Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

December 9, 2016

Business Law Policy
Consumer and Business Policy Unit
Ministry of Government and Consumer Services
6th Floor, 56 Wellesley Street West
Toronto, ON M7A 1C1
businesslawpolicy@ontario.ca

Dear Sir/Madam:

Re: Comments on Business Law Advisory Council Report to Ontario Minister of Government and Consumer Services, November 2016 (the "2016 Report")

The Canadian Coalition for Good Governance ("CCGG") thanks you for the opportunity to provide our comments on the 2016 Report. Our comments are primarily confined only to one item that is of utmost importance to our members, namely the fact that the Ontario Business Corporations Act ("OBCA") does not provide for majority voting in uncontested director elections for public companies governed by the OBCA.

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.

CCGG appreciated having the opportunity on October 5, 2016 to meet with certain members of the Business Law Advisory Council (the "Council"), as is disclosed in the 2016 Report, at which time we were able to express our views on the importance and urgency of enshrining majority voting in Ontario corporate law.

CCGG is concerned that in connection with majority voting, the Council has not acted on one recommendation in the June 2015 Priority Findings and Recommendations Report (the "2015 Report") of the expert panel which had been convened by the Minister of Government and Consumer Services "to provide advice to the Minister on the priorities for reform". While we understand that the Council will continue to consider changes to the OBCA, in the 2015 Report's summary of recommendations, Recommendation 2a(iii) stated that "Priority should be given to ... [a]llowing shareholders to effectively determine the composition of their board of directors by eliminating certain legislative requirements", a sentiment with which CCGG could not agree more strongly and which we were very pleased to see in the 2015 Report. The 2015 Report went on to state as follows:

> "Shareholders should have the ability to effectively choose their boards. For example, they should be entitled to vote against candidates for election to the board."

CCGG questions why majority voting has not been addressed in the 2016 Report. The right to vote "for" or "against "director nominees, rather than only voting "for" or "withholding" from director nominees as is currently the case under Ontario corporate law, is a fundamental principle which needs to be enshrined in the OBCA (as well as in the corporate laws in the rest of Canada and the U.S., which are the only remaining jurisdictions globally of which CCGG is aware that do not yet have majority voting as the legal requirement in their corporate statutes).

While the 2016 Report makes two recommendations for amendments to the OBCA regarding the governance of public companies, namely removing the 25% Canadian residency requirements for board of directors and relaxing certain provisions governing shareholder proposals (the latter of which "would enhance shareholder democracy") both of which CCGG supports, the 2016 Report does not address the far greater enhancement to shareholder democracy that would result from changing the OBCA's existing plurality voting requirement to a majority voting requirement for uncontested director elections at public companies. CCGG strongly recommends that the Ministry enact majority voting: it is the key to making shareholders' most fundamental right, the ability to elect directors, meaningful rather than just the empty formality it now is under the law.

The majority voting policy required by the TSX since it adopted such a listing requirement in 2014, is a partial and imperfect protection of this right. The TSX requirement covers only the public companies listed on the TSX, which are less than half the public companies in Canada (i.e., it excludes the companies listed on the TSX Venture exchange). The TSX policy is merely a 'workaround' of the problems presented by our existing corporate statutes and it is a policy that can be changed at any time by the TSX. On principle, majority voting should be the law of the land and that is why CCGG has been pushing for such a legislative change for over ten years.

CCGG is not aware of any groups that argue against majority voting in principle. Rather, objections take the form of arguing that enabling shareholders to vote 'against' directors may lead to situations where boards are offside certain regulatory or legislative requirements (for example, what happens if shareholders fail to elect one of the audit committee directors when the law requires that an audit committee of a public company consist of at least three members, or what if a majority of shareholders vote against all of the director nominees so that there are no directors left in place?). We understand that there may be drafting challenges in adopting a majority voting standard, as the federal government is proposing to do within Bill C-25 (which when enacted will enshrine majority voting for public companies governed by the Canada Business Corporations Act ("CBCA")), but the appropriate response to any such challenge is to thoughtfully work through it. Majority voting is functioning very effectively around the globe so any challenges can clearly be addressed.[1]

Given that the 2015 Report spoke of the need to review leading global practices in corporate law reform in order to "consider opportunities to strengthen corporate governance and investor confidence", we had hoped that the 2016 Report would move towards both of these goals by including majority voting. There is no better way to strengthen the confidence of investors in Canadian capital markets than to enshrine majority voting in law.

