



May 10, 2017

The Right Honourable Justin Trudeau, PC, MP  
Prime Minister of Canada  
Langevin Block  
Ottawa, Ontario  
K1A 0A2

**Re: Bill C-25**

Dear Prime Minister:

I write this letter on behalf of the Canadian Coalition for Good Governance ("CCGG") concerning *Bill C-25, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act*.

CCGG firmly believes that the amendments to the *Canada Business Corporations Act* ("CBCA") for distributing corporations (being the term used in the CBCA to refer to public companies incorporated under the CBCA) proposed by Bill C-25 are critical to enhancing the corporate governance regime of public companies in Canada. Your government was right to bring these amendments forward, and we encourage you to continue advocating for the bill's advancement through Parliament and eventual coming into force. In so doing, you will advance the government's objectives of developing Canada's Innovation Agenda, both through the advancement of good corporate governance and by working to unlock the potential of Canada's talented and diverse workforce.

### **About CCGG**

By way of background, CCGG was founded in 2002 to promote good governance practices in the Canadian public companies whose shares are owned by our members. CCGG members include a wide range of Canadian institutional investors – primarily pension funds and investment management firms – that have in aggregate approximately \$3 trillion in assets under management. Millions of Canadians rely on returns from these investments to fund their retirements. A list of CCGG members is available on our website at [www.ccg.ca](http://www.ccg.ca).

In accordance with our mission to promote good governance practices in Canadian public companies, our comments regarding Bill C-25 relate to its impact on distributing corporations governed by the CBCA.

### **C-25 and its Benefits**

In our view, Bill C-25 provides for two complementary enhancements to the corporate governance regime for distributing corporations governed by the CBCA: meaningful director elections and improved diversity disclosure.

## *Meaningful Director Elections*

Bill C-25 would, if adopted, provide for meaningful elections for the board of directors of distributing corporations governed by the CBCA. This result would arise by way of three improvements to the electoral regime for prescribed corporations. First, it would limit each director's term to the company's subsequent annual meeting. Second, it would require individual elections for each director candidate, thus prohibiting the practice of slate voting, where a shareholder is given the option to vote only in respect of a slate of nominees as determined by the incumbent board. Third, it would provide for a "true majority voting" system of electing directors, which permits shareholders to cast a meaningful vote against director candidates in uncontested elections.

The provisions that would provide for true majority voting are particularly important. Canada is an international laggard in this aspect of board governance. The current "plurality voting" regime under the CBCA does not permit shareholders to vote against directors; a nominated candidate could thus be elected today even with only a single vote cast in favour. Canada is one of only two developed countries of which we know – the other being the U.S. – that uses such a regime for electing directors.

Further, while provincial and territorial securities regulators oversee many aspects of the governance regime for public companies in Canada, such regulators have been hesitant to introduce rules affecting director elections, viewing such matters as the domain of corporate law. Accordingly, it is left to legislators to act, and we are pleased to see that the federal government has chosen to be a leader in this regard.

CCGG believes that corporations and their stakeholders benefit when director candidates are required to submit to meaningful elections before taking their seat on the board. Based on our discussions with international investor organizations such as the International Corporate Governance Network and the Global Network of Investor Associations, CCGG also believes international investors share the same view. By providing for a more robust form of shareholder democracy, CCGG also believes that Bill C-25 can make Canada a more attractive destination for foreign investor capital.

We also note that while some CBCA distributing corporations are currently subject to stock exchange listing rules that attempt to emulate these proposed amendments, such listing rules are ultimately a workaround for deficient corporate laws. The better solution is to resolve such deficiencies through legislative amendments to corporate law of the type proposed in Bill C-25.

## *Improved Diversity Disclosure*

Bill C-25 would also, if adopted, introduce new disclosure obligations for prescribed distributing corporations in respect of diversity among their boards of directors and members of senior management.

In Canada, the level of diversity in public company leadership is persistently low. There are many reasons for this result, including company-level inertial forces (such as the common practice of recruiting nominees from within the current directors' personal networks) as well as larger, societal forces that disadvantage minorities. The result is boards and senior managers that are remarkably homogenous, with particularly low numbers of women and racialized minorities. We cannot yet have unlocked our full potential as a nation when the leadership of our public companies continues to greatly underrepresent women and minority groups.

Bill C-25 attempts to address this problem by requiring each prescribed CBCA distributing corporation to place before its shareholders at every annual meeting information relating to diversity among the company's leadership. Such information would include, among other things, a short summary of the objectives and key provisions of any written policy adopted by the company in respect of diversity among directors and members of senior management relating to (i) gender and (ii) forms of diversity other than gender. If a CBCA distributing corporation has not adopted such a policy, it would instead be required to disclose an explanation of why it has not done so.

These measures do not amount to quotas or externally-imposed targets. Whether governments or regulators decide in the future that such measures are necessary will depend on what progress is shown in the near future. Instead, the bill proposes a comply-or-explain regime. In light of this, the House Standing Committee on Industry, Science and Technology was right to amend Bill C-25 to introduce a review period for the bill's diversity provisions, which will allow Parliament to monitor the progress of corporate Canada in this regard.

Further, Bill C-25 also will provide the shareholders of CBCA distributing corporations with new tools to help them act on such information – specifically, the above-described provisions (majority voting for directors, annual elections of directors and individual elections of directors) that give rise to meaningful director elections. If shareholders determine that insufficient progress has been made, they will have the means to do something about it.

### **Coming Together to Promote Good Governance**

Throughout the debate over Bill C-25, it has been heartening to see all parties motivated by the same objectives of improving the corporate law regime for CBCA distributing corporations in respect of director elections and diversity among company leadership. The bill itself is an example of this – we understand it was largely prepared under the previous Conservative ministry and was alluded to in the 2015 budget, and was then taken up by the new Liberal government and introduced this past fall. The NDP and Green Party also contributed significantly to the vigorous debate surrounding the bill.

Bill C-25 has demonstrated the ability of Parliament to advance a bill that promotes core principles of good corporate governance for the benefit of all Canadians. We look forward to the continued progress of this bill in the House and the Senate, with a view to bringing its provisions into force once the necessary regulatory drafting and consultation is complete.

Please do not hesitate to reach out to CCGG's Executive Director Stephen Erlichman (416-847-0524 or [serlichman@ccgg.ca](mailto:serlichman@ccgg.ca)) or CCGG's Director of Policy Development Catherine McCall (416-868-3582 or [cmccall@ccgg.ca](mailto:cmccall@ccgg.ca)) to discuss any of the foregoing further.

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Yours sincerely,



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

Copy:

The Honourable Rona Ambrose, PC, MP, Leader of Her Majesty's Loyal Opposition  
The Honourable Thomas Mulcair, PC, MP, Leader of the New Democratic Party  
Martine Ouellet, Leader of the Bloc Québécois  
Elizabeth May, OC, MP, Leader of the Green Party of Canada

The Honourable Navdeep Bains, PC, MP, Minister of Innovation, Science and Economic  
Development  
The Honourable Diane Finley, PC, MP, Critic for Innovation, Science and Economic Development  
Brian Masse, MP, Critic for Innovation, Science and Economic Development

Senator the Honourable Peter Harder, PC, Representative of the Government in the Senate  
The Honourable Larry Smith, CQ, Senator, Leader of the Opposition in the Senate  
The Honourable Elaine McCoy, QC, Senator, Facilitator of the Independent Senators Group  
The Honourable Joseph A. Day, Senator, Leader of the Senate Liberal Caucus  
The Honourable Howard Wetston, Senator