

**THE VOICE OF THE SHAREHOLDER**

April 18, 2008

M. Maurice Lalancette  
Directeur général de l'encadrement du  
secteur financier et des personnes morales  
Ministère des Finances du Québec  
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Dear Mr. Lalancette:

**Re: Request for Comment – Reform of the Companies Act (Quebec)**

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The Canadian Coalition for Good Governance (CCGG) was formed to promote good governance practices in the public companies owned by our members. Currently CCGG's 46 members are institutional investors managing approximately \$1.3 trillion in assets.

Through the CCGG and in some cases, individually, the members of the CCGG intend to have a voice in shaping the legislative process in Canada. This submission represents the views of members as reflected in the policies of and positions of the CCGG.

This submission addresses two such policy areas (majority voting and proxy solicitation) and provides the CCGG's position on certain issues raised in the Reform Working Paper.

Majority Voting

While the laws of Canadian and U.S. are aligned with other developed markets with respect to right of shareholders to elect directors, the plurality election system sets the U.S. and Canada apart by denying shareholders the right to vote against a director. They may only vote for or withhold their vote, enabling directors to be elected with the support of only a minority of shareholders. The members of the CCGG strongly support the current trend<sup>1</sup> towards a majority vote requirement in the election of directors. The movement towards such a majority

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<sup>1</sup> The CCGG is aware of 83 Canadian issuers that currently have majority vote policies. Several more issuers adopted but subsequently were acquired. A list of the issuers with majority voting policies is attached as Appendix A. The represents 65 percent of the S&P/TSX 60 index as well as several income trusts, controlled companies and some small to medium size enterprises (SME).

vote requirement in Canada to date has been limited to the adoption by issuers of policies or by-laws that set out the vote as a “test” of shareholder support. Although there are variations, the policies generally provide that in the case where fewer votes are cast for a director than are withheld:

- the director will tender his or her resignation to the board;
- the board<sup>2</sup> or nominating committee will decide whether to accept or reject the resignation; and
- the board will make public its decision within 60 days.

In addition, the policy provides that directors will be elected individually rather than by a single slate, and that votes will be counted by way of a poll and results of the poll will be fully disclosed after the meeting. A copy of the model CCGG policy is attached.

The movement to a majority vote requirement would require changes to corporate and securities laws. We urge the Ministère des Finances to take the lead in this area and amend the Act to at least recognize majority vote, as Delaware has done, or to go further and lead a coordinated regulatory initiative with a goal of implementing a majority vote requirement, which is the ultimate goal of the members of the CCGG.

### Proxy Solicitation

CCGG members believe that in many jurisdictions, shareholders are overly restricted in their ability to communicate with other shareholders on important proxy issues. Below are comments from our submission to the Provincial securities commissions and the Autorité des marchés financiers dated January 10, 2008. In this submission, we indicated that our members support the amendments to the proxy solicitation provisions of National Instrument 51-102 and Companion Policy 51-102 published for review and comment on October 12, 2007. We quote from our January 10, 2008 submission:

“[The amendments] will serve to bring the requirements of NI 51-102 substantially in line with the proxy solicitation requirements in the *Canada Business Corporations Act* which were updated in 2001, and those in the *Business Corporations Act (Ontario)* which were updated in 2007. ‘Solicitation’ by way of public broadcast, speech or publication (including the prescribed information) should be an accepted method by which investors can make their views known on pending corporate votes and solicit support for their views.

Notably, in CCGG’s Statement of Principles Regarding Member Activism (available on the website [www.ccgq.ca](http://www.ccgq.ca)), CCGG’s members have approved as a matter of principle that when they have been unable to reach a satisfactory outcome in relation to concerns raised in active dialogue with a public issuer, among the action steps to be considered (on a case-by-case basis) is making a public statement prior to the issuer’s shareholder meeting, with other shareholders being informed of the anticipated statement in advance where it would make the intervention more effective. Unnecessarily restrictive legislation in relation to proxy solicitation should not serve to silence our members from voicing their views when appropriate.

We remain concerned that even if the proposed amendments are enacted, the Canadian system will leave public issuers and their owners with proxy solicitation matters being governed by both securities laws and corporate laws. In some circumstances, inconsistent

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<sup>2</sup> Generally, majority vote policies require resignations to be considered by the independent members of the board or members of the board excluding the director tendering his or her resignation.

corporate laws will render the proposed amendments to NI 51-102 ineffective for issuers established under those laws (as it has done in relation to the previously-enacted proxy solicitation provisions of NI 51-102).”

The Quebec Act should be brought up-to-date to reflect reforms effected in the United States during the 1990s or more recently in the federal and Ontario corporate statutes and Canadian securities laws; these reforms allow investors to have an informed, open and meaningful dialogue with one another about pending shareholder votes without undue expense or compliance risk or unnecessary restrictions.

### CCGG position on certain issues raised in the Reform Working Paper

#### (2) Protection of shareholders

- CCGG members strongly support the addition of enhanced shareholder protections in the form of an oppression remedy and dissent rights in the form currently provided in the Canada Business Corporations Act (CBCA).

#### (3.1) Director Liability

- Members strongly recommend against adopting a so-called “Raincoat Provision” that covers directors for “shortcomings in their duties of prudence and diligence.”
- Director indemnification should not be broader than is currently provided in the CBCA.
- Members strongly oppose the adoption of restrictive staggered terms of office for directors. The CCGG notes that corporations in the U.S. have been unwinding their classified boards<sup>3</sup>

#### (3.3) Increase in competitiveness and attractiveness

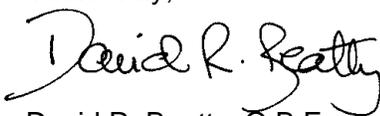
- Members believe that the due diligence defense in the Act not be broadened beyond the scope of the CBCA.
- Continuation should be recognized in the Act.

#### (3.4) Modernizing and Streamlining

- Adapting to new technologies – Members support the continued use of electronic voting and communications and meeting attendance by electronic means, as long as such meeting attendance supplements the ability of a shareholder to participate in person at a meeting.

If you have any questions concerning these comments, please contact us directly and we would be pleased to discuss them with you.

Yours truly,



David R. Beatty, O.B.E.  
Managing Director

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<sup>3</sup> According to data provided by Riskmetrics Group, U.S. Corporations have moved increasingly to declassify their boards. In 2006, for the first time ever, a majority of S&P 500 companies had annually elected boards. Classified boards, while still a majority among mid-cap and small-cap companies, also declined two years in a row. Meanwhile, shareholder pressure continues. In 2006, average support for non-binding shareholder proposals calling for board declassification reached 65 percent at S&P 500 companies, 71 percent at mid-caps and 82 percent at small caps.