The OBCA is reviewed and updated infrequently, so to miss the current opportunity to bring Ontario into line with the rest of the world (apart from the other outlier jurisdictions of the U.S. and the rest of Canada) would be unfortunate. Ontario law should aspire to reflect the best in corporate governance practices if it wishes to attract investors and should, at a minimum, reach for consistency with the federal CBCA corporate statute. CCGG believes that the Minister should work together with the federal Minister of Innovation, Science and Economic Development right now as the federal government makes progress on this important issue via Bill C-25. Given that this consultation on the 2016 Report is happening simultaneously with Bill C-25 winding its way through parliament, now is the time to address majority voting in Ontario.

Maureen Jensen, Chair of the Ontario Securities Commission, stated as follows in her closing comments at the Shareholder Rights Conference at the University of Toronto on October 28, 2016:

> "... corporate and securities law must work in a complementary fashion to improve the governance of our public companies. I am very pleased that recent amendments to the CBCA will mandate majority voting ... and we look forward to seeing how it will be implemented."[2]

We suggest that the Ministry should be on the same page as the Ontario Securities Commission on important matters of law if we are to progress effectively and efficiently to improve corporate governance and investor confidence in Ontario. We are copying Ms. Jensen so that she is aware that CCGG has quoted her in this letter in support of our views.

Note that while this letter focuses on the omission of majority voting from the 2016 Report, we also strongly recommend that the OBCA should be amended to address other very important corporate governance issues not mentioned in the 2016 Report and which are described in our comment letter, attached as Appendix B, that responded to the 2015 Report, namely:

- Individual election of directors and the elimination of 'slate' voting

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[1] We attach as Appendix A just one example of suggested language that would address concerns about boards being rendered off side certain legal or regulatory requirements if majority voting were to be put in place.

[2] Closing remarks by Maureen Jensen, Chair and Chief Executive Officer, Ontario Securities Commission, Shareholder Rights Conference, University of Toronto, October 28, 2016.

- Maximum one-year terms and annual elections for directors
- Separation of CEO and Chair roles
- Proxy access
- Say on pay
- Universal proxy
- Mandatory voting by ballot at shareholder meetings and disclosure of results by public companies
- 'Empty voting' by shareholders without an economic interest in the corporation
- Rights and remedies of beneficial shareholders

We ask the Ministry to address these additional issues as soon as possible.

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 416.847.0524 or serlichman@ccgg.ca or our Director of Policy Development, Catherine McCall, at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,

Julie Cays

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CCGG MEMBERS – DECEMBER 2016

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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 depot et placement du Quebec
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
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 Pension Plan
Northwest & Ethical Investments L.P. (NEI Investments)
OceanRock Investments Inc.
Ontario Municipal Employee Retirement Board (OMERS)
Ontario Pension Board
Ontario Teachers' Pension Plan Board (OTPP)
OPSEU Pension Trust
PCJ Investment Counsel Ltd.
Pier 21 Asset Management Inc.
Pension Plan of the United Church of Canada Pension Fund
Public Sector Pension Investment Board (PSP Investments)
RBC Global Asset Management Inc.

Régime de retraite de la Société de transport de Montréal (STM) Pension Funds
Russell Investments Canada Limited
Scotia Global Asset Management
Sionna Investment Managers Inc.
State Street Global Advisors, Ltd. (SSga)
Sun Life Investment Management Inc.
TD Asset Management Inc.
Teachers' Retirement Allowances Fund
UBC Investment Management Trust Inc.
University of Toronto Asset Management Corporation
Vestcor Investment Management Corporation
Workers' Compensation Board - Alberta
York University

Appendix A

In the U.S., the Council of Institutional Investors suggested the following wording in order to amend the Model Business Corporation Act to include majority voting:

> "Unless the articles of incorporation require a greater number of affirmative votes, in a meeting at which a quorum is present, directors are elected by the affirmative vote of a majority of the votes of the shares represented at the meeting and entitled to vote in the election, unless ... fewer than the minimum number of directors, as defined in the company's articles of incorporation or bylaws, is thereby elected, in which case those directors receiving a plurality of the votes cast by the shares entitled to vote, but not a majority, are elected for a holdover period of 90 days (the "holdover directors"), during which time all the directors having received a majority of affirmative votes, and thus duly elected, shall fill the seats of the holdover directors according to the provisions of section 8.10. If no directors receive a majority of the votes cast by the shares entitled to vote, then those directors receiving a plurality of the votes cast by the shares entitled to vote are elected for a period of 180 days."

