

**Canadian Coalition for  
GOOD GOVERNANCE**  
THE VOICE OF THE SHAREHOLDER

April 25, 2016

Mr. Robert Day  
Senior Specialist Business Planning  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto, Ontario  
M5H 3S8  
rday@osc.gov.on.ca

Dear Mr. Day,

**Re: Ontario Securities Commission ("OSC") Draft 2016-2017 Statement of  
Priorities**

We thank you for the opportunity to provide you with our comments on the OSC's draft 2016-2017 Statement of Priorities.

CCGG's members are Canadian institutional investors that together manage approximately \$3 trillion in assets on behalf of pension fund contributors, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies, as well as the improvement of the regulatory environment to best align the interests of boards and management with those of their shareholders and to promote the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

***General***

CCGG represents "the voice of the shareholder" and endeavours to ensure that this stakeholder perspective is reflected in regulatory initiatives. After reading the initiatives identified in the draft 2016-2017 Statement of Priorities as important areas where the OSC intends to focus its resources and actions, we note that there are several shareholder democracy matters of significant importance to CCGG's institutional shareholder members which we believe should be high on the OSC's agenda but have not been included. We discuss those matters below.

We would first like to highlight our support for the OSC's continued focus on monitoring progress on disclosure related to women on boards and in executive officer positions, a corporate governance issue of the utmost importance to CCGG's members. We also laud the OSC's stated

commitment to working with the participating jurisdictions to transition to the Cooperative Capital Markets Regulatory System.

### ***Shareholder Democracy Issues***

#### Say-on-Pay

We are disappointed that the OSC did not include say-on-pay on its list of priorities for the upcoming year. In response to comments on the absence of say-on-pay from last year's draft Statement of Priorities, the OSC in that year's final Notice of Statement of Priorities stated that "[w]e are also continuing to monitor developments in respect of say-on-pay in Canada and other jurisdictions to determine whether it would be necessary and appropriate to mandate say-on-pay under securities regulation." If the OSC has determined that it is not necessary or appropriate to mandate say-on-pay under securities regulation, we request that a public statement be made to that effect. If the OSC has not so determined, we encourage the OSC to focus on this important issue as it becomes more pressing as time goes by. As we noted in our comments on prior years' OSC draft Statement of Priorities, Canada is an outlier among developed nations in not having a mandatory advisory say-on-pay vote that allows shareholders to voice their views on the appropriateness of an issuer's executive compensation practices. Last year in Canada shareholders used say-on-pay to send strong messages to boards of companies with unsatisfactory executive compensation practices, the failed say-on-pay votes at Barrick, CIBC and Yamana being particularly noteworthy. In order to level the playing field for all Canadian issuers and in order that all Canadian shareholders benefit from what is recognized globally to be an important means of communicating with issuers and boards, the OSC should prioritize making an annual advisory say on pay vote mandatory for all TSX and TSX-V listed issuers.

In correspondence with the OSC earlier this year, CCGG encouraged the OSC to take the lead on this matter. We also wrote to other provincial securities regulators encouraging them to take a role in bringing say-on-pay to Canada, but we believe that as the regulator of Canada's primary capital market it is incumbent on the OSC to spearhead the mandatory adoption of say-on-pay. It also is consistent with the OSC's stated priority in its draft 2016-2017 Statement of Priorities of improving "alignment with international standard setting to deliver regulatory solutions that meet the needs of Ontario's market and participants."

#### Majority Voting

CCGG continues to advocate for the enactment of a statutory majority voting standard for uncontested director elections so that majority voting, via the ability to vote 'against' directors rather than merely 'withhold', becomes the law and is not just a stock exchange listing requirement. We believe that the OSC should publicly lend its voice in support of this position. Until this occurs, we encourage the OSC to use its influence to have the TSX rules on majority voting expanded so that they apply to the approximately 1,775 issuers listed on the TSX-V as well as to TSX listed issuers. There is no reason to exclude the shareholders of smaller companies from this fundamental shareholder right, especially since the added cost to companies is minimal.



We also note that notwithstanding the TSX's majority voting rule, we have seen that the phenomenon of 'zombie directors' (those directors who remain on the board even after failing to receive a majority of votes cast in favour) continues on in Canada in some cases. Accordingly, until Canadian corporate statutes are changed to require majority voting for uncontested director elections, CCGG encourages the OSC to seek rule-making authority from the Ontario provincial government that would enable the OSC to impose a more effective majority voting regime on public issuers than currently exists. It is unacceptable that in Canada, alone with the U.S. globally in this respect, the shareholders' right to elect directors remains ultimately ineffective.

### Shareholder Involvement in the Director Nomination Process

CCGG views shareholders' ability to have a meaningful say in which persons are put forward as director nominees to be a fundamental right. In the first instance, as espoused in our policy [Shareholder Involvement in the Director Nomination Process: Enhanced Engagement and Proxy Access](#), directors should seek the input of shareholders on the director nominating process and thus board composition on a regular basis. In addition, shareholders meeting certain conditions should be able to nominate directors in proxy materials on an equal footing with management nominees. We support the view that shareholders holding an aggregate economic and voting interest of at least 3% (for companies with market capitalization of at least \$1 billion) or 5% (for companies with market capitalization of less than \$1 billion), should be able to nominate directors, without the need for any holding period. The number of directors that can be nominated pursuant to this right would be limited to a maximum of the lesser of 3 directors or 20% of the board. As stated in our policy, shareholders nominating directors should be required to represent that they are not seeking control and that their economic ownership interest is at least 3% or 5%, as the case may be. We believe that the OSC should make shareholder involvement in the director nomination process, including direct access to the proxy under certain conditions, a priority going forward. While we recognize that many stakeholders in the Canadian environment are uneasy with this concept, CCGG believes that, like majority voting, shareholder involvement in the director nomination process will inevitably come to be seen as another manifestation of a meaningful shareholder franchise and one of the foundations of good corporate governance. We believe it is important that the OSC recognise the importance of shareholder involvement in the director nomination process and bring its voice to this discussion.

