Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

February 2, 2009

Mr. Jean St-Gelais
Chair
Canadian Securities Administrators
Tour de la Bourse
800, Square Victoria
Montreal, Quebec H4Z 1J2

Dear Mr. St-Gelais,

Re: Shareholder Democracy Concerns

The Canadian Coalition for Good Governance (CCGG) was formed in 2003 to promote good governance practices in the Canadian public companies owned by our over 40 members, who are Canadian institutional investors managing approximately $1.4 trillion in assets on behalf of Canadians. (A list of our members is attached in Appendix A).

CCGG has become increasingly concerned that there has been little regulatory progress in finding solutions to a fundamental corporate governance challenge – the lack of a practical ability for shareholders to effectively express their views as owners of Canadian public companies.

CCGG has created "best practices" for boards of directors to voluntarily deal with certain shareholder democracy issues. Our best practices have been adopted by a number of leading Canadian public companies. However, some companies have refused to adopt our best practices and to recognize, for example, that shareholders have a legitimate right to open and meaningful director elections and to participate in the decision-making process relating to transformational corporate events.

We believe that the credit crisis has highlighted the need for stronger company oversight by shareholders and that the time has come for the Canadian Securities Administrators to change securities rules to ensure that all shareholders can have their voices heard in a democratic and effective way.

We recognize that in December 2008 the CSA released a request for comments on draft corporate governance guidelines (which we will comment on in due course in detail) which deal in a non-proscriptive way with some of our recommendations below. However, we encourage the CSA to deal with the issues set out below immediately - and separately from the CSA corporate governance guidelines process.

120 Adelaide Street West, Suite 2500, Toronto, Ontario M5H 1T1
Telephone: (416) 868-3576 Fax: (416) 367-1954 Web Site: www.ccgg.ca

In particular, we believe that the CSA should do the following:

1. **Individual Director Voting**

   The CSA should mandate that shareholders have the right to separately and individually vote on each nominee director rather than the entire slate.

   It is currently the norm for a company management to work closely with the nominating committee to propose a slate of directors so that a shareholder must either vote "for" the slate in its entirely or "withhold" from voting its shares. This inhibits the ability of shareholders to consider alterative directors and tends to lead to an entrenched board.

   Since *National Instrument 51-102 - Continuous Disclosure Obligations* already dictates the form of proxy required, we suggest that the CSA amend section 9.4(6) to require issuers provide shareholders with the right to vote separately for each nominee director rather than by slate. In particular, Section 9.4(6) of NI 51-102 could require that forms of proxies provide the ability for shareholders to specify how their securities are to be voted in respect of the "election of each director", rather than the "election of directors".

2. **Majority Voting**

   The CSA should mandate that shareholders have the right cast votes "for" or effectively "against" each nominee director.

   Currently in Canada, if a shareholder does not approve of a director, the only option under corporate law is to "withhold" its vote, which has no practical effect. In an attempt to make it clear that directors have or have not received the support of shareholders, CCGG has prepared a majority voting policy for boards to adopt (see Appendix B). The policy provides that any director who has more votes "withheld" than "for" him or her will be deemed to have tendered his or her resignation. The board will accept the resignation as soon as possible, consistent with an orderly transition.

   While over 100 Canadian public companies have adopted some version of the CCGG majority voting policy, indicating that most leading directors agree with this policy, many have refused to do so or ignored our request.

   Section 9.4(6) of *National Instrument 51-102 - Continuous Disclosure Obligations* could be amended by the CSA to provide shareholders with the right to vote "for" or effectively "against" each nominee director following the protocol set out in the CCGG Majority Voting Policy.
   CCGG is also working to change Canadian corporate laws to require a "for" or "against" director election as is the case in other leading jurisdictions such as the UK and Australia. We note recent changes to Delaware corporate laws to permit bylaw amendments to require majority voting for directors. This has resulted in different versions of majority voting bylaws and policies being adopted by over 2/3's of S&P 500 companies. (See Appendix C).

3. **Shareholder Approval for Transformational Transactions**

The CSA should mandate that shareholder approval is required for all transformational transactions in a public company, such as a large acquisition or share issuance, as is required in most other major markets.

CSA should require shareholder approval for a significant purchase (say, increasing the enterprise value of the company by 20% or more), or a share issuance (say of 20% or more of the currently outstanding shares).

We note that the Toronto Stock Exchange in 2007 asked for public comment on whether it should amend its listing rules to require shareholder approval for large share issuances, but has failed to move this initiative forward. We have communicated to the TSX that we believe that it should move immediately with implementing these rules (see Appendix D).

We also note the January 23, 2009 OSC decision in Hudbay which we applaud as a landmark decision for shareholder rights. We urge the CSA to follow up on this decision to ensure that shareholder rights to approve transformational transactions. We urge the CSA to compel the TSX to remove the exemption in section 611(d) of the TSX Company Manual, which provides an exemption from the shareholder approval requirement if the dilutive share issuance is in connection with the acquisition of a reporting issuer.

4. **Access to the Proxy**

The CSA should mandate that a significant shareholder (alone or with others) can require a company to include in its management proxy circular alternative nominees for directors (along with a description of their backgrounds and why they should be elected), and allow the shareholder to solicit other shareholders without the need to file a dissident proxy circular. The inclusion in the circular should be at no cost to the shareholder, and the shareholder should be reimbursed by the company for its reasonable solicitation costs unless the shareholders resolve that there should be no reimbursement.

