

**Suggested form of policy statement to be adopted by the boards of directors of Canadian public corporations.**

The board of directors of [Company] believes that each of its members should carry the confidence and support of its shareholders. To this end, the directors have unanimously adopted this statement of policy. Future nominees for election to the board will be asked to subscribe to this statement before their names are put forward.

Forms of proxy for the vote at a shareholders' meeting where directors are to be elected will enable the shareholder to vote in favour of, or to withhold from voting, separately for each nominee. At the meeting, the Chair will call for a vote by ballot and the scrutineers will record with respect to each nominee the number of shares in his or her favour and the number of shares withheld from voting. Prior to receiving the scrutineer's report on the ballot, the Chair may announce the vote result based on the number of proxies received by the Company. At the conclusion of the meeting, the final scrutineer's report on the ballot must be filed on SEDAR. If, with respect to any particular nominee, the number of shares withheld exceeds the number of shares voted in favour of the nominee, then for purposes of this policy the nominee shall be considered not to have received the support of the shareholders, even though duly elected as a matter of corporate law.

A person elected as a director who is considered under this test not to have the confidence of the shareholders is expected forthwith to submit to the board of directors his or her resignation, to take effect upon acceptance by the board of directors. The board will accept the resignation as soon as possible, consistent with an orderly transition. In any event, it is expected that the resignation will be accepted within 90 days.

Subject to any corporate law restrictions, the board of directors may leave the resultant vacancy unfilled until the next annual general meeting. Or it may fill the vacancy through the appointment of a new director whom the board considers to merit the confidence of the shareholders. Or it may call a special meeting of shareholders at which there will be presented a management slate to fill the vacant position or positions.

This policy does not apply in any case where the election involves a proxy battle -- i.e., where proxy material is circulated in support of one or more nominees who are not part of the slate supported by the board of directors.

## Explanatory Notes

It would be feasible for Canadian corporations that are organized under the Business Corporations Act to implement this policy through an amendment to their articles. However, the approach proposed provides greater flexibility, particularly by the availability of a transitional period. For example, if the director who fails to attain the requisite support is a corporate executive or is chair of the board or of a significant board committee, time might be required for the board to put appropriate transitional arrangements into place. Also, the flexibility would accommodate an extreme situation where there would not be a quorum of directors in office if the resignations were to be immediately accepted.

For federally regulated financial institutions (FRFIs), the statutory requirement is that the persons who receive the greatest number of votes at the shareholders' meeting shall be elected. Accordingly, the requirement for a majority vote could not be added to the corporate organizational documents of an FRFI. However, Torys LLP has advised that the resignation procedure described in the proposed form of policy statement above can properly be adopted by an FRFI.

Further, OSFI has indicated that it would not object to the adoption of this policy statement by a financial institution.

Under existing practice at many AGMs, a formal ballot is not taken. Under most governing statutes, this is permissible unless a ballot is requested by a shareholder. CCGG is on record in "Best Practices in Shareholder Communication" that good practice requires the taking of a ballot. Where this does happen, the voting results must be disclosed (see National Instrument 51-102 section 11.3). This practice -- i.e., taking the ballot on a director-by-director basis and publishing the results -- is followed by a number of major Canadian public corporations. It would be followed by any corporation that adopts the policy statement we propose.

Experience indicates that those nominated as part of the management slate usually receive very substantial majority support. CCGG hopes that this will continue to be the case. Prior consultation by public corporations with their major investors before putting forward a management slate will help to minimize the possibility of any other outcome.

This policy statement makes no attempt to change the voting regime as to incorporations where control is held through multiple voting shares. Also, the proposed policy statement is specifically designed for public *corporations*. CCGG believes the concept would be appropriate for public income trusts, but has been advised that the content of the policy statement might require adaptation to fit the specific legal structure of an income trust. CCGG encourages income trusts to take this initiative, making any necessary adaptations in the policy statement to fit their circumstances.

Where a nominee for election as director fails to attain the requisite majority, the policy statement gives maximum flexibility to the board as to how to proceed, subject to corporate law requirements. The vacancy can be left open until the following AGM; the ongoing board may fill the vacancy with a suitable candidate; or a special AGM might be called to elect a new director. CCGG believes that this range of alternatives is desirable so that public corporations will have maximum flexibility to deal with this eventuality if it were to occur. CCGG trusts that public corporation boards would make use of this discretion in a manner consistent with the overall spirit of shareholder transparency and would discuss the decision with their major investor.