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

March 31, 2011

By email

Dear Sir:

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

I am writing on behalf of PGGM, a Dutch pension administrator and asset manager acting on behalf of - amongst others - *Pensioenfonds Zorg en Welzijn (PFZW)*, the Dutch pension fund for over two million employees and former employees in the healthcare and welfare sector and the third largest pension fund in Europe. PGGM currently has over €100 billion of assets under management.

Acting on the belief that financial and social returns go largely hand in hand, PGGM sees it as its duty to incorporate responsible investment principles into its investment process, thereby helping to secure a high and stable return. PGGM attaches great importance to good corporate governance, environmental and social practices, and standards in these areas throughout all markets worldwide, and routinely engages issuers and regulators globally on these matters.

PGGM appreciates the opportunity to provide its views on the above referenced Staff Notice and encourages the Ontario Securities Commission to move forward in implementing governance practices in Ontario and, with other members of the Canadian Securities Administrators, in Canada. It is imperative for Canadian companies competing for capital with their global counterparts that they operate within a governance framework which provides shareholders with essentially the same rights as those available in other markets.

Slate voting and majority voting for uncontested director elections

Majority Voting

According to a recent article written by Mr. Peter Dey for the Global Corporate Governance Forum, the principal and most important role of shareholders is to elect and oversee the boards of the companies in which shareholders invest. To fulfill this role, shareholders must have the tools which enable them to do this. Majority voting is such a tool which enables shareholders to elect directors in a meaningful and democratic fashion. Equally important, without it, shareholders have no instrument to remove underperforming directors.

The plurality standard currently used in Canada does not provide shareholders with the power to vote by proxy "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. This does not facilitate the shareholder responsibility referred to by Mr. Dey of electing and overseeing directors who are accountable to shareholders.

Examples from the United States and Canada where a majority of votes were withheld from directors and those directors refused to leave the board demonstrate that the current system of electing accountable directors in Canada and the United States is ineffective and out of line with every other market in developed countries where regulations require directors to receive a majority of votes cast in favour of their nomination in order for them to gain or maintain their seat on the board.

We understand that the Canadian Coalition for Good Governance has been engaging with companies for several years, encouraging them to implement the Coalition's majority voting board policy which was developed to fill a gap in the current law. The Coalition has been successful in that the policy has been substantially adopted by 131 of Canada's largest companies. This however only represents 57% of the S&P/TSX Composite and excludes the vast majority of smaller companies which constitute a large part of the Canadian market. The fact that more companies have not implemented majority voting even with the Coalition advocating its importance, and developing a policy so as to make implementation virtually turn-key for companies, is an indication of the need for regulatory action in this area.

Slate Voting

Slate voting, which requires shareholders to vote for all or none of the directors does not allow shareholders to hold individual directors accountable and detracts from shareholders' right to have a meaningful director election process. As a result of slate voting investors are forced to vote against all directors on a slate even if they only opposed the (re-)election of one individual director. Slate voting should be abolished so that shareholders can cast their votes in respect of each individual director. The advantage for companies lies in the fact that a vote against one director will have no effect on any of the other directors that are up for (re-)election.

Staggered Boards

It is important to discuss staggered boards in the context of shareholder responsibilities regarding oversight of the board. Currently, the law in Canada allows directors to be elected for differing terms of up to three years, creating "staggered boards". In the absence of mechanisms which make directors accountable to shareholders during their term (such as an annual discharge), staggered boards can reduce director accountability and impede the ability of shareholders to make needed changes to the board. Some mechanisms that enhance director accountability during their term include requiring the chairs of committees to stand for re-election every year. Alternatively, as is the case in Australia with the two strike rule, all directors must stand for re-election if binding say on pay proposals receive greater than 25% of votes cast against them for two consecutive years. While we do not take issue with staggered boards as they have their place in well-functioning boardrooms, we prefer to see mechanisms in place that serve to enhance director accountability during the years before which they are up for election.

Mandated shareholder advisory votes on executive compensation

In the Netherlands, 'say on pay' votes are binding, and take the form of being 'for' or 'against' the report of the compensation committee. This report contains the remuneration policy. The supervisory board as a whole is responsible for the execution of this policy. We have found this to be effective for both shareholders and companies, and the binding vote has not hindered the operation of the company or the board. In case shareholders have concerns with the way the remuneration policy is carried out, shareholders in the Netherlands can decide to refrain from granting discharge to the supervisory board (or as an escalation vote against either the members of the supervisory board that are up for reelection or against the annual report).

Despite also having a full host of shareholder rights concerning director elections in the Netherlands, our experience with binding 'say on pay' votes in our home market, and advisory 'say on pay' votes in other markets outside of North America, has been that we've seen a marked increase in the quantity and quality of engagement between shareholders and directors. While the engagement certainly concerns compensation, it often expands to include other issues of importance. Such a dialogue between shareholders and the directors who are accountable to them serves to greatly develop and enhance the understanding of board issues, and to provide support to directors in standing up to management, if required. We have noted that in Canada and the United States, directors are reluctant to speak with their shareholders, choosing instead to delegate this responsibility to management. We see this lack of communication as a significant oversight on the part of directors, and expect that votes on compensation change this practice as it has in other markets.

Based on the above, we cannot see any reason for securities regulators to not mandate 'say on pay' votes.

Effectiveness of proxy voting system

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" written by Davies Ward Phillips & Vineberg.

We think this is an area in which securities regulators could take a more principles-based approach. We recommend that securities regulators articulate 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 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.
- **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.
- **Simplicity**. The voting chain is extremely complex at the moment and should be simplified by increasing the level of automation of the process and limiting the responsibilities of, or even taking out, some actors where possible.

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.]

Other matters

There are other matters which should be considered alongside those named in the OSC Staff Notice 54-701. These are detailed below.

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:

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 reimburse it.

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. PGGM is also not in favour of introducing ad hoc proposals of which other shareholders who voted by proxy were not informed.

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.

Separation of the Chief Executive Officer and Chairman of the board

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 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.

We would appreciate the OSC giving consideration to mandating separating the roles of CEO and board chair.

We thank you again for the opportunity to provide you with our comments.

With kind regards,

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