Under the Canada Business Corporations Act and current securities rules, a shareholder wishing to propose an alternative slate of directors and to actively solicit other shareholders to vote for their slate has the following options:

a) Prepare and mail its own dissident proxy circular for the annual meeting - at significant duplicative cost which puts shareholders at an economic disadvantage vs. management and an incumbent board. It has been estimated that this process typically would cost a minimum of $500,000 (including legal fees, printing and mailing costs) and could be much more for a large company or if a proxy solicitation service is used.

b) If the shareholder holds 5% or more of the shares (which is rarely the case for an individual institutional shareholder who typically do not hold more than the index weight), the shareholder can:
   - Request that the management circular include as a "proposal" a different slate of directors together a 500 word explanation. The shareholder can issue general public statements on its views, but can only directly solicit up to 15 other shareholders, or
   - Requisition a meeting to elect new directors and issue a proxy circular at its expense. Unless otherwise resolved at the meeting, the shareholder is entitled to be reimbursed for its expenses.

   We note that the CBCA permits the aggregation of the holdings of several shareholders to reach the 5% requirement, but this may cause issues for the shareholders who may be seen to be "acting in concert" or require them to make onerous US filings. In most public companies, this option is generally of little use and would not permit broad solicitations of other shareholders.

c) The company could consent to including the shareholder's alternative nominees in the management proxy circular, which is unlikely to occur.

d) Subject to the corporate bylaws, the shareholder could attend the annual meeting and propose an alternative slate. This is unlikely to be successful as most shareholders vote their shares in advance by proxy and the discretionary authority granted by proxies to management will not likely be used to vote against the board's nominees

We recognize that changes to the proxy circular system may require change to both securities and corporate laws to be fully effective.

5. Proxy Voting System Improvements

The CSA should implement a more effective system for determining eligibility to vote proxies and enforce compliance with this system through new transparency measures.

The proxy voting system for public companies is currently very complex and opaque. Over-voting is a common occurrence at shareholder meetings and has reduced confidence in the proxy voting system. Further, shareholders receive no confirmation that their votes have been received and counted by the final tabulator and final vote results are often reported as a "show of hands" vote, with information on proxy votes cast not disclosed.

CCGG will shortly provide you with a detailed analysis of the existing proxy voting system for your review. In particular, we will be asking the CSA to take the following immediate action regarding NI 54-101:

- Ensure NOBOs and OBOs are treated equally
- Provide shareholders with confirmation that their votes have been received and tabulated at shareholder meetings

- Issue guidance regarding a single record date for notice and voting Encourage the use of electronic delivery options for proxy materials
- Standardize communication between intermediaries so meeting materials are relayed to shareholders on timely basis.

Given the current economic times, we urge the CSA to move these important policy matters forward without further delay. These are important issues for long term investors that should be addressed before the current crisis is over – with the voice of shareholders being heard by companies at the time of most need for good governance.

We would be pleased to meet with you at any time to discuss these issues with you further. To arrange to discuss this matter further, please contact Stephen Griggs, Executive Director of CCGG at 416 868 3585 or sgriggs@ccgg.ca.

Yours truly,

Doug Pearce
Chairman
Canadian Coalition for Good Governance

APENDIX A
CCGG Members

CCGG MEMBERS

Acuity Investment Management Inc.
Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund Board
Aurion Capital Management Inc.
Barclays Global Investors Canada Limited
BMO Harris Investment Management Inc.
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management Ltd.
Canada Post Corporation Registered Pension Plan
CIBC Global Asset Management
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management
CPP Investment Board
Ethical Funds Company (The)
Franklin Templeton Investments Corp.
Fiducie Globale des Régimes de Retraite de la Société de transport de Montréal
Genus Capital Management
Greystone Managed Investments Inc.
Hospitals of Ontario Pension Plan (HOOPP)
Jarislowsky Fraser Limited
KBSH Capital Management Inc.
Leith Wheeler Investment Counsel Ltd.
Lincluden Investment Management
Mackenzie Financial Corporation
McLean Budden Limited
MFC Global Investment Management
New Brunswick Investment Management Corporation (NBIMC)
Ontario Municipal Employees Retirement Board (OMERS)
Ontario Pension Board
Ontario Teachers' Pension Plan (Teachers')
OPSEU Pension Trust
Phillips, Hager & North Investment Management Ltd.
Public Sector Pension Investment Board (PSP Investments)
RBC Asset Management Inc.
Scotia Cassels Investment Counsel Limited
SEAMARK Asset Management Ltd.
Sionna Investment Managers Inc.
Standard Life Investments Inc.
TD Asset Management Inc.
UBS Global Asset Management (Canada) Co.
University of Toronto Asset Management Corporation
Workers' Compensation Board - Alberta
York University Pension Fund

January 2009

APPENDIX B
CCGG Majority Voting Policy

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.

APPENDIX C
The Corporate Library Report on US Majority Voting Adoption

The Corporate Library®

ANALYST ALERT

December 2008

Majority Voting for Director Elections— *It is not yet standard practice*

By Annalisa Barrett and Beth Young, Senior Research Associates

There has been much discussion over the last few years about companies adopting a majority voting standard for director elections. And, there has been great progress in this area among large U.S. companies. Some observers have commented that this proactive adoption of majority voting should serve as a signal that no additional shareholder rights or mechanisms are necessary to provide greater board accountability. However, a recent study conducted by The Corporate Library finds that the proliferation of majority voting is limited to large companies, meaning that calls to reform director elections should not be so easily dismissed.

Background

One of the fundamental rights shareholders have under state corporate law is the power to elect corporate directors. Influential former Delaware chancellor William Allen wrote in Blasius v. Atlas Corp. that "[t]he shareholder franchise is the ideological underpinning upon which the legitimacy of directorial power rests." Shareholders have complained, however, that director elections do not impose meaningful accountability because board slates are chosen by the incumbent board and contested elections are exceedingly rare.

