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March 25, 2011

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

via email: jstevenson@osc.gov.on.ca

Re: Comments on OSC Staff Notice 54-701 – Shareholder Democracy Reforms

Dear Mr. Stevenson,

This letter is provided by British Columbia Investment Management Corporation (bcIMC) in response to the Ontario Securities Commission (OSC) staff notice regarding its review of issues relating to shareholder democracy. According to the notice, the OSC is considering the development of regulatory proposals relating to director elections, shareholder votes on executive compensation or "say on pay", and the effectiveness of the proxy voting system.

I. Introduction

a) British Columbia Investment Management Corporation

bcIMC is among Canada's leading institutional investors, with responsibility for managing approximately $85 billion in global assets on behalf of more than 400,000 pension beneficiaries in our province.

As a large, diversified investor, bcIMC believes that effective share ownership lies not in divesting or avoiding companies who may not have strong governance practices, but by helping them make positive and lasting change for the long-term benefit of the company. As a result, consistent with our fiduciary duty and belief in the active role of shareholders in governance, bcIMC works hard to engage companies and policymakers to improve corporate practices, disclosure and regulation where necessary.

b) The importance of shareholder democracy

We are the provider of billions of dollars of capital[1] and the ultimate owner of hundreds of Canadian companies, so bcIMC places significant value on being able to hold company boards of directors to account. Without accountability, the shareholder voice may not be

[1] *At March 31, 2010, bcIMC's assets under management included more than $12 billion invested in the shares of Canadian public companies.*

heard on critical matters like long-term corporate strategy, risk management, and senior executive pay and performance. In order to facilitate directors' accountability to shareholders, and mitigate the risk that directors' interests will become more aligned with those of management, Canadian securities law should be amended where necessary to ensure that all shareholders can have their voices heard in a democratic and effective way.

c) Why a regulatory solution is necessary

Canadian securities law requirements for public companies in the area of governance and shareholder rights have not kept pace with leading market practices. For example, though not legally required to do so, the vast majority of Canadian public companies allow shareholders to vote individually on directors, instead of voting for or against an entire slate. Companies have voluntarily adopted this best practice largely because active shareowners like bcIMC, and other members of the Canadian Coalition for Good Governance (CCGG), have encouraged the change. Eliminating slate voting is a modest and reasonable reform, and in no way limits executive or board decision-making. It merely gives shareholders slightly more say on an issue (i.e., director quality) that is crucial to our well-being as the actual owners of companies. Unfortunately, some companies have indicated to us that they have no intention of removing their slate because they do not believe that shareholders should be given this kind of direct power.

It is time to update securities law to reflect best corporate governance practices so that all Canadian public companies are required to implement them.

In this context, bcIMC appreciates the opportunity to respond to the OSC staff notice and request for comment on regulatory proposals regarding certain shareholder democracy issues that were released in early January 2011. More broadly, we applaud the OSC for making a commitment to reviewing protections for shareholders' rights and corporate governance as stated in its *2010-2011 Statement of Priorities*.

II. OSC Focus Areas of Shareholder Democracy

We recommend that the OSC introduce reforms to securities law in each of the three areas of its review:

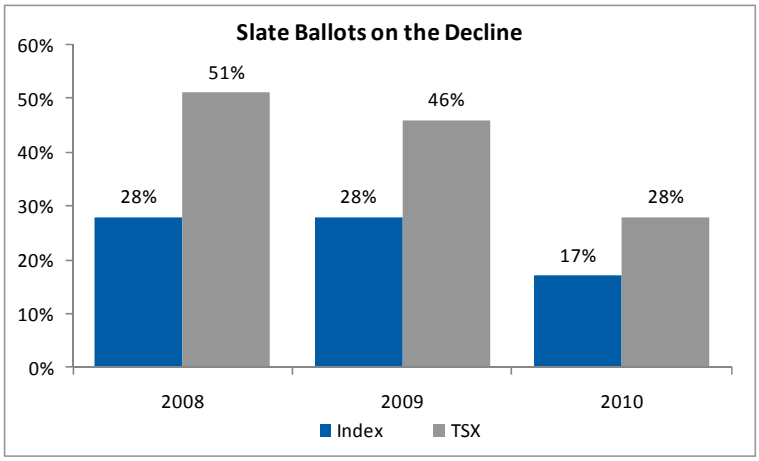
- slate voting and majority voting for uncontested director elections;
- shareholder advisory votes on executive compensation; and
- the effectiveness of the proxy voting system.

a) Slate voting and majority voting

As the overseers of executive management, corporate strategy and risk management, directors are the cornerstone of good governance. Directors also have an important role in terms of being the "eyes and ears" of shareholders. Therefore, it is essential that the shareholder voting process to elect directors be democratic, fair and transparent.

