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VIA EMAIL:

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January 25, 2018

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
The Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission of New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territories  
Registrar of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto, Ontario  
M5H 3S8

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, rue du Square-Victoria, 22e étage  
C.P. 246, tour de la Bourse  
Montréal (Québec)  
H4Z 1G3

**Re: Canadian Securities Administrators (the “CSA”) Notice and Request for Comment: CSA Consultation Paper 52-404 *Approach to Director and Audit Committee Member Independence* (the “Consultation Paper”)**

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We are pleased to provide comments on behalf of IGM Financial Inc. (“IGM”) in response to the CSA’s request for comments and feedback on the Consultation Paper regarding the approach to determining director and audit committee member independence.

## **Background on IGM**

IGM is a diversified financial services company and is one of Canada's largest asset managers and has approximately \$157 billion in assets under management on behalf of over 2 million clients across Canada. Its activities are carried out principally through its subsidiaries, namely Investors Group Inc., Mackenzie Financial Corporation, and Investment Planning Counsel Inc. IGM is a member of the Power Financial Corporation group of companies. Power Financial Corporation, a subsidiary of Power Corporation of Canada, is the majority shareholder of IGM as it holds in the aggregate, directly or indirectly, approximately 65.3% voting interest in IGM.

## **General Comments**

As a general comment, we welcome and support the CSA's continued review and consideration of the appropriateness of the current approach and framework for determining director and audit committee independence.

Independent directors play an important corporate governance role in that they serve to protect the interest of shareholders and to monitor the integrity and actions of management. However, as set out in our comments below, we believe that certain aspects of the current approach to determining director and audit committee member independence unduly restrict the discretion of board members and creates an implicit bias especially with respect to equity controlled issuers, such as IGM.

## **Specific Request for Comment – Question 1(a)**

As set out in more detail below, we do not believe from our experience as a company which has a majority shareholder, that the current approach to director and audit committee independence is appropriate for all issuers in the Canadian market.

The Canadian Coalition for Good Governance (the "CCGG"), institutional shareholders such as the Caisse de dépôt et placement du Québec, as well as proxy advisory firms such as Glass Lewis and ISS, have all acknowledged that majority controlled corporations face unique governance challenges and that allowing a majority shareholder to play an active role on both the board and committees of the corporation is a benefit to all shareholders<sup>1</sup>. As Glass Lewis points out:

*"For controlled companies, we provide an exception to our independence standards. The board of directors' function is to protect the interests of shareholders; however when a single individual or entity owns more than 50% of the voting shares, the interests of the majority of shareholders are the interests of that entity or individual".<sup>2</sup>*

IGM shares this view. We believe that it is not only appropriate, but is also beneficial, to also allow a controlling shareholder to not immediately be deemed not to be independent, for the purposes of the board and the corporation's audit committee. In our experience, a financially strong and long-term oriented controlling shareholder can have a significant positive impact on a corporation's long-term returns, benefiting all shareholders and the corporation as a whole. In the case of IGM, many of these attributes are

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<sup>1</sup> See CCGG's policy "Governance Differences for Equity Controlled Corporations", October, 2011.

<sup>2</sup> See Glass Lewis' 2017 Proxy Paper: *An Overview of the Glass Lewis Approach to Proxy Advice – Canada*, re: Controlled Companies at page 16.

provided through a governance model which has been developed over many years, and which includes a group of directors who are also officers of the controlling shareholder.

In our view, no single corporate governance model is superior or appropriate in all cases. The current framework used to determine director and audit independence creates an implicit bias that corporate governance practices that differ are in some way deficient. As discussed in more detail below, we believe a more principled approach to director independence for the board and the audit committee should be implemented so that boards can make a determination of independence using their reasonable judgment taking into account all circumstances.

### **Specific Request for Comment – Question 1(b)**

We believe the current definition of director independence is overly restrictive and can serve to limit or preclude individuals who would otherwise contribute meaningfully on the board of an issuer.

A negative consequence of the current “bright line test” approach to independence is that a director that has a relationship with a control person or a significant shareholder is automatically deemed to be “not independent”. Implicit in this restriction is that the director is incapable of exercising independent judgment and/or a conflict of interest exists that cannot be effectively mitigated. The presumption that an executive officer of a parent corporation or a controlling shareholder is unable to exercise independent judgment in discharging his or her duties or that is conflicted in such duties as a director, based on our own experience with our controlling shareholder is unfounded. This presumption also goes against the basic tenets of corporate law, wherein directors have fiduciary duties to the company as a whole and not to any single shareholder or shareholder group.

The current approach to corporate governance emphasizes the need for perceived independence, over the need for directors to have company-specific knowledge and the requisite skills and experience. In our experience, it is a combination of qualities that make an outstanding director, which includes intellect, experience, being fully informed of the business of the company and a willingness to question management decision making. While the current approach to directors clearly defines who is and is not “independent”, it does not necessarily compel or guarantee any of these other important attributes needed in a director.