Under the corporate law of all U.S. states, the default voting threshold for director election—the one that applies unless the company provides otherwise—is a plurality. A plurality standard means that the director who receives the most votes is elected.

A company can alter its voting threshold by including a different threshold in the bylaws or, less commonly, the charter. The Corporate Library considers a company to have a "majority" voting standard for director elections if the company's governing documents provide that directors must receive support from holders of a majority of shares voted in order to be considered legally elected.

Some companies retain a plurality standard for election but adopt a corporate governance policy requiring that a director who does not receive majority support must submit his or her resignation. Such companies are described by The Corporate Library as having a "plurality plus resignation policy." The board has discretion to amend or repeal a corporate governance policy at any time, without shareholder concurrence.

Findings

A recent analysis of director election standards in place at U.S. companies yields a striking finding about the current state of the movement toward change in U.S. director election voting standards. Much of the discussion regarding the move away from plurality voting for directors seems to indicate that the majority voting standard is becoming the norm among U.S. companies. While this may be true for the largest companies, smaller companies are not following their lead.

Nearly half (49.5 percent) of the companies in the S&P 500 have made the switch to majority voting for director elections and another 18.4 percent have adopted the plurality-plus-resignation approach. Less than one-third (32.1 percent) of the S&P 500 companies now use the once-ubiquitous straight plurality standard (plurality without a director resignation policy). This reflects a dramatic change since last year, when more than half of the S&P 500 companies still had a plurality voting standard for director elections.

However, while this dramatic shift at large U.S. companies has garnered much attention, the straight plurality voting standard is still very common among the smaller companies included in the Russell 1000 and 3000 indices. Over half (54.5 percent) of the companies in the Russell 1000, and nearly three-quarters (74.9 percent) of the companies in the Russell 3000, still use a straight plurality voting standard for director elections.

> *"Some companies retain a plurality standard for election but adopt a corporate governance policy requiring that a director who does not receive majority support must submit his or her resignation."*

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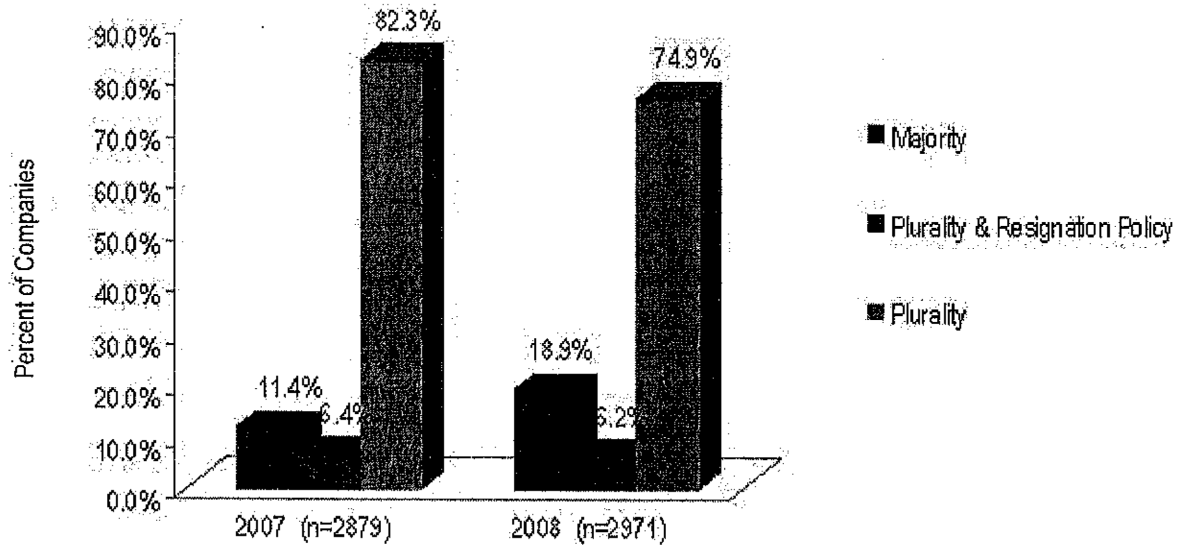
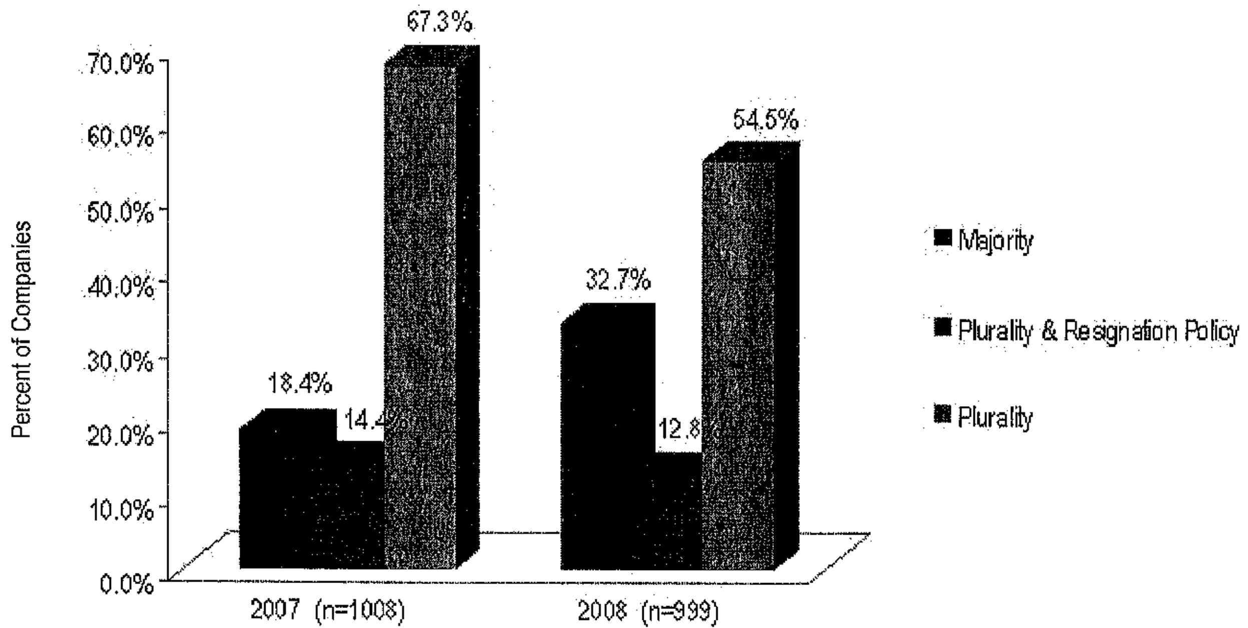
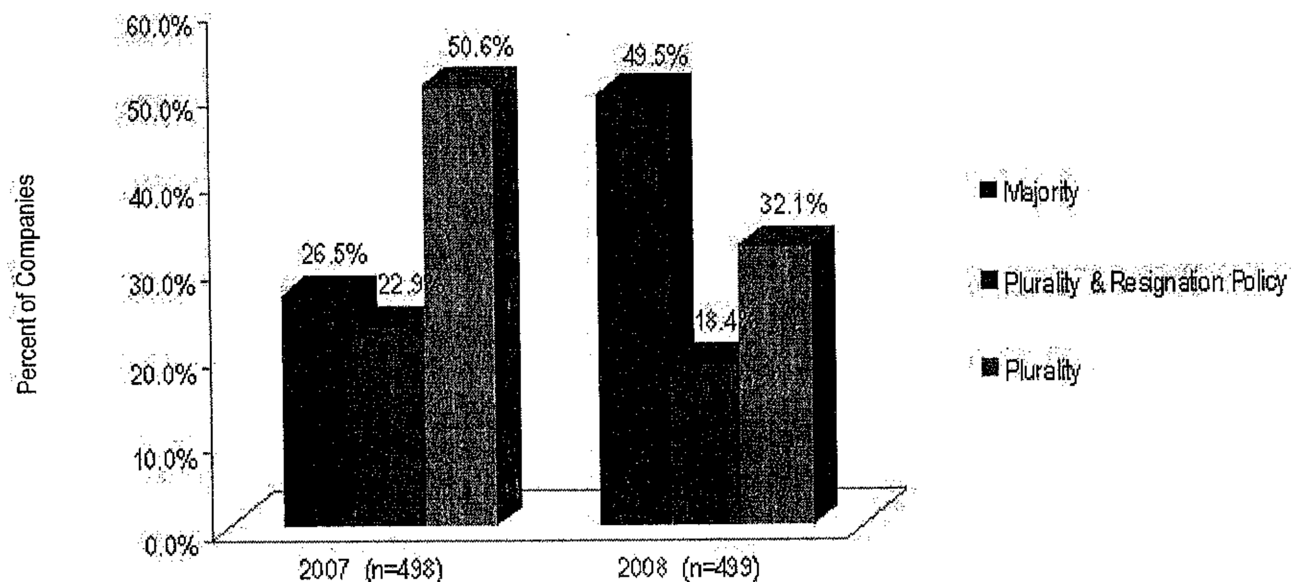
Director Election Standards
(Russell 3000)



