March 28, 2011

Ontario Securities Commission
Attention: John Stevenson, Secretary
20 Queen Street West
Suite 1900, Box 55
Toronto, ON M5H 3S8

Via Email
Hard Copy by Mail

Dear Mr. Stevenson:

I welcome the opportunity by the OSC to provide input with respect to several current issues dealing with governance generally and compensation in particular.

By way of introduction I have been an active Director during the last 25 years. Since presenting to Peter Dey and his Committee in 1994, I have actively supported the significant evolution of governance practices in Canada.

While my Bio is attached for further background, I wish to emphasize that my comments are as an individual only and do not represent the collective views of any past, present, or future companies with which I am associated.

This letter is in support of mandating individual voting for Directors. It also supports improved process providing better clarity of vote tabulation.

This letter does not support mandatory Say On Pay regulation for a number of reasons which are outlined below. I emphasize that not agreeing with the proposed regulatory approach is not synonymous with a lack of understanding or appreciation of the current issues surrounding Executive Compensation. Because they need to be addressed I am proposing better solutions than Say on Pay.

Executive compensation is already under unprecedented scrutiny including much more fulsome and appropriate disclosure, TSX approval for specific components, likewise shareholder approvals, and the well-established and growing Institutional review of the total compensation system by ISS.

If individual voting for Directors is mandated, then dissatisfied Shareholders can vote directly against the Chair and other members of the Compensation Committee. One suspects this would gain the attention of those directly involved in designing inappropriate compensation systems.

Say On Pay might become more effective if it were used as a default mechanism to identify and admonish companies which did not respond to dialogue. Just as a policy forcing all drivers to take courses on drinking and driving because of the transgressions of a few would be silly, so is mandating Say on Pay for all companies a suboptimal approach. A requirement of unnecessary process and associated cost runs the risk of creating a perfunctory process much like the mandated annual approval of the Auditors. Better to focus on the transgressors.

One appreciates that the political train has left the station with Say On Pay votes in place or on their way in other countries. The temptation for regulators to blow with the political winds is understandable. However, I believe we in Canada including bodies such as the OSC, stock exchanges, the institutions, and Directors, have been much more proactive and measured than those in other countries with respect to the evolution of our governance. I hope we in Canada can avoid the kneejerk political reactions that I believe were a big part of the Bush Administration support for legislation that led to SOX and the current Obama Administration leading to over 2,000 pages comprising the Dodd Frank Act including Say on Pay. SMART REGULATION IS BETTER THAN JUST MORE.

Forcing Say on Pay on companies which have sensible compensation systems and receive high “yes” votes risks trivializing an important issue. Another unintended consequence is that additional mandated resolutions encourage the already growing number of resolutions at AGMs. Such meetings are becoming platforms for special interest groups with narrow social agendas which have absolutely nothing to do with the creation of shareholder value or responsible governance.

As an experienced practitioner almost invariably involved with compensation committees, often as the Chair, I feel such votes undermine those Directors who have and are addressing the important issues. The fact that the resolutions proposed by CCGG specifically mention that possibility is an acknowledgment and affirmation of its existence rather than eliminating it. How can the CCGG or those supporting Say on Pay determine the feelings of myself or other active Directors. The perceived need for such a vote sends a very clear message – Directors cannot be trusted and additional approval of their work is required. As a practitioner I emphasize this is disappointing and disheartening.

At a high level the major issue playing out in boardrooms across the country is the wrestling control of management compensation from Executives to the Board where it should always have resided. As one who has been directly involved in this process with many companies over many years, while it may seem like an easy task to an academic, a shareholder, or a regulator, I can assure you that this difficult task takes a lot of courage and determination. It also requires a lot of trust between Board and Management – how can Boards expect the trust of Management if Shareholders clearly do not provide that trust?

Say on Pay votes also undermine, and perhaps violate, the principles of corporate governance that have developed over time. The fiduciary duties of Directors are well defined and include the delegation of a specific role once they are elected by Shareholders. This unwise, and I believe unwarranted intrusion into these long established principles begs the question of "What will come next?".

Most would agree that the two most important roles of the Board are to have the right CEO and a well thought out strategy in place. The main purpose of compensation systems are to recruit, retain, and motivate high performers and in a way that supports the corporate strategy. It is illogical to have a vote only on the support system especially with the knowledge that far more shareholder value has been destroyed by way of the wrong CEO or a poor strategy. Once again as is often the case with politically motivated initiatives, the unintended consequences have not been thoroughly considered.

So in summary it would be hard to conclude that mandating Say on Pay is smart regulation. Together with current scrutiny of compensation systems and the existence of more effective alternatives, it is my hope that you and your colleagues will strongly consider whether there is a compelling case to mandate Say on Pay.

Thank you again for the opportunity to address this important issue.

Respectfully submitted,

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