

March 31, 2011

Sent via email

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

Attention: John Stevenson, Secretary

Dear Mr. Stevenson,

Re: Ontario Securities Commission Staff Notice 54-701 – Regulatory Developments Regarding Shareholder Democracy Issues

The undersigned - investors with approximately USD\$832 billion in assets under management, and professional service partners - are signatories to the United Nations-backed Principles for Responsible Investment (www.unpri.org), a global group that recognizes the investment risks and opportunities posed by environmental, social and governance (ESG) issues. One of our commitments under the Principles is to active ownership, including exercising our voting rights and participation in the development of policies and regulations on shareholder democracy issues.¹ Many of us invest in companies that trade on Canadian exchanges.

We welcome the decision of the Ontario Securities Commission (OSC) to open a consultative process on shareholder democracy issues under Staff Notice 54-701, and offer the following comments.

Slate voting and majority voting for uncontested director elections

Slate voting, in which shareholders may only vote on the entire slate of director nominees presented by management, is not in the best interests of shareholders. It obstructs shareholders from voting against specific directors for performance issues such as poor board attendance or decision-making on a specific board committee. The only option in such cases is to vote against the whole board, or conduct a costly proxy fight. Shareholder interests are best served by individual director voting, providing the opportunity to vote on each director nominee on an annual basis.

¹ PRI Principle 2: "We will be active owners and incorporate ESG issues into our ownership policies and practices".

Under the plurality voting system, whereby “withhold” votes are discounted, a single vote in favour of a director nominee is all that is required for election. Where director nominees are also shareholders, they can be elected on the basis of their own votes. Once again, this prevents shareholders from voting against under-performing directors. We believe shareholder interests are best served by a majority voting system in which individual director nominees require the support of the majority of votes cast to be elected.

Majority voting is becoming a norm among major Canadian issuers. According to research in 2010 by the Canadian Coalition for Good Governance, more than half of S&P/TSX Composite issuers – 75% by market capitalization - have adopted a majority voting policy.²

Mandated shareholder advisory votes on executive compensation

A mandated shareholder advisory vote on executive compensation – “say on pay” - is a logical accompaniment to majority voting for individual director nominees. As stated in the OSC Staff Notice, in many jurisdictions companies are already required to provide such a vote, which is one way that we are able to communicate our view of compensation policy and practices at public companies.³ Where we do not have this right, we can only signal dissent with respect to executive compensation on the proxy by withholding support from one or more of the directors who serve on the compensation committee. This is problematic if we view these directors as valuable to the board overall. We therefore prefer a mechanism that enables us to send a direct message about executive pay.

Say on pay is an important tool for shareholders to provide boards with feedback on executive compensation. Where it is available, the vote prompts companies to establish more accountable and responsible remuneration practices, and improve pay disclosure.

Since February 2009, 55 Canadian issuers have agreed to hold annual advisory votes on executive compensation; 29 of them held their first votes in 2010. We recognize the continuing efforts of the OSC and the CSA to enhance standards of executive compensation disclosure, enabling shareholders to make increasingly effective use of say on pay where it is on Canadian company ballots.

Conclusion

It is clear that a significant gap exists between shareholder rights in Canada and those of shareholders in peer jurisdictions. We recommend that the OSC take what steps are necessary to incorporate majority voting and an annual advisory vote on executive compensation (say on pay) into securities regulation in Ontario. We also recommend that the OSC promote the

²Canadian Coalition for Good Governance. CCGG Majority Voting Policy, March 2011.
http://www.ccg.ca/site/ccgg/assets/pdf/Majority_Voting_March_10_2011.pdf.

³Virtually all public companies incorporated in the United Kingdom, Australia, Germany and the United States must submit reports on remuneration to an advisory shareholder vote. Binding votes on remuneration policy are required for companies governed under the laws of the Netherlands and Norway.

incorporation of these common and fundamental shareholder rights into the securities regulations of the other Canadian jurisdictions.

Please contact Michelle de Cordova, Manager, Public Policy and Research at NEI Investments (mdecordova@NEIinvestments.com, 604-742-8319) or Laura O'Neill, Director, Law and Policy at SHARE (loneill@share.ca, 604-695-2024) if you would like to discuss this submission further. We have copied this letter to the Secretariat of the CSA.

Sincerely,

John Kearns
Chief Executive Officer
NEI Investments

Laura O'Neill
Director, Law and Policy,
Shareholder Association for Research and
Education (SHARE)

Scott Zdrazil
First Vice President, Director of Corporate
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Michael O'Sullivan
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cc: Kim Lachapelle, Secretary General, CSA Secretariat