Director Election Standards
(Russell 1000)



Director Election Standards
(S&P 500)



As shown in the charts above, there is a long way to go before the straight plurality standard for director elections is no longer the norm among smaller U.S. companies. Several factors likely explain why such companies have not yet made the change to a majority voting standard:

First, the smaller companies tend to garner less attention from institutional shareholders, activists, and the media. Many of the companies that were among the first to modify their director election standards did so with much fanfare, attracting attention for being on the cutting edge of best practices in corporate governance. For example, when Pfizer first announced its groundbreaking change to a plurality-plus-resignation policy in 2005, much attention was paid to the announcement and the approach became known as the "Pfizer-style" standard for director elections. Because they are not in the spotlight, smaller companies in the U.S. might not enjoy the same kind of public relations boost from making the same changes to their governance practices.

In a similar vein, smaller companies tend to receive fewer shareholder proposals, which are the primary mechanism for pressuring companies to make changes to their director election standard. Although some companies might proactively adopt majority voting without a shareholder proposal (or a credible threat of one), others would likely wait to see if the issue is raised via a proposal before seriously considering a change. (A smaller company that analyzes the data on shareholder proposals might rationally conclude that the likelihood of facing a proposal on majority voting is rather low.)

Another explanation for the differing patterns in director election standards may lie in the ownership structure of companies of different sizes. The Corporate Library has found that companies with smaller market capitalization are much more likely to have concentrated ownership than companies with larger market capitalization. Companies with concentrated ownership are more likely to have controlling shareholders, such as families who own large blocks of shares, and are therefore less likely to be under pressure from their shareholders to adopt best practices.

> *"...there is a long way to go before the straight plurality standard for director elections is no longer the norm among smaller U.S. companies."*

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Ownership Structures across Market Cap Tiers*

	Small Cap	Mid Cap	Large Cap
	n=1579	*n*=770	*n*=656
Concentrated Ownership	72%	64%	50%
Dispersed Ownership	28%	36%	50%

*"Small Cap" companies are those with Market Caps under $900 million; "Mid Cap" is $900 million to $3.25 billion, and "Large Cap" is $3.25 billion and above.