Appendix B

Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

October 16, 2015

Ministry of Government and Consumer Services
Business Law Policy
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Dear Sir/Madam:

Re: Comments on Ontario Business Law Agenda: Priority Findings & Recommendations Report (the "Report")

The Canadian Coalition for Good Governance ("CCGG") has reviewed the Report 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.

OVERVIEW

We agree with the Report's opening statement that "[k]eeping Ontario's business laws current is critical to the provinces' competitiveness, and to positioning Ontario as a jurisdiction of choice for business." Ontario must stay at the forefront of global business developments if its economy is to succeed and CCGG applauds the Report's first recommendation that Ontario's corporate and commercial statutes should be reviewed and updated on a regular basis through the establishment of an ongoing formal process.

Notable from CCGG's perspective is that the world has seen major developments in corporate governance since the Ontario Business Corporations Act (the "Act") was enacted. We support the Report's guiding principle that business law reform should strengthen corporate governance and investor confidence. Ontario should look to the global evolution in corporate governance best practices to position itself as a leader in this area.

Our comments in this letter are restricted to those aspects of the Report which are of significant importance to our members, namely those suggestions found in the Report's Recommendation 2a that deal with the Act and the relevant corporate governance provisions that are of concern to CCGG's members. Our comments also are restricted to public companies (i.e. reporting issuers).

Clarification of directors' duties

Recommendation 2a (ii) states that, in light of global legislative and case law developments, priority should be given when updating the Act to "providing greater certainty about the standards to which directors and officers will be held, the liabilities to which they are exposed and the defences and protections available to them". We agree that there should be more certainty surrounding the standards to which directors are to be held. The Ontario government should consider taking this opportunity to clarify the ambiguity surrounding the duties owed by directors following the Supreme Court of Canada decision in *BCE Inc. v. 1976 Debentureholders*. We recommended in our May 2014 submission to Industry Canada on amending the Canada Business Corporations Act ("CBCA") that Industry Canada tackle this issue by beginning a consultation process that would solicit the views of a broad group of stakeholders with the goal of clarifying directors' duties and providing guidance as to whom those duties are owed. We encourage the Ontario government to start such a process now. It is important, of course, that this process coordinates to the extent possible with any federal efforts.

The question of what comprises a director's duties takes place within the context of the broader debate about which constituency should have primacy in Canada's corporate governance model: shareholders, a broader group of stakeholders, directors, a combination? This debate has taken place in several regulatory areas in Canada such as discussions between the Canadian Securities Administrators ("CSA") and the Autorité des marchés financiers over the proper balance of power in takeover bid defence situations. CCGG believes that it is appropriate to attempt to provide some clarification about these issues within the Canadian regulatory context.[1] As we noted in our submission to Industry Canada, views on this issue likely will vary dramatically and a solution will not be easy, but that fact should not deter the government from considering the issue now.

Majority Voting

Recommendation 2a (iii) states that priority should be given to "allowing shareholders to effectively determine the composition of their boards of directors by eliminating certain legislative requirements". The Report goes on to propose, as an example, that shareholder have the ability to effectively choose

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[1] In the U.K., legislation was adopted in 2006 to attempt to clarify the duties owed by directors through the concept of 'enlightened shareholder value' (see section 172 of the U.K. Companies Act, 2006 set out in Appendix 2 hereto). The legislation has not to date resulted in settling the issues, however. See, for example, Andrew Keay in *Moving towards Stakeholderism? Constituency Statutes, Enlightened Shareholder Value, and All That: Much Ado about Little?* Working paper, 4 January 2010 and *The Duty to Promote the Success of the Company: Is It Fit for Purpose?* SSRN-id1662411-1.pdf

their boards through being "entitled to vote against candidates for election to the board", rather than only 'withholding' from director nominees as is currently the case under Ontario corporate law. The inability to vote "against" directors (rather than merely "withhold" from voting) is the foundation of Canada's existing "plurality voting system" under which a "withhold" vote has no effect and directors can be elected even if they receive only one vote. In January 2014, the TSX adopted a 'work around' this consequence by establishing as a listing requirement that every TSX listed issuer (of which there are approximately 1,420 at present), other than majority controlled issuers, must adopt a majority voting policy in the prescribed form[2], which is a form consistent with the majority voting policy which CCGG has publicly advocated since 2006.

