

March 31, 2011

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

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

Sent via e-mail

Dear Mr. Stevenson,

With more than \$100 billion in assets, the Ontario Teachers' Pension Plan is the largest single-profession pension plan in Canada. An independent organization, it invests the pension fund's assets and administers the pensions of 295,000 active and retired teachers in Ontario. On behalf of our members, we thank you for the opportunity to comment on OSC Staff Notice 54-701 – Regulatory Developments Regarding Shareholder Democracy Issues. We hope that you find our comments thoughtful and relevant.

Slate voting and majority voting for uncontested director elections

Majority Voting

Teachers' supports reforms to securities laws that are appropriate to facilitate voting for individual directors and the implementation of a majority-voting standard. We believe that one of the fundamental rights and responsibilities of shareholders is to vote their shares. However, to be truly effective, this vote should be meaningful. Under the current voting system, shareholder votes carry no weight. Shareholders are allowed to either vote "for" a director or "withhold" their vote for a director. A withheld vote is the same as not voting; therefore it requires only a single "for" vote to elect a director. Even when a company adopts a majority voting policy, such as the one promoted by the Canadian Coalition for Good Governance¹, issuers are not legally compelled to abide by the wishes of shareholders. For director elections to be meaningful, shareholders need the ability to vote against directors. Securities law needs to be amended accordingly.

¹ The Coalition's policy states that in non-contested director elections, withheld votes would be considered "no" votes and directors who fail to receive a majority of votes "for" are required to resign, unless there are extraordinary circumstances. See http://www.ccg.ca/site/ccgg/assets/pdf/Majority_Voting_March_10_2011.pdf for a copy of the policy.

A primary argument put forth against moving to a majority-vote standard is the possibility of a failed board, which occurs when an insufficient number of directors are elected to the board to constitute a quorum. We believe the risk of a failed board is remote. In our experience, shareholders are generally reluctant to vote against a director unless there is an overwhelming reason to do so. Furthermore, in many cases when a director receives a high proportion of negative votes it is not a surprise to the market or the relevant corporation's board and management. Boards could easily take proactive steps to avoid a failed board scenario, including engaging with shareholders and addressing their concerns prior to the vote. Finally, in other jurisdictions where the majority-vote standard has been implemented we are not aware of instances where shareholders have failed to elect a sufficient number of directors to constitute a quorum.

The implementing legislation could address the unlikely event that the required quorum of directors is not elected to the board. For instance, to maintain the required quorum, the elected board members could be granted the discretion to decline the resignations of those directors with the least number of "no" votes.

The risks associated with majority voting are both theoretical and manageable. They cannot outweigh the most compelling reason to mandate a majority voting standard: placing control of who is on the board in the hands of those whom the board is designed to represent - the shareholders.

Slate Voting

When directors are elected using slate voting, shareholders are not allowed to vote for individual directors but must vote for the directors as a group. Under a slate voting system, shareholders may not vote for or withhold their vote from individual directors, resulting in individual directors not being accountable to shareholders. Furthermore, electing directors via a slate is not appropriate under a majority-vote standard. Therefore, it follows that the adoption of a majority-vote standard would also include the abolishment of the slate voting method. Teachers' has long supported the concept that directors should be elected individually rather than via a slate.

Mandated shareholder advisory votes on executive compensation

We recognize that a number of jurisdictions have put in place rules requiring regular shareholder advisory votes on compensation. Teachers' maintains its view that these advisory votes are not needed primarily because the board arrives at compensation decisions in carrying out their duty to supervise the management of the business affairs of the corporation. It is not the responsibility of shareholders to advise the board on compensation decisions.

Teachers' does believe that the board must be held accountable for decisions they make, however a vote on compensation does not serve this end. Individual director elections combined with a majority-vote standard (as discussed above) provide shareholders with the proper tools to hold boards and directors accountable for their actions. We believe the only effective way to address compensation issues is not with an advisory vote on compensation, but with the ability to remove underperforming directors with our shareholder vote. In our view, implementing a majority-vote standard combined with individual director elections removes the requirement for a mandatory advisory vote on compensation and is a much more effective way to affect positive change on compensation issues.

Effectiveness of the proxy voting system

Recently, the proxy voting system has been the subject of much debate in Canada with publication of “The Quality of the Shareholder Vote in Canada” by Davies Ward Phillips & Vineberg LLP. The paper is a thorough review of the challenges in the current proxy voting system in Canada and should serve as a starting point for any review by OSC staff of the system.

Teachers’ believes that the current system is in need of reform and urges the OSC to undertake a systematic review and recommend reforms that will make the system more transparent and accountable. As stated earlier in our comments, one of the fundamental rights and responsibilities of shareholders is to vote their shares. However, casting votes into a system that is complex, is unable to confirm votes and has no group or body assuming ownership over systemic integrity is fundamentally flawed and dilutes, or in some cases eradicates, the shareholders’ right to vote.

We appreciate the opportunity to respond to your request for comment and hope that you find our feedback relevant. Feel free to contact us if we can be of further assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Wayne Kozun", written in a cursive style.

Wayne Kozun
Senior Vice-President, Public Equities