"...shareholders do not have a meaningful role in director elections at a large number of publicly-owned companies in the U.S."

Conclusion

Whatever the reason for the disparity between large and small capitalization companies' adoption of majority voting, the fact that many U.S. companies still use a straight plurality standard should be considered when arguments are made that further change to director election procedures is unnecessary. While much progress has been made in this area, shareholders do not have a meaningful role in director elections at a large number of publicly-owned companies in the U.S.

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APPENDIX D
TSX Correspondence

THE VOICE OF THE SHAREHOLDER

June 8, 2007

Richard Nesbitt
Chief Executive Officer
TSX Group
130 King Street West, 3rd Floor
Toronto, Ontario
M5X 1J2

Dear Mr. Nesbitt,

I am writing to you on behalf of the members of the Canadian Coalition for Good Governance (CCGG). The members of the CCGG are institutional investors that manage, in aggregate, approximately C$1 trillion. A goal of the CCGG is to ensure that adequate protections are maintained to ensure ongoing investor confidence in our capital markets.

The Toronto Stock Exchange ("TSX") Company Manual requires shareholder approval where the number of shares issued in payment of the purchase price for an acquisition exceed 25% of the acquirer's outstanding securities (section 611(c)). However, under section 611(d), listed issuers acquiring other issuers are exempt from this requirement where the target is a reporting issuer with 50 or more beneficial securityholders, regardless of the dilutive effect of the new issuance.

The members believe that the protection afforded under section 6.11(c) is appropriate and forms part of an important system of checks and balances needed to protect investors and maintain investor confidence for the following reasons.

1. Other major stock exchanges (NYSE, Amex, NASDAQ, LSE, JSE, and Hong Kong) prohibit listed issuers from issuing more than a specified percentage of its issued shares without shareholder approval. This specified percentage is 20 to 30 percent and there are no exceptions relating to acquisitions.

2. The NYSE viewed the implementation of the rule in 1955 as "closing a loophole" in the laws requiring shareholder approval in the case of mergers, consolidations or recapitalizations, but not acquisitions. In 1989, it expressed its belief that approval of certain significant corporate transactions is an important aspect of its corporate governance listing standards and that the rule's purpose is to ensure shareholder ratification of significant issuances of securities. The purpose of the TSX or NYSE rule has also been described as "to ensure fair dealing prior to the consummation of a transaction", to "protect the integrity of [the shareholders'] investment", "to ensure fairness to all shareholders", "to preserve investor confidence in the capital markets", "to protect [investors] from dilution of their economic position or voting rights without a prior shareholder vote".

120 ADELAIDE STREET WEST, SUITE 2500, TORONTO, ONTARIO M5H 1T1
TELEPHONE: (416) 868-3585 FAX: (416) 367-1954 WEB SITE: WWW.CCGG.CA

3. The OSC has stated that it approves the principle that securities regulation (including the rules of the TSX) may apply a standard which is higher than the standard required at corporate law because securities regulation prescribes, on a very current basis, standards designed to preserve investor confidence in the capital markets.

4. Although the TSX published changes to Part 6 of the Company Manual in 2002 and 2004, section 611(d) did not appear until the final version with the result that interested parties did not have an opportunity to comment on this specific provision. The TSX did not provide any substantive discussion of the reason for the exemption, although it seems to have been in response to submissions that called for the codification of exemptions that were typically granted by TSX staff. There was no real public consultation on this change nor was there public consultation when discretionary exemptions were granted, so there is very little public information explaining the rationale or discussing the merits of the exemption.

5. We understand that the original rationale for granting discretionary exemptions was that there was wide distribution of securities and comprehensive disclosure documents (albeit not directed to the offeror securityholders). On more of a secondary basis, the exemption also allowed offerors in a competitive bid situation to react quickly to other offers. We do not agree with either of these rationales and believe the exemption is inconsistent with the standards required to preserve investor confidence. At least when granting discretionary exemptions one would presume that TSX staff must have been convinced that it was in the best interests of the listed company (and its shareholders) to be able to issue the shares to make the acquisition without being subject to the delay and potential uncertainty that would be caused by a shareholder vote. The delay issue (at least with respect to take-over bids) might have been more of an issue prior to 1999 when the minimum deposit period for a take-over bid was 21 days instead of the current 35 days.

Members of the Canadian Coalition for Good Governance believe that the board of directors of a public company should seek the approval of its shareholders before proceeding with an acquisition of significant size, whether the consideration for the acquisition is in the form of shares or some other form of compensation. But dilution through share issuances is of particular concern because Canadian issuers, unlike issuers incorporated in the United States, almost invariably have unlimited authorized common share capital. The potential for a board of directors to fundamentally change a Canadian corporation through acquisitions without seeking shareholder approval is alarming under current regulations. Therefore, we urge the TSX to initiate the steps necessary to remove section 611(d) from the TSX Company Manual in order to restore appropriate checks and balances.

Sincerely yours,

David R. Beatty
Managing Director

Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

December 12, 2007

Toronto Stock Exchange
Ontario Securities Commission

SENT VIA EMAIL
Toronto Stock Exchange
Attention: Deanna Dobrowsky, Legal Counsel, Market Policy and Structure
(Deanna.dobrowsky@tsx.com)
And
Ontario Securities Commission
Attention: Cindy Petlock, Manager, Market Regulation – Capital Markets
(cpetlock@osc.gov.on.ca)

Re: Submission of the Canadian Coalition for Good Governance to the Toronto Stock Exchange re: Request for Comments, Security Holder Approval Requirements for Acquisitions (TSX Company Manual, Section 6.11)

This submission is made on behalf of the members of the Canadian Coalition for Good Governance (CCGG). The membership of the CCGG consists of 49 institutional investors (listed in the appendix) that manage, in aggregate, approximately C$1.3 trillion. The submission addresses the nine questions presented in the request for comments, dated October 12, 2007 and represents the collective view of the CCGG members.