While CCGG is pleased with this advancement, we do not believe it to be sufficient. Not only are there approximately 1,950 Canadian public companies listed on the TSX Venture exchange, which does not have a similar majority voting listing requirement, but listing requirements can be changed relatively easily. It is important that the fundamental shareholder right of majority voting be enshrined in law. In our 2014 submission we encouraged Industry Canada to amend the CBCA to effect true majority voting in uncontested director elections.[3] CCGG also has in the past[4] urged the Ontario Securities Commission (OSC) to act on this matter in the absence of change in the corporate law and encouraged the Cooperative Capital Markets Regulatory Authority to adopt majority voting in its upcoming legislation and accompanying regulations.[5] Now we strongly encourage the Ontario government to take the opportunity to bring businesses incorporated in Ontario into line with the best practices of the rest of the world. As far as we are aware, Canada and the U.S. are the only global outliers that fail to provide

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[2] The TSX requires that majority voting provisions must provide that: (i) a director immediately tender his or her resignation if he or she is not elected by at least a majority of the votes cast in an uncontested election; (ii) the board of directors accept or reject the resignation within 90 days of the meeting; (iii) the resignation be rejected only in exceptional circumstances; and (iv) promptly after the board's decision, an issuer is required to issue a news release communicating the directors' decision and, if the directors refuse to accept a resignation, the news release must fully state their reasons.

[3] http://admin.yourwebdepartment.com/site/ccgg/assets/pdf/Submission_to_Industry_Canada_May_14,_2014_re_~onsultation_Paper_on_the_CBCA_Final_signed.pdf. Note that footnote 11 in CCGG's comment letter contains the following sample language for a statutory majority voting provision:

In the U.S. the Council of Institutional Investors' proposed amendments to the Model Business Corporation Act to include majority voting suggests the following wording: "Unless the articles of incorporation require a greater number of affirmative votes, in a meeting at which a quorum is present, directors are elected by the affirmative vote of a majority of the votes of the shares represented at the meeting and entitled to vote in the election, unless ... fewer than the minimum number of directors, as defined in the company's articles of incorporation or bylaws, is thereby elected, in which case those directors receiving a plurality of the votes cast by the shares entitled to vote, but not a majority, are elected for a holdover period of 90 days (the "holdover directors"), during which time all the directors having received a majority of affirmative votes, and thus duly elected, shall fill the seats of the holdover directors according to the provisions of section 8.10. If no directors receive a majority of the votes cast by the shares entitled to vote, then those directors receiving a plurality of the votes cast by the shares entitled to vote are elected for a period of 180 days." In addition to including a similar provision, the CBCA would need to be amended to provide that the form of proxy related to director elections must provide for a 'for' and 'against' option, rather than, as is currently the case, refer to the form of proxy prescribed under NI 52-102 s 9.4 (6) which states that a form of proxy for the election of directors must be 'voted or withheld from voting'.

[4] http://www.ccgg.ca/site/ccgg/assets/pdf/CCGG_Response_to_OSC_Staff_Notice_54-701.pdf

[5] Comments on Consultation Drafts of the Provincial Capital Markets Act and the Capital Markets Stability Act, December 2014

true majority voting because of their continued use of a plurality voting system in their corporate statutes. By giving shareholders an effective voice in choosing directors, Ontario can help to foster an investor-friendly business environment which will help to meet the goals of positioning Ontario as a leading business jurisdiction. We also strongly encourage the Ontario government to work with its federal counterpart to establish a consistent meaningful democratic voting framework across the country.

Proxy access

In CCGG's view, meaningful shareholder democracy requires not only the ability to vote against a director but that shareholders also have some meaningful input into who those directors will be. We explain this position in our recent policy release "Shareholder Influence on the Director Nomination Process: Enhanced Engagement and Proxy Access[6]. Today shareholders in Canada have no meaningful access to the director nomination process. It is onerous and prohibitively expensive for shareholders to propose alternate directors for election and to actively solicit other shareholders to vote for their nominees.[7] In the past we have encouraged the OSC and Industry Canada to focus on greater proxy access for shareholders to assist in increasing shareholder democracy[8] and we now encourage the Ontario government to focus on this issue too.

