

Canadian Coalition for  
**GOOD GOVERNANCE**

**THE VOICE OF THE SHAREHOLDER**

November 15, 2016

Financial Institutions Division  
Financial Sector Policy Branch  
Department of Finance Canada  
90 Elgin Street  
Ottawa, Canada  
K1A 0G5  
Email: [LegislativeReview-ExamenLegislatif@canada.ca](mailto:LegislativeReview-ExamenLegislatif@canada.ca)

Dear Sir/Madam:

**Re: Department of Finance Canada: A Consultation Document for the Review of the  
Federal Financial Sector Framework *Supporting a Strong and Growing Economy:*  
Positioning Canada's Financial Sector for the Future (the "Consultation Document")**

The Canadian Coalition for Good Governance ("CCGG") has reviewed the Consultation Document and we thank you for the opportunity to provide our comments.

CCGG's members are Canadian institutional investors that together manage approximately \$3 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies and the improvement of the regulatory environment in order 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 as Appendix 1.

## **OVERVIEW**

CCGG supports the Department of Finance Canada's review of whether the federal financial sector legislative and regulatory framework continues to effectively support the economy and individual Canadians. We welcome the opportunity to provide our input into ensuring that the financial sector framework meets the core policy objectives of stability, efficiency and utility. CCGG's mandate is the improvement of corporate governance at Canadian public companies, which includes the governance of financial institutions which are public companies. Accordingly, we restrict our comments here to corporate governance matters that we believe should be addressed in the Department of Finance's public consultation process (the "Consultation").

The governance of public companies has important ramifications for the capital markets. Establishing a corporate governance framework that enables directors, management and shareholders to fulfill their obligations as well as meaningfully exercise their rights is essential if our public corporations are going to serve their market role of enhancing long term sustainable value and creating prosperity for society generally. It has long been acknowledged that good governance is critical to meeting this goal.

In this regard, the federal Ministry of Innovation, Science and Business Development (the "Ministry") recently released proposed legislation Bill C-25 that would amend the Canada Business Corporations Act (CBCA) to introduce corporate governance changes for companies incorporated under the CBCA that are intended to: "promote investor confidence and a competitive marketplace, which can in turn support long-term investment and contribute to economic growth". Further, "(m)odern and well-crafted economic framework laws are the foundation upon which Canadian companies can innovate and grow to scale in the modern economy." CCGG believes Bill C-25 introduces several essential governance improvements, ones for which CCGG has been advocating for many years.

Good governance is equally critical for financial institutions and the financial sector generally, especially given the potential for systematic impact of governance failures at these institutions. Accordingly, CCGG recommends that the Finance Department Canada consider amending the federal statutes governing financial institutions which are public companies in a manner similar to the amendments proposed in Bill C-25 (the "Proposed CBCA Amendments").

We outline the Proposed CBCA Amendments below that we believe are relevant to the governance of Canadian financial institutions which are public companies. We also outline additional proposals to amend the CBCA that we are encouraging the federal government to adopt to further improve corporate governance at public companies governed by the CBCA and that we believe should be considered by the Department of Finance for public federal financial institutions as well.

## **PROPOSED CBCA AMENDMENTS**

### **Director election by majority vote**

CCGG strongly supports the proposed CBCA amendment to enshrine majority voting for uncontested director elections in legislation. It is now universally accepted in the corporate governance world that a majority voting standard for uncontested director elections, as opposed to the plurality standard currently found in the legislation governing Canadian public corporations, including financial institutions, is fundamental to shareholder democracy. The ability to vote only 'for' or 'withhold', as is the case under the plurality standard, leads to the unacceptable result that a director who receives only one vote

‘for’ (and such vote may be his or her own) is elected even if all other votes are ‘withheld’. Under this system, directors are not truly accountable to shareholders. Under a majority voting standard, shareholders can vote ‘for’ or ‘against’ directors so that directors who do not receive a majority of votes in their favour are not, as a matter of law, elected to the board.

While the TSX in 2014 amended its listing requirements so that its listed issuers must adopt a majority voting policy in uncontested director elections similar to the majority voting policy that CCGG has espoused since 2006, the TSX policy is only a ‘work around’ the fact that the law still provides for plurality voting. The TSX listing requirements provide a board with discretion as to whether to accept the resignation of a director who has failed to receive a majority of votes in favour, leading to the phenomenon of what have been called ‘zombie directors’ when the resignations are not accepted. Also, the rule applies only to TSX listed issuers (and not to TSX-V listed issuers or other public companies not listed on the TSX) and the TSX could change the requirement in the future. Just as it is important that the CBCA be amended to enshrine the shareholder right to majority voting for all public companies incorporated under the CBCA it is equally as important that the statutes pursuant to which public financial institutions are incorporated are amended in a similar fashion.

### **Annual election of directors**

The CBCA amendment will provide for annual elections of directors at all public corporations. The Department of Finance should amend the relevant statutes to require that the directors of all public financial institutions are elected for one year terms as well.