In order for securities law to reflect these values, the OSC should prohibit slate voting and require individual director voting. The Commission should also require a majority voting standard for director elections.

Though it is a declining practice, many companies in Canada propose a slate of directors and require shareholders to vote for all or none of them, commonly referred to as "slate voting". bcIMC and other institutional shareholders have worked hard in the past several years to urge companies to abandon this practice. Despite this quiet and constructive encouragement, approximately 28% of TSX-listed companies still have slate voting (according to data compiled in 2010 by the CCGG).



The lack of accountability caused by slate voting is compounded by the fact that directors can be elected without receiving a majority of votes in their favour.

Currently, under securities legislation, shareholders of public companies do not have the power to vote "for" or "against" directors. Their only right is to vote "for" them, or "withhold" their vote. 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!

Directors cannot be truly accountable to shareholders if shareholders have no meaningful way to remove them from the board. 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.

Until all applicable laws are changed, bcIMC and the CCGG have advocated for companies to voluntarily establish majority voting by adopting a "majority voting board policy". In general, the policy provides that a director who fails to win an affirmative majority of votes must resign their seat on the board. The policy has already been substantially adopted by 130 of Canada's largest companies.

The Commission should note that to the best of our knowledge, Canada and the United States are the only jurisdictions that do not use a majority voting system for director elections.

b) Shareholder advisory votes on executive compensation

The OSC should introduce mandatory shareholder votes on executive compensation or "say on pay" because currently, shareholders cannot directly express views on compensation policies for company executives except through private engagement (although we are pleased that, to date, approximately 45 Canadian companies have voluntarily adopted a say on pay vote).

bcIMC is also concerned that executive compensation has reached astonishing levels. According to a 2004 survey done by McKinsey & Co and HRI Corporation of 280 Canadian company directors and members of the CCGG, some 40% of board members believe that CEO compensation is too high and so do 65% of investors. We also note a study made by the Canadian Center for Policy Alternatives in early 2008 about the compensation of the 100 highest paid CEOs of listed Canadian companies: the ratio of the CEO compensation to that of the average worker reaches 218 times while, ten years ago, it stood at 104 times.

Our additional reason for supporting this legal reform is that it is a proven success in markets around the world. Since 2003 in the United Kingdom and 2004 in Australia, the compensation policy of public corporations must be submitted to a non-binding vote by shareholders while countries like the Netherlands (2004), Sweden (2005) and Norway (2007) go even further asking for outright approval of the policy by shareholders. The OECD provides another acknowledgement of shareholders' rights over compensation policy of senior management in its Principles on Corporate Governance (2004, p. 20). In the U.S., the Securities and Exchange Commission (SEC) recently implemented say on pay as a result of the Dodd-Frank Act.

We believe that the advisory nature of the say on pay vote would, based on the evidence to date, be beneficial to both boards of directors and company shareholders by fostering improved communication as well as promoting better/strong linkages to company performance.

c) Effectiveness of the proxy voting system

In our view, the proxy voting process should be fully transparent and verifiable, starting with the compilation of a reconciled list of beneficial owners eligible to vote and ending with a final tabulation of votes cast at a shareholder meeting. Currently, this is not the case in Canada and we encourage the OSC to quickly introduce the necessary voting system reforms.

For example, bcIMC votes at annual general meetings by returning voting instruction forms – electronically – to a proxy intermediary, Broadridge. At the present time, the intermediary can only confirm back to us that our votes were forwarded to the company. The next logical and important, but missing, step is confirmation to us from the company that bcIMC's share positions were actually voted as instructed.

To enhance the integrity of the voting process, securities law should require companies to return a detailed confirmation to shareholders of vote instructions received. We understand that the proxy messaging "tools" to deliver vote confirmations have been developed and are beginning to be voluntarily implemented in North America.

The consequences of a miscast or missed vote can have serious economic implications. In mergers and acquisitions activity, particularly in very tight contested takeover situations, a miscast or missed vote could lead to financial losses for investors. In addition, where there is a particularly contentious resolution on the ballot, the matter of a few votes can make the difference about whether a measure will pass.

In conclusion, bcIMC appreciates the opportunity to add our views and experiences to this consultation project and we encourage all of the CSA members to move ahead with the development of uniform regulation in these areas.

Should you have any questions, please feel free to contact me.

Sincerely,

Doug Pearce
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