Questions

1. Should security holder approval be required for the issue of securities as full or partial consideration for the acquisition of a public company in a transaction negotiated at arm's length where insiders receive 10% or less of the securities issued? Why?

Yes. CCGG members believe that the requirement for security holder approval for significant acquisitions is appropriate and forms part of an important system of checks and balances needed to protect investors and maintain investor confidence for the following reasons.

1. Other major stock exchanges (NYSE, Amex, NASDAQ, London, Johannesburg, and Hong Kong) prohibit listed issuers from issuing more than a specified percentage of its issued shares without shareholder approval. This specified percentage is 20 to 30 percent and there are no exceptions relating to acquisitions.

2. The NYSE viewed the implementation of the rule in 1955 as "closing a loophole" in the laws requiring shareholder approval in the case of mergers, consolidations or recapitalizations, but not acquisitions. In 1989, it expressed its belief that approval of certain significant corporate transactions is an important aspect of its corporate governance listing standards and that the rule's purpose is to ensure shareholder ratification of significant issuances of securities. The purpose of the TSX or NYSE rule has also been described as "to ensure fair dealing prior to the consummation of a transaction", to "protect the integrity of [the shareholders'] investment", "to ensure fairness to all shareholders", "to preserve investor confidence in the capital markets", "to protect [investors] from dilution of their economic position or voting rights without a prior shareholder vote".

3. The OSC has stated that it approves the principle that securities regulation (including the rules of the TSX) may apply a standard which is higher than the standard required at corporate law because securities regulation prescribes, on a very current basis, standards designed to preserve investor confidence in the capital markets.

4. Although the TSX published changes to Part 6 of the Company Manual in 2002 and 2004, section 611(d) did not appear until the final version with the result that interested parties did not have an opportunity to comment on this specific provision. The TSX did not provide any substantive discussion of the reason for the exemption, although it seems to have been in response to submissions that called for the codification of exemptions that were typically granted by TSX staff. There was no real public consultation on this change nor was there public consultation when discretionary exemptions were granted, so there is very little public information explaining the rationale or discussing the merits of the exemption.

5. We understand that the original rationale for granting discretionary exemptions was that there was wide distribution of securities and comprehensive disclosure documents (albeit not directed to the offeror securityholders). On more of a secondary basis, the exemption also allowed offerors in a competitive bid situation to react quickly to other offers. We do not agree with either of these rationales and believe the exemption is inconsistent with the standards required to preserve investor confidence. At least when granting discretionary exemptions one would presume that TSX staff must have been convinced that it was in the best interests of the listed company (and its shareholders) to be able to issue the shares to make the acquisition without being subject to the delay and potential uncertainty that would be caused by a shareholder vote. The delay issue (at least with respect to take-over bids) might have been more of an issue prior to 1999 when the minimum deposit period for a take-over bid was 21 days instead of the current 35 days.

Members of the Canadian Coalition for Good Governance believe that the board of directors of a public company should seek the approval of its shareholders before proceeding with an acquisition of significant size, whether the consideration for the acquisition is in the form of shares or some other form of compensation. But dilution through share issuances is of particular concern because Canadian issuers, unlike issuers

incorporated in the United States, almost invariably have unlimited authorized common share capital. The potential for a board of directors to fundamentally change a Canadian corporation through acquisitions without seeking shareholder approval is alarming under current regulations.

2. If you responded affirmatively to Question 1, please comment on whether approval should be required only if the issue exceeds a certain dilution level and, if so, what constitutes an appropriate dilution level. Should Subsection 611(d) (which provides for the security holder approval exemption) simply be eliminated? Is a level of dilution other than that set out in Subsection 611(c) (which provides that security holder approval is required where the number of securities issued in payment of the purchase price for an acquisition exceeds 25% of the number of outstanding securities of the issuer) more appropriate e.g. 35% or 50%? If so, why?

Approval should be required if equity dilution exceeds, at most, 25 percent of outstanding common shares as contemplated in 611(c). This threshold level is consistent with existing approval requirements for discounted private placements specified in the TSX Manual. However, members of the CCGG would prefer to see the threshold at 20 percent and note that such a threshold would align us with the US markets where the threshold for shareholder approval is also set at 20 percent.

3. Should factors other than voting dilution, such as the relative premium to a target company's stock price or enterprise value, be taken into consideration in determining if security holder approval is required? If so, what are the appropriate factors and why?

CCGG members advocate the use of a common equity dilution test. With other measures based on share prices, including takeover bid premiums, it becomes very difficult to determine one ideal threshold. Such a threshold may fluctuate based on market conditions and the appropriate metric may vary across the spectrum of industries. In the case of a private placement that exceeds the 25 percent dilution threshold and is priced at a premium to market value, shareholder approval is not required under TSX rules. Yet market conditions may be such that premium to market pricing in such a placement could still be below fair value and thus be very dilutive to shareholders. Equity dilution is a simple and relevant test.

4. Does imposing security holder approval requirements discourage acquisitions?

TSX-listed resource companies generally rely on acquisitions to grow. The TSX notes that these issuers rely on equity as their primary source of funding to finance acquisitions. There is a worry that a vote requirement will curtail acquisitions, thereby limiting growth of our resources sector.

We believe the worry is unfounded and draw attention to the technology companies listed on the NASDAQ, an exchange that requires approval for acquisitions exceeding 20 percent dilution. Technology companies mirror resource companies in so far as they rely

on equity as currency for making acquisitions. The requirement for a vote did not appear to discourage acquisitions by NASDAQ-listed technology companies over the last 15 years.