In IGM’s experience, the breadth of knowledge, degree of oversight and rigour brought to bear by its controlling shareholder as a member of the board is of great benefit to the corporation and its shareholders. The interests of a significant shareholder are most often aligned with those of all other shareholders, and their participation on the board and its committees serves to ensure that the interest of all shareholders are adequately addressed.

Furthermore, IGM believes that the governance issues that are typically associated with a controlling shareholder are not ones of “independence”, but rather relate to conflict of interest and “self-dealing”. Any concerns which may exist in a controlled company relating to conflicts of interest or self-dealing should, in the view of IGM, be resolved directly through a committee of directors who are independent of the controlling shareholder. The governance model at IGM includes such a committee, the Related Party and Conduct Review Committee, which is composed entirely of directors who are independent. IGM’s Related Party and Conduct Review Committee reviews transactions with “related parties” of the corporation and approves only those transactions that it deems appropriate.

### **Specific Request for Comment – Question 1(c)**

We do not believe the current approach strikes an appropriate balance due to the restrictions it imposes on an issuer's board in making a determination of director and audit committee independence. Removing such discretion from the board of directors not only hinders its ability to make decisions which it believes are in the best interest of the issuer, but results in the board less able to compose board structures and appoint audit committee members that achieve the right degree of skills and experience specific to the company.

While the current bright line approach may provide certainty, consistency and a predictable way to determine independence of a director, it does so at an expense. For the reasons summarized above, we believe that the benefits derived from the consistency and predictability of the current approach do not outweigh the negative consequences it creates.

### **Specific Request for Comment – Question 2**

In our view, a relationship with a control person or a significant shareholder should not, in and of itself, determine independence. This view is shared by the CCGG which states:

*“No, a relationship with a control person or significant shareholder should not, in and of itself, be identified as a relationship that could affect independence. This is particularly the case where control is held through a controlling equity position (e.g. owning a majority of the common shares), as opposed to control held through multiple voting shares with minimal equity holdings (in which case the control relationship may lead to the interests of the controlling shareholder being significantly different than those of other shareholders).”<sup>3</sup>*

IGM strongly believes that the current definition of director independence should be revised so that the determination of independence is based not on the current bright line test but instead on such factors as (i) whether or not the director is independent from management of the issuer, and (ii) whether or not the director has any other relationships with the issuer that, in light of all the circumstances, could reasonably be expected to interfere with the exercise of the director's independent judgment.

The CSA previously acknowledged the above referenced concerns, and seemed to agree with this approach to independence as we have outlined when the CSA published for comment proposed revised versions of National Policy 58-201, National Instrument 52-110 and National Instrument 58-101 (the “Instruments”)<sup>4</sup> in 2005. Among other things, the CSA contemplated at the time the replacement of the current prescriptive approach to independence with a more principle-based approach. As noted in the Consultation Paper, a principle-based approach is also used by other nations such as the UK, Australia and Sweden.

### **Summary**

IGM encourages the CSA to replace the current bright line test in the Instruments with a more principle-based approach, and to modify its position of the “independence” definition as it relates to majority shareholders.

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<sup>3</sup> See CCGG's April 20, 2009 response to the Request for Comment - Proposed Repeal and Replacement of NP 58-201 *Corporate Governance Guidelines*, NI58-101 *Disclosure of Corporate Governance Practices*, and NI 52-110 *Audit Committees and Companion Policy 52-110CP Audit Committees*. See also CCGG's policy “*Governance Differences for Equity Controlled Corporations*”, October, 2011.

<sup>4</sup> CSA's Request for Comment - Proposed Repeal and Replacement of NP 58-201 *Corporate Governance Guidelines*, NI58-101 *Disclosure of Corporate Governance Practices*, and NI 52-110 *Audit Committees and Companion Policy 52-110CP Audit Committees*.

In addition to our submission, we also want to acknowledge the submission by Power Corporation of Canada in its response to the Consultation Paper, which we fully support.

We appreciate the opportunity to provide you with our comments on the Consultation Paper and would be pleased to answer any questions that you may have about these submissions. Please feel free to contact Erin McNicol ([Erin.McNicol@investorsgroup.com](mailto:Erin.McNicol@investorsgroup.com)), Rhonda Goldberg ([Rhonda.Goldberg@igmfinancial.com](mailto:Rhonda.Goldberg@igmfinancial.com)) or myself, if you wish to discuss this further or require additional information.

Yours very truly,

A handwritten signature in blue ink, appearing to be 'JRC', is written over a light blue circular stamp or watermark.

**IGM FINANCIAL INC.**

Jeffrey R. Carney, President and Chief Executive Officer