We also recommend that the OSC adopt rules that would require the use of a 'universal proxy' in all contested director elections.<sup>1</sup> All director nominees in this situation should be included on the same proxy form whether nominated by management or by dissidents so that shareholders are able to freely choose the combination of nominees they wish to support, just as they are able to do if they attend the shareholder meeting in person. We note that the US Securities and Exchange Commission is currently considering whether the use of universal proxy cards should be optional or mandatory, as well as whether to mandate a format for universal proxy cards.

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<sup>1</sup> See CCGG's [Universal Proxy Policy](#), September 2015

### Reform of the Proxy Voting System

Few issues will have as broad an impact on so many different shareholder democracy and corporate governance issues as effective reform of the proxy voting system. Our understanding is that the OSC continues to take a leadership role in addressing systemic problems in the proxy voting infrastructure and that issues as complex and wide ranging as this can take several years to resolve. We note that progress is being made on this issue with the recent release of the Canadian Securities Administrators' draft Proxy Voting Protocols. However, much work remains to be done in this complex area and we would like to see an acknowledgment by the OSC that this important matter will continue to be front and centre on the list of the OSC's priorities until all the issues are resolved.

### Empty Voting

We would also like to see an acknowledgement that the OSC is considering the issue of empty voting. The separation of voting interests from economic interests calls into question some of the fundamental assumptions of shareholder democracy upon which our system of corporate governance is based and we believe it is time for the OSC to turn its attention to this issue.

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We thank you again for the opportunity to provide you with our comments. Please feel free to contact our Executive Director, Stephen Erlichman (416-847-0524 or [serlichman@ccgg.ca](mailto:serlichman@ccgg.ca)) or our Director of Policy Development, Catherine McCall (416-868-3582 or [cmccall@ccgg.ca](mailto:cmccall@ccgg.ca)) if you would like to discuss this matter further or if we can be of any assistance.

Yours truly,



Daniel E. Chornous, CFA  
Chair of the Board  
Canadian Coalition for Good Governance

**CCGG Members - 2016**

- 1 Alberta Investment Management Corporation (AIMCo)
- 2 Alberta Teachers' Retirement Fund (ATRF)
- 3 Archdiocese of Toronto
- 4 BlackRock Asset Management Canada Limited
- 5 BMO Asset Management Inc.
- 6 BNY Mellon Asset Management Canada Ltd.
- 7 British Columbia Investment Management Corporation (bcIMC)
- 8 Burgundy Asset Management Ltd.
- 9 Canada Pension Plan Investment Board (CPPIB)
- 10 Canada Post Corporation Registered Pension Plan
- 11 CIBC Asset Management Inc.
- 12 Colleges of Applied Arts and Technology Pension Plan (CAAT)
- 13 Connor, Clark & Lunn Investment Management Ltd.
- 14 Desjardins Global Asset Management
- 15 Electrical Safety Authority (ESA)
- 16 Fiera Capital Corporation
- 17 Franklin Templeton Investments Corp.
- 18 Greystone Managed Investments Inc.
- 19 Healthcare of Ontario Pension Plan (HOOPP)
- 20 Industrial Alliance Investment Management Inc.
- 21 Jarislowsky Fraser Limited
- 22 Leith Wheeler Investment Counsel
- 23 Lincluden Investment Management Limited
- 24 Mackenzie Financial Corporation
- 25 Manulife Asset Management Limited
- 26 NAV Canada
- 27 New Brunswick Investment Management Corporation (NBIMC)
- 28 Northwest & Ethical Investments L.P. (NEI Investments)
- 29 OceanRock Investments Inc.
- 30 Ontario Municipal Employee Retirement System (OMERS)
- 31 Ontario Pension Board
- 32 Ontario Teachers' Pension Plan Board (OTPP)
- 33 OPSEU Pension Trust
- 34 PCJ Investment Counsel Ltd.
- 35 Pension Plan of the United Church of Canada
- 36 Public Sector Pension Investment Board (PSP Investments)
- 37 RBC Global Asset Management Inc.
- 38 Régimes de retraite de la Société de transport de Montréal (STM)
- 39 Russell Investments Canada Limited
- 40 Scotia Global Asset Management
- 41 Sionna Investment Managers Inc.
- 42 State Street Global Advisors, Ltd. (SSgA)



- 43 Sun Life Investment Management Inc. (SLIM)
- 44 TD Asset Management Inc.
- 45 Teachers' Retirement Allowances Fund
- 46 UBC Investment Management Trust Inc.
- 47 University of Toronto Asset Management Corporation
- 48 Workers' Compensation Board - Alberta
- 49 York University

**CCGG Collaboration Partner - 2016**

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