and practices for proxy voting comply with the rules and principles for an effective proxy voting system.

We recognize that this proposal might require securities regulators to ensure that they have regulatory oversight of all relevant participants in the proxy voting process. It may also require an examination of the role of proxy advisory firms. Ultimately, securities regulators will be required to monitor and oversee the certification process on an ongoing basis.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Griggs, at 416.868.3585 or sgriggs@ccgg.ca.

Yours very truly,

David F. Denison
Chair of the Board
Canadian Coalition for Good Governance

CCGG MEMBERS

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Alberta Teachers' Retirement Fund Board
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Burgundy Asset Management Ltd.
Canada Post Corporation Registered Pension Plan
CIBC Global Asset Management
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management
CPP Investment Board
Franklin Templeton Investments Corp.
Genus Capital Management
Greystone Managed Investments Inc.
Hospitals of Ontario Pension Plan (HOOPP)
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel Ltd.
Lincluden Investment Management
Mackenzie Financial Corporation
McGill University Pension Fund
McLean Budden Limited
MFC Global Investment Management
New Brunswick Investment Management Corporation (NBIMC)
NEI Investments
Ontario Municipal Employees Retirement Board (OMERS)
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SEAMARK Asset Management Ltd.
Sionna Investment Managers Inc.
Standard Life Investments Inc.
State Street Global Advisors, Ltd.
Teachers' Retirement Allowance Fund
TD Asset Management Inc.
UBS Global Asset Management (Canada) Co.
University of Toronto Asset Management Corporation
Workers' Compensation Board - Alberta
York University Pension Plan

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Revised CCGG Policy

CCGG first issued a policy on majority voting in August 2006, when few Canadian issuers had adopted a majority voting policy. Since then, most large Canadian issuers have voluntarily adopted either the form of policy recommended by CCGG or a modified version of it. The following updated policy provides the context to majority voting, its level of adoption to date and an updated form of majority voting policy for boards to consider.

CCGG maintains a list of all issuers we are aware of that have adopted majority voting, available at www.ccgg.ca. Please contact us at info@ccgg.ca if there is an error or if an issuer is missing from our list.

"Plurality" Voting Required by Law

Under Canadian law[1], voting for directors by shareholders of a public corporation is based on a "plurality system" under which a shareholder can either vote "for" a director nominee or "withhold" his or her vote. "Withhold" votes do not count and a director needs only one "for" vote to be elected to the board, even if all other votes are "withheld". If a director nominee is a shareholder, in theory the only "for" vote needed for the nominee to be duly elected to the board is his or her own vote.

CGGG believes that the plurality system for the election of directors is not in the best interests of shareholders as it does not permit shareholders to vote against an underperforming director and allows an entrenched board to continue to be in charge of the company, even if they are opposed by a majority of the owners of the company. The only option for shareholders who wish to effectively vote against one or more directors is to undertake a costly and confrontational public proxy fight.

CCGG believes that the board of directors of a public issuer has a responsibility to ensure that shareholders have the opportunity to vote for each director on an annual basis and that the vote is conducted fairly.

In most cases, the individuals nominated by the board (often called "management nominees") receive substantial support from shareholders, and CCGG expects that this will continue. As set out in our *2010 Building High Performance Boards*, prior consultation or engagement by the board with investors before putting forward management nominees can minimize the possibility of shareholders withholding votes for one or more management nominees.

[1] See Section 9.4 of National Instrument 51-102 - Continuous Disclosure Obligations.

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TD Asset Management

Donald F. Reed
Franklin Templeton Investments Corp.

Kim Shannon
Sionna Investment Managers

CONTACT US

Stephen Griggs
Executive Director
sgriggs@ccgg.ca
416-868-3585

Judy Cotte, General Counsel and Director of Policy Development
jcotte@ccgg.ca
416-868-3582

120 Adelaide Street West, Suite 2500, Toronto, ON M5H 1T1 | 416-868-3576 | info@ccgg.ca | ccgg.ca

While this policy is focused on issuers formed as corporations, CCGG believes that it should also be applied to other forms of issuers (such as trusts) to ensure that the persons representing the equity holders have the confidence of a majority of the owners of the issuer.

What is "Majority Voting"?

CCGG believes that each director of a corporation should have the confidence and support of a majority of its shareholders and that this should be a legal requirement for every public issuer in Canada. CCGG continues to urge the securities and corporate law regulators to require all public issuers in Canada to have shareholders vote "for" or "against" each individual director nominee.

Until the law is amended in Canada to require true majority voting for directors, CCGG has supported the practice that has developed at many leading issuers of effectively implementing majority voting through a board "majority voting policy". A majority voting policy ensures that shareholders can vote separately for each nominee and that, if a director nominee has more "withhold" votes than votes in favour, the nominee will be considered not to have received the support of a majority of shareholders, even though duly elected as a matter of corporate law. Such a nominee would immediately tender his or her resignation to the board, which the board would be expected to accept absent extraordinary circumstances.

Level of Adoption of Majority Voting Policy – Work to be Done

The boards of most large Canadian corporations have voluntarily adopted a majority voting policy similar to the CCGG 2006 suggested policy. More than half of all of S&P/TSX composite index issuers – 75% by market capitalization – have adopted a majority voting policy [2]. However, many large Canadian issuers have failed to adopt reasonable levels of shareholder democracy, which is of considerable concern to most investors.