### **Individual election of directors and not slate voting**

The proposed CBCA amendments require that a separate shareholder vote be taken with respect to each director nominee rather than by slate ballot. The same requirement should apply to the election of directors at public financial institutions. Being able to hold individual directors accountable is fundamental to meaningful shareholder democracy. Again, while the TSX already requires that its listed issuers provide for individual voting for directors it is important that this principle be enshrined in legislation for all public financial institutions so that it is not only a listing requirement which the TSX could change in the future.

### **Disclosure relating to diversity in corporations**

CCGG believes in the importance of diversity on boards and in senior management given that research shows that diversity enhances the quality of decision making and group, as well as corporate performance.<sup>1</sup> As CCGG’s 2013 *Building High Performance Boards* states, boards should reflect a wide variety of experiences, views and backgrounds, which to the extent practicable reflect the gender,

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<sup>1</sup>*Different if Better: Why Diversity Matters in the Boardroom* <http://www.russellreynolds.com/content/different-better>; (2010, October). *Better Decisions through Diversity: Heterogeneity Can Boost Group Performance*. Kellogg Insight. Kellogg School of Management at Northwestern University; [https://www.credit-suisse.com/newsletter/doc/gender\\_diversity.pdf](https://www.credit-suisse.com/newsletter/doc/gender_diversity.pdf); “Women Matter: gender diversity, a corporate performance driver”, McKinsey, & Company, 2007; “The Bottom Line: Corporate Performance and Women’s Representation on Boards”, Lois Joy, Nancy M. Carter, Harvey M. Wagener, Sriram Narayanan; “Mining the Metrics of Board Diversity”, June 2013 Thomson Reuters; “Women on Boards” February 2011, UK, pages 7-9 (the “Davies Report”)

ethnic, cultural and other personal characteristics of the communities in which the corporation operates and sells its goods or services.<sup>2</sup> The same principle applies to senior management.

The Proposed CBCA Amendments will require issuers to annually disclose certain information “respecting diversity among the directors and among the members of senior management”. The proposals do not provide any details as to the sort of information on diversity that will be prescribed, which will be set out in future regulation, or what is meant by ‘diversity’, but CCGG supports in principle the focus on addressing lack of diversity, both as a fairness and a business issue. Because women comprise half the population, CCGG believes that the lack of gender diversity on boards and in senior management is the most obvious form of lack of representation that needs to be addressed, and will be encouraging the federal government to begin with gender.<sup>3</sup> We note, however, that CCGG strongly supports addressing the lack of other forms of diversity on boards and in senior management as well. We encourage the Department of Finance to address lack of diversity, beginning with gender, by amending the federal statutes governing public financial institutions in a way that reflects the importance of this issue, perhaps by emulating the Proposed CBCA Amendments.

## **PROPOSALS FOR ADDITIONAL CBCA AMENDMENTS**

In addition to supporting the Ministry’s Proposed CBCA Amendments with respect to majority voting, annual elections and diversity on boards and in senior management, we have asked the federal government to amend the CBCA to adopt other provisions important for good governance and shareholder rights. These other provisions are as relevant and important for public financial institutions as well and we encourage the Department of Finance to adopt them.

### **Say on Pay**

Canada is an outlier among developed nations in not having a mandatory say on pay vote that allows shareholders to voice their views on the appropriateness of an issuer’s executive compensation practices. In some countries, say on pay votes are advisory in nature, such as those mandated in the U.S. since 2011 under the Dodd-Frank Wall Street Reform and Consumer Protection Act, and in other countries they are binding, as in the U.K. and Switzerland. CCGG believes that the statutes pursuant to which public financial institutions are incorporated should be amended to provide for an annual advisory say on pay vote for all institutions governed by those statutes.

Say on pay already has been adopted voluntarily by approximately [ 130] of Canada’s largest issuers and those aspiring to best practices, a trend which was led by Canada’s leading financial institutions which are at the forefront of the adoption of say on pay in Canada. Say and pay is viewed widely as having significantly improved the quality of issuer disclosure in Canada and to have increased productive engagement between shareholders and boards. It is important that the playing field be consistent and

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<sup>2</sup>[http://www.ccg.ca/site/ccgg/assets/pdf/building\\_high\\_performance\\_boards\\_august\\_2013\\_v12\\_formatted\\_\\_sept\\_19\\_2013\\_last\\_update\\_.pdf](http://www.ccg.ca/site/ccgg/assets/pdf/building_high_performance_boards_august_2013_v12_formatted__sept_19_2013_last_update_.pdf) page 9

<sup>3</sup>In its response to the Ontario Securities Commission’s Consultation Paper on gender diversity, CCGG supported the OSC’s initiative in this area to encourage the inclusion of more women on boards and senior management through the proposed adoption of disclosure requirements regarding gender diversity policies.  
[http://www.ccg.ca/site/ccgg/assets/pdf/submission\\_to\\_osc\\_staff\\_consultation\\_paper\\_58-g\\_women\\_on\\_boards\\_and\\_in\\_senior\\_management.pdf](http://www.ccg.ca/site/ccgg/assets/pdf/submission_to_osc_staff_consultation_paper_58-g_women_on_boards_and_in_senior_management.pdf) response letter to OSC Staff consultation Paper 58-401 Disclosure Requirements Regarding Women on Boards and in Senior Management.



level, in order that shareholders of all public companies, including all public financial institutions, have this ability and that all directors benefit from this form of shareholder communication.