CCGG supports ongoing regular engagement between shareholders and directors on the matter of board composition. CCGG also supports the position that shareholders holding 3% of the outstanding shares, in aggregate, being able to nominate up to the lesser of three and 20% of the directors and to have information about those nominees included in the management proxy information circular in the same manner as the company's nominees. Further, shareholders meeting the conditions for proxy access should be able to use the management information circular to solicit proxies on behalf of their director nominees. We urge the Ontario government to include proxy access in the Act and to work with its federal counterpart on this important issue as well to ensure consistency across the country.

Universal Proxy

In addition to incorporating proxy access, CCGG believes that the Act should be amended to require the use of a 'universal proxy' in the case of contested director elections. A 'universal proxy' includes all director nominees on the same proxy ballot 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 annual general meeting in person. Under current practice, opposing sides in a proxy contest for the election of directors typically include only their own nominees even though in Canada there is no restriction on a dissident including management nominees on its

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[6] Shareholder Involvement in the Director Nomination Process: Enhanced Engagement and Proxy Access, June 2015

[7] For a discussion of the challenges to proxy access under current law see CCGG's shareholder democracy submission referred to in footnote 3.

[8] Ibid

proxy or vice versa. For example, in the CP/Pershing Square proxy contest in 2012 each party voluntarily used a universal proxy that included the other's nominees on its ballot. CCGG believes that this practice should be mandatory under the Act. For more detailed information on CCGG's views on the use of universal proxies see our Universal Proxy Policy released in September 2015.

Mandatory voting by ballot at shareholder meetings and disclosure of results by public companies

As discussed in CCGG's 2010 Brief to the Standing Committee on Industry, Science and Technology[9], CCGG believes that detailed voting results should be disclosed for every matter on the ballot for a shareholder meeting, apart from routine procedural matters related to the conduct of the meeting for which a show of hands voting and summary reporting of whether the matter was carried or defeated is adequate. For all other matters on the ballot, voting results should give shareholders enough information to assess the level of shareholder support as well as to ascertain trends in changing levels of support by disclosing the votes cast in person and by proxy and the number or percentage of votes cast for, against or withheld from the vote.

Individual election of directors and 'slate' voting

As CCGG has maintained in the past[10], shareholders should be able to vote for directors on an individual basis rather than on the basis of 'slate' voting which requires that shareholders vote for all or none of the directors. Being able to hold individual directors accountable is fundamental to meaningful shareholder democracy. The TSX already requires that its listed issuers provide for individual voting for directors but it is important that the Act enshrine this principle for all public companies incorporated under the Act so that it is not only a listing requirement which the TSX could change in the future.

Maximum one-year terms and annual elections for directors

The Act should be amended to require that all directors public companies incorporated under the Act be elected annually. Staggered terms of up to three years, as are currently permitted under the Act, do not theoretically pose the same problems of entrenchment that they do in the U.S.[11] In practice, however, staggered boards reduce director accountability and can impede the ability of shareholder to make timely and needed changes to the board.[12] Concerns about disruption and lack of board continuity are unwarranted as evidenced by the fact that almost all large Canadian companies now permit voting for all directors annually with no adverse consequences. Again, although such a provision is a TSX listing requirement, it should be enshrined in the Act for all public companies incorporated under the Act in case the TSX decides to change this requirement in the future.

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[9] 2010 Brief

[10] 2010 Brief and CCGG response to staff notice 54-701:Regulatory Developments regarding Shareholder Democracy Issues http://www.ccgg.ca/site/ccgg/assets/pdf/CCGG_Response_to_OSC_Staff_Notice_54-701.pdf

[11] Under the Act directors can be removed at any time by an ordinary resolution of shareholders at a special meeting. CBCA section 109(1)

[12] See CCGG_Response_to_OSC_Staff_Notice_54-701 on Shareholder Democracy Issues, page 4

"Empty voting" by shareholders without an economic interest in the corporation

"Empty voting", that is, the separation of voting interests from the economic interests of shareholders, can occur when, for example, shares are subject to securities lending or derivatives transactions. The British Columbia Court of Appeal in *TELUS v Mason Capital*[13], in commenting on the issue of "empty voting", stated that "[t]o the extent that cases of 'empty voting' are subverting the goals of shareholder democracy, the remedy must lie in legislative and regulatory change." In our May 2014 submission to Industry Canada noted above, CCGG encouraged Industry Canada to work with the CSA in order that the issues be properly addressed. We also encourage the Ontario government to turn its attention to this matter as it considers amendments to the Act and to coordinate with other regulatory authorities in its efforts to address this important issue.