5. Does the requirement for security holder approval of the acquiror make transactions more difficult to complete, particularly where a premium is being paid for the securities of the target?

CCGG members do not believe that strategic acquisitions will be discouraged by the requirement to obtain such approval. While it may affect tactics used, obtaining shareholder approval will not necessarily require that a takeover bid remain open beyond the minimum 35 day deposit period[1]. The requirement for a vote on a major acquisition is consistent with the standards required to preserve investor confidence.

The payment of a premium on its own should not be a considered a hurdle. What matters is the proposed business model and strategy after the acquisition and how effectively that is related to shareholders. As noted above, a bid premium may not be a good indicator of the merits of a transaction. CCGG members, as long-term partners in business, are more interested in the effect of an acquisition on the business model and strategy of an acquiring firm. Involving shareholders through a vote on a key acquisition affecting corporate strategy builds shareholder trust.

6. Is this an appropriate issue for security holder approval or should the decision to make an arm's length acquisition using securities be left to the business judgment of the board of directors of the acquiror?

CCGG members believe that good business judgment would lead to the inclusion of shareholders in the decision-making process when considering important, enterprise changing acquisitions. While we are aware that advisors on arms-length mergers and acquisitions generally advise boards of acquiring firms that have the benefit of expert counsel to proceed without obtaining shareholder approval, there have been cases where acquiring boards have voluntarily taken acquisition proposals to shareholders for their approval[2].

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[1] Under NI 54-101, the minimum time in days to initiate the shareholder meeting process and hold a shareholder meeting is 55 days. However the Instrument provides that these time requirements may be abridged (sect 2.20 and 2.5(1)), as long as all materials are mailed to shareholders at least 21 days prior to the meeting.

[2] In February 2005 Goldcorp sought approval for the issuance of 200,000,000 Goldcorp shares to enable the purchase Wheaton River Minerals. As noted on page 3 and 14 of the circular:
"Although Goldcorp does not believe that applicable corporate law and securities law requirements require the issuance of the Consideration Shares to be approved by the Goldcorp Shareholders, Goldcorp has included a condition in the Offer to Purchase that the Share Issuance Resolution be approved by the Goldcorp Shareholders at the Goldcorp Meeting."

Alcan's board intended to voluntarily seek shareholder approval for its three way merger with Pechiney and Allusuisse, which failed to win approval of European anti-trust regulators. An all-stock transaction with Alcan as the surviving entity, the deal represented dilution well in excess of 25%.

In Canada, where corporations generally have unlimited authorized share capital, there is a stronger case for the requirement to obtain shareholder approval for significant transactions involving equity swaps. Without it, there are insufficient checks and balances.

7. What are the possible unintended consequences of requiring security holder approval of an acquiror in a share exchange bid? Will this favour cash bids over share exchange bids? Will this result in acquirors increasing their leverage to make cash bids so as to avoid the need for security holder approval or the need to provide disclosure about the acquiror's strategy that could benefit its competitors?

Following are some possible consequences of requiring security holder approval for acquisitions:

- Greater reliance on cash and debt to finance acquisitions;
- More deal uncertainty could lead to a higher bid price and/or the negotiation of a large break fee, although presumably, shareholders will not allow an over-priced bid to proceed if they have a vote;
- The risk of competitive harm to an acquiring firm has not had the effect of deterring acquisitions by plan of arrangement, where the merits of the transaction are disclosed publicly to selling shareholders. A takeover bid circular is supposed to outline the rationale behind an acquisition as well.

8. If security holder approval is required, is approval by a majority vote of security holders the right threshold?

Yes, a simple majority approval for arms-length acquisitions.

9. Should issuers with a smaller market capitalization be exempted from the new proposal?

No, the same principles as outlined above apply to all publicly traded issuers.

Appendix - CCGG Members

Acuity Investment Management Inc.
Alberta Investment Management, Alberta Finance
Alberta Teachers' Retirement Fund Board
AMI Partners Inc.
Aurion Capital Management Inc.
Barclays Global Investors Canada Limited
BMO Harris Investment Management Inc.
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management Ltd.
Canada Post Corporation Registered Pension Plan
CIBC Global Asset Management
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management
CPP Investment Board
Ethical Funds Company (The)
Fonds commun de placement des Régimes de retraite de l'Université Laval
Franklin Templeton Investments Corp.
Fiducie Globale des Régimes de Retraite de la Société de transport de Montréal
Greystone Managed Investments Inc.
Heathbridge Capital Management Ltd.
Hospitals of Ontario Pension Plan (HOOPP)
Jarislowsky Fraser Limited
J.P. Morgan Fleming Asset Management (Canada) Inc.
KBSH Capital Management Inc.
Leith Wheeler Investment Counsel Ltd.
Lincluden Investment Management
Mackenzie Financial Corporation
McLean Budden Limited
MD Management Limited
MFC Global Investment Management
New Brunswick Investment Management Corporation (NBIMC)
Ontario Municipal Employees Retirement Board (OMERS)
Ontario Pension Board
Ontario Teachers' Pension Plan (Teachers')
OPSEU Pension Trust
Pembroke Management Ltd.
Phillips, Hager & North Investment Management Ltd.
Public Sector Pension Investment Board (PSP Investments)
RBC Asset Management Inc.
Scotia Cassels Investment Counsel Limited
SEAMARK Asset Management Ltd.
Signature Funds (CI Investments)
Sionna Investment Managers Inc.