### **Separation of the Roles of the Chief Executive Officer (CEO) and the Chair of the Board**

For all issuers, there is an inherent conflict of interest when the Chair of a company's board also serves as the CEO of that company. The oversight of management, in particular the CEO, is one of the board's key responsibilities and a combined Chair/CEO is thus responsible for leading the body that oversees himself or herself. Other important responsibilities of the Chair are compromised when the role is shared: setting the agenda for board meetings, ensuring directors receive the necessary information and that board meetings are conducted with open discussion and an independent assessment of management views. Similar challenges are presented when the Chair is not wholly independent of management. Accordingly, it is CCGG's position that as a basic tenet of good governance the CEO should not also serve as the Chair and, further, that the Chair should be independent of management. CCGG believes this cardinal rule should be made explicit in the CBCA as well as in those federal statutes that govern public financial institution issuers.

The statutes could provide for a transitional period for issuers that currently combine the roles pursuant to which boards could appoint a lead director independent of management to carry out the functions of the chair of the board as the board moves toward completely separating the roles of CEO and chair.

### **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. CCGG is encouraging the federal government to amend the CBCA to include direct access to the proxy under certain conditions, for example by amending section 137(4) of the CBCA. We also encourage the Department of Finance Canada to take the same initiative, for example by amending section 143(4) of the Bank Act. 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 Department of Finance recognise the importance of shareholder involvement in the director nomination process for public financial institutions and reflect this recognition in the relevant legislation.

### **SUMMARY**

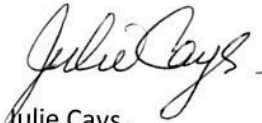
The opportunity to amend the statutes governing federal financial institutions provides a rare opportunity to enhance the corporate governance of Canadian financial institutions in important ways. CCGG is pleased to be able to provide its comments on the Consultation Document and strongly encourages the Department of Finance Canada to take full advantage of this opportunity to position

Canada in the forefront of good governance practices at public financial institutions and thereby assist in promoting the stability, efficiency and utility of the Canadian financial markets.

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Thank you for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Erlichman, at \_\_\_\_\_ or  
or our Director of Policy Development, Catherine McCall, at \_\_\_\_\_ or

Yours very truly,



Julie Cays,  
Chair of the Board of Directors  
Canadian Coalition for Good Governance

## APPENDIX 1

### CCGG Members - 2016

Alberta Investment Management Corporation (AIMCo)  
Alberta Teachers' Retirement Fund (ATRF)  
Archdiocese of Toronto  
BlackRock Asset Management Canada Limited  
BMO Asset Management Inc.  
BNY Mellon Asset Management Canada Ltd.  
British Columbia Investment Management Corporation (bcIMC)  
Burgundy Asset Management Ltd.  
Caisse de dépôt et placement du Québec  
Canada Pension Plan Investment Board (CPPIB)  
Canada Post Corporation Registered Pension Plan  
CIBC Asset Management Inc.  
Colleges of Applied Arts and Technology Pension Plan (CAAT)  
Connor, Clark & Lunn Investment Management Ltd.  
Desjardins Global Asset Management  
Electrical Safety Authority (ESA)  
Fiera Capital Corporation  
Franklin Templeton Investments Corp.  
Greystone Managed Investments Inc.  
Healthcare of Ontario Pension Plan (HOOPP)  
Hillsdale Investment Management Inc.  
Industrial Alliance Investment Management Inc.  
Jarislowsky Fraser Limited  
Leith Wheeler Investment Counsel  
Lincluden Investment Management Limited  
Mackenzie Financial Corporation

Manulife Asset Management Limited

NAV Canada

New Brunswick Investment Management Corporation (NBIMC)

Northwest & Ethical Investments L.P. (NEI Investments)

OceanRock Investments Inc.

Ontario Municipal Employee Retirement System (OMERS)

Ontario Pension Board

Ontario Teachers' Pension Plan (OTPP)

OPSEU Pension Trust

PCJ Investment Counsel Ltd.

Pension Plan of the United Church of Canada

Pier 21 Asset Management Inc.

Public Sector Pension Investment Board (PSP Investments)

RBC Global Asset Management Inc.

Régimes de retraite de la Société de transport de Montréal (STM)

Russell Investments Canada Limited

Scotia Global Asset Management

Sionna Investment Managers Inc.

State Street Global Advisors, Ltd. (SSgA)

Sun Life Investment Management Inc. (SLIM)

TD Asset Management Inc.

Teachers' Retirement Allowances Fund

UBC Investment Management Trust Inc.

University of Toronto Asset Management Corporation

Workers' Compensation Board - Alberta

York University