Elimination of Canadian residency requirements for directors

Director residency requirements vary from country to country but few jurisdictions impose them[14]. CCGG is of the view that the Canadian residency requirements under the Act should be removed. This would serve the competitive purpose of bringing provisions more in line with the majority of countries, including most of those with a similar 'Anglo Saxon' corporate governance framework. If Canadian stock exchanges believe that residency requirements are important for various types of companies, they have the ability to make Canadian residency a listing requirement. It is CCGG's view, in fact, that whether or not there is a Canadian residency listing requirement, the stock exchanges should ensure that there are directors on the board who are familiar with Canadian culture, laws, financial regulation, local business practices and political landscape. In addition, CCGG believes that the Act should require that every director must attorn to the jurisdiction of the appropriate Canadian court, so that if need be an action can be brought against all directors in Canada.

Separation of CEO and Chair

Good corporate governance generally requires the chair of the board to be someone other than the CEO. There is an inherent conflict of interest when the chair also serves as the CEO. The oversight of

[13] TELUS Corporation v Mason Capital Management LLC, 2012 BCCA, 403

[14] Very few jurisdictions in Europe, Asia, Australasia and South America (other than Nordic countries and Argentina) impose residency requirements. As far as we are aware none of the U.S. states (with the exception of Hawaii), the U.K., New Zealand, France or Germany have director residency requirements while Australian requires that at least two directors of a public company be Australian resident directors. Canada Business Corporation Act: Discussion Paper: Directors' and Other Corporate Residency Issues (August 1995), Canada Business Corporations act: Directors' residency requirements and Other Residency Issues (December 1999) .

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.[15] 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 ensuring 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. As stated by the Office of the Superintendent of Financial Institutions when it amended its Corporate Governance Guidelines in 2013: "The role of the Chair should be separated from the CEO, as this is critical in maintaining the Board's independence, as well as its ability to execute its mandate effectively.

In CCGG's view, if there is a controlling shareholder of the company, then there could be an exception to the rule that the board chair should be independent of the CEO. In such a case, the chair and the CEO role may be combined or the CEO may be an officer of the controlling shareholder provided there is a lead director independent of the controlling shareholder (and independent of management) appointed. The board must also have an effective and transparent process to deal with any conflicts of interest between the controlled corporation, minority shareholders and the controlling shareholder.[16]

We believe that the time has come for corporate law to require all companies to comply with this basic tenet of good corporate governance.

Say on Pay

Canada is becoming 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 our 2011 submission to the OSC regarding shareholder democracy we encouraged the OSC to adopt a requirement making an annual shareholder advisory vote on executive compensation mandatory for all public issuers. Say on Pay has been broadly adopted by the largest Canadian public companies and is considered to be a best practice among those issuers. It is widely acknowledged to have helped to focus the board's attention on executive compensation, improved the quality of disclosure of executive compensation and encouraged increased dialogue between shareholders and boards. In August 2015 CCGG sent letters to those companies on the TSX/Composite Index that do not have Say on Pay encouraging them to adopt the practice voluntarily. We also encourage the Ontario government to take the opportunity to introduce this important shareholder mechanism through the Act and level the playing field so that all Canadian reporting issuers and their shareholders can enjoy its benefits.

Rights and remedies of beneficial shareholders

[15] "The notion that the chief executive should supervise himself as chairman is absurd", Chair of the German exchange Deutsche Bourse quoted by Jan Wagner in Responsible Investor, February 6, 2014
[16] See CCGG's Governance Differences of Equity Controlled Corporations

Recommendation 2a (iv) states that priority should be given to "determining how best to make available to the ultimate investors in shares of a corporation, the rights and remedies available to the registered holders of those shares." CCGG supports amending the Act to clarify that the rights and remedies belonging to registered shareholders under the Act are available to the beneficial shareholders or "true" owners of the shares.

In summary, we support the Report's recommendations on corporate governance and encourage the Ontario government to adopt the best practices outlined in this letter.

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 416.847.0524 or serlichman@ccgg.ca or our Director of Policy Development, Catherine McCall, at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,

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