Standard Life Investments Inc.
State Street Canada
TD Asset Management Inc.
UBS Global Asset Management (Canada) Co.
Workers' Compensation Board - Alberta
York University Pension Fund

Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

December 3, 2008

Mr. Tom Kloet
Chief Executive Officer
TMX Group Inc.
Toronto Office
P.O. Box 450
3rd Floor, 130 King Street W.
Toronto, ON M5X 1J2

Dear Mr. Kloet,

Re: Security Holder Approval Requirements for Acquisitions (TSX Company Manual, Section 6.11)

On October 12, 2007, the TSX issued a Request for Comments on a concept paper entitled "Security Holder Approval Requirements for Acquisitions" (TSX Company Manual, Section 6.11). On behalf of its members, who are listed in the appendix, the CCGG responded to the concept paper. In our submission, dated December 12, 2007, we made the following recommendation:

The CCGG members believe that the requirement for security holder approval for significant acquisitions is appropriate and forms an important part of a system of checks and balances that is needed to preserve investor confidence. It is the collective view of the CCGG members, that an acquisition for which consideration would include the issuance of common equity that exceeds 20 percent of the outstanding shares prior to the transaction, should be approved by a majority of the votes cast at a meeting of shareholders of the acquirer. We note that the majority of other exchanges (or the corporate law in the jurisdiction in which each exchange is domiciled) require some form of security holder approval for dilutive acquisitions.

Although the comment period expired on December 12, 2007, almost one year later, the TSX has remained silent on this issue. We understand that a number of other parties responded to the concept paper and that a reasonable deliberation period is to be expected. However, we believe it is time for the TSX to take action to eliminate market and investor uncertainty on this matter.

The CCGG is pleased by the TSX inquiry into the need for a corporate transaction approval mechanism. It is confirmation that the Exchange is interested in keeping its listing standards current with best global practices. The Coalition members also see it as a clear and important signal that the TSX is seeking to deliver on its website promise to:

> "...provide the guidance issuers need to meet the combined expectations of investors and all other market participants."

Please allow me to reinforce the expectations of Canada's institutional investor community in relation to Section 6.11 of the TSX Company Manual. Institutional shareholders of TSX-listed companies, as long-term partners in business, are not interested in limiting the growth prospects of these companies by making transactions difficult to complete. What matters to sophisticated investors is the proposed new combined business strategy and how it will lead to an increase in shareholder value. A vote requirement is a straightforward channel through which TSX issuers can build sustained trust and commitment from capital providers. It will not curtail acquisitions that are acceptable to investors. Rather, we view it as a means to ensure fairness and accountability, and to facilitate ongoing company and market success.

The market reaction to the November 21, 2008 announcement by HudBay Minerals Inc. of its intention to acquire Lundin Mining illustrates the vital importance of the need for shareholder approvals for major transactions . On the day the transaction was announced, Hudbay's share price plummeted as much as 48% and the stock continues to trade almost 40% below its pre-announcement price. The market reacted strongly to the fact that the proposed transaction is highly dilutive and will proceed without HudBay shareholders' approval. Clearly, accountability and trust, or lack thereof, are vital considerations to investors where and when we place capital. The disruption to Hudbay and the Canadian capital markets could have been reduced or even avoided if the TSX had a rule in place that ensures shareholders are able to protect the value of their assets. Unfortunately, we expect that the options now being contemplated by some HudBay shareholders, including a proxy fight for control of the board, will lead to even more disruption for the issuer and the marketplace.

In summary, the CCGG members encourage the TSX, in conjunction with the Ontario Securities Commission, to move immediately to adopt fair and modern listing standards comparable to U.S. and other major foreign exchanges. Further inaction on a rule change to Section 6.11 will surely bring more market risk to participants in the Canadian marketplace, as demonstrated by the HudBay-Lundin transaction. It will also call into question the Exchange's reputation, and website claim, as being

> "Known for high standards of transparency and fairness..."

Either I or the CCGG staff would be pleased to discuss any aspect of our request in more detail.

Sincerely,

Doug Pearce,
Chairman, CCGG

Cc: Ms. Orlee Wertheim, Listings Manager, TMX Group
Ms. Julie Shin, Director, Listed Issuer Services, TMX Group
Ms. Martine Valcin, Director, Listed Issuer Services, TMX Group
Ms. Cindy Petlock, Manager, Market Regulation , OSC

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Burgundy Asset Management Ltd.
Canada Post Corporation Registered Pension Plan
CIBC Global Asset Management
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management
CPP Investment Board
Ethical Funds Company (The)
Franklin Templeton Investments Corp.
Fiducie Globale des Régimes de Retraite de la Société de transport de Montréal
Greystone Managed Investments Inc.
Heathbridge Capital Management Ltd.
Hospitals of Ontario Pension Plan (HOOPP)
Jarislowsky Fraser Limited
KBSH Capital Management Inc.
Leith Wheeler Investment Counsel Ltd.
Lincluden Investment Management
Mackenzie Financial Corporation
McLean Budden Limited
MD Management Limited
MFC Global Investment Management
New Brunswick Investment Management Corporation (NBIMC)
Ontario Municipal Employees Retirement Board (OMERS)
Ontario Pension Board
Ontario Teachers' Pension Plan (Teachers')
OPSEU Pension Trust
Pembroke Management Ltd.
Phillips, Hager & North Investment Management Ltd.
Public Sector Pension Investment Board (PSP Investments)
RBC Asset Management Inc.
Scotia Cassels Investment Counsel Limited
SEAMARK Asset Management Ltd.
Sionna Investment Managers Inc.
Standard Life Investments Inc.
TD Asset Management Inc.
UBS Global Asset Management (Canada) Co.
University of Toronto Asset Management
Workers' Compensation Board - Alberta
York University Pension Fund