CCGG has informally tracked the adoption of key elements of majority voting and shareholder democracy for a number of years, and is now undertaking a complete study of issuers in the S&P/TSX composite index. This initial study will compare adoption rates from the founding of CCGG in 2003 until early 2011, and will be published in spring 2011 at www.ccgg.ca.

Implementing "Majority Voting" in Articles or Bylaws

Under most Canadian corporate laws, an issuer may adopt majority voting by inserting a provision into its articles or bylaws[3]. Alternatively, the board of directors of an issuer can adopt a voluntary board policy providing that, if a director nominee receives more votes "withheld" than "for", the nominee will tender his or her resignation, which would generally be accepted by the board.

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[2] Based on CCGG research as of December 2010.

[3] CCGG is aware of at least one issuer that has taken this approach – Nexen Inc. implemented majority voting in Section 4.03 of its Bylaw No. 3.

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In the view of CCGG, it is preferable for a board to obtain shareholder approval to implement majority voting by adding it to the company's articles or bylaws, as this provides stronger protection for shareholders than a board policy which can be changed by the board without shareholder approval. CCGG recognizes that a change to the articles or bylaws of an issuer can take time and may add expense, and that many boards would prefer to at least initially adopt a board policy before making more permanent changes to its articles or bylaws.

Board Majority Voting Policy

Many boards have implemented majority voting by adopting a board policy that applies to all current directors and future nominees to the board which provides flexibility for the board to deal with problematic situations. For example, if a director who does not get the support of shareholders is a corporate executive or chair of the board or of a significant board committee, time might be required for the board to make appropriate transitional arrangements. As well, there may be rare circumstances where accepting a resignation immediately would result in a lack of quorum of directors in office.

If a board retains flexibility in its policy to deal with any situation that may occur, CCGG expects that the board will use this flexibility in a manner consistent with the overall spirit of shareholder accountability and transparency, respecting the interests of shareholders, and that boards will discuss their decisions with major investors.

Filling a Vacancy

If a director resigns because he or she receives more votes "withheld" than "for", the board has several options as to how the resigning director is replaced. For example, the board can leave the vacancy open until the following annual meeting, fill the vacancy with a suitable candidate or call a special shareholder meeting to elect a new director.

Terms of a "Majority Voting" Policy

To ensure effective shareholder democracy in the election of directors, CCGG recommends that the board of every public company adopt a majority voting bylaw or board policy that applies to the board and to all future director nominees. The bylaw or policy should include the following key provisions:

1. The company will list each individual director separately on the Form of Proxy or the Voting Instruction Form to allow shareholders to vote for each director individually.
2. The company will promptly disclose the results of the vote director by director. If the vote is by a show of hands rather than by ballot, the company will disclose the number of shares voted by proxy in favour or withheld for each director and the outcome of the vote by a show of hands.
3. If a director has 50% + 1 of the total votes "withheld" from him or her, the withheld votes will be considered "No" votes and the director will be expected to immediately tender his or her resignation to the board, which will be referred to the board or its nominating/corporate governance committee (or equivalent) for consideration.
4. The board will promptly accept the resignation unless it is determined that there are extraordinary circumstances relating to the composition of the board or the voting results that should delay the acceptance of the resignation or (in very rare cases) justify rejecting it.
5. The board will make its decision and reasons available to the public.

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Suggested Form of Majority Voting Policy

The following is a suggested form of majority voting policy that can be adopted as a policy of the board of a Canadian public company:

Majority Voting Policy

The board believes that each director should have the confidence and support of the shareholders of the corporation. To this end, the board has unanimously adopted this policy and future nominees for election to the board will be required to confirm that they will abide by this policy.

Forms of proxy for the election of directors will permit a shareholder to vote in favour of, or to withhold from voting, separately for each director nominee. The Chair of the Board will ensure that the number of shares voted in favour or withheld from voting for each director nominee is recorded and promptly made public after the meeting. If the vote was by a show of hands, the company will disclose the number of shares voted by proxy in favour or withheld for each director.

If a director nominee has more votes withheld than are voted in favour of him or her, the nominee will be considered by the board not to have received the support of the shareholders, even though duly elected as a matter of corporate law. Such a nominee will be expected to forthwith submit his or her resignation to the board of directors, effective on acceptance by the board. The board will refer the resignation to the nominating/corporate governance committee (or equivalent) for consideration.

The board will promptly accept the resignation unless the committee determines that there are extraordinary circumstances relating to the composition of the board or the voting results that should delay the acceptance of the resignation or justify rejecting it. In any event, it is expected that the resignation will be accepted (or in rare cases rejected) within 90 days of the meeting.

Subject to any corporate law restrictions, the board of directors may (1) leave a vacancy in the board unfilled until the next annual general meeting, (2) fill the vacancy by appointing a new director whom the board considers to merit the confidence of the shareholders, or (3) call a special meeting of shareholders to consider new board nominee(s) to fill the vacant position(s).

This policy does not apply where an election involves a proxy battle i.e., where proxy material is circulated in support of one or more nominees who are not part of the director nominees supported by the board of directors.

Approved by the board of CCGG: February 2, 2011

CCGG thanks the law firm of Torys LLP and Cornell Wright, Partner, and James Baillie QC, Counsel, for providing legal advice to CCGG in the preparation of this and the original CCGG majority voting policy.

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