CCGG POLICY
MAJORITY VOTING POLICY
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Canadian Coalition for GOOD GOVERNANCE
THE VOICE OF THE SHAREHOLDER

Revised CCGG Policy

CCGG first issued a policy on majority voting in August 2006, when few Canadian issuers had adopted a majority voting policy. Since then, most large Canadian issuers have voluntarily adopted either the form of policy recommended by CCGG or a modified version of it. The following updated policy provides the context to majority voting, its level of adoption to date and an updated form of majority voting policy for boards to consider.

CCGG maintains a list of all issuers we are aware of that have adopted majority voting, available at www.ccgg.ca. Please contact us at info@ccgg.ca if there is an error or if an issuer is missing from our list.

"Plurality" Voting Required by Law

Under Canadian law, voting for directors by shareholders of a public corporation is based on a "plurality system" under which a shareholder can either vote "for" a director nominee or "withhold" his or her vote. "Withhold" votes do not count and a director needs only one "for" vote to be elected to the board, even if all other votes are "withheld". If a director nominee is a shareholder, in theory the only "for" vote needed for the nominee to be duly elected to the board is his or her own vote.

CGGG believes that the plurality system for the election of directors is not in the best interests of shareholders as it does not permit shareholders to vote against an underperforming director and allows an entrenched board to continue to be in charge of the company, even if they are opposed by a majority of the owners of the company. The only option for shareholders who wish to effectively vote against one or more directors is to undertake a costly and confrontational public proxy fight.

CCGG believes that the board of directors of a public issuer has a responsibility to ensure that shareholders have the opportunity to vote for each director on an annual basis and that the vote is conducted fairly.

In most cases, the individuals nominated by the board (often called "management nominees") receive substantial support from shareholders, and CCGG expects that this will continue. As set out in our *2010 Building High Performance Boards*, prior consultation or engagement by the board with investors before putting forward management nominees can minimize the possibility of shareholders withholding votes for one or more management nominees.

See Section 9.4 of National Instrument 51-102 - Continuous Disclosure Obligations.

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While this policy is focused on issuers formed as corporations, CCGG believes that it should also be applied to other forms of issuers (such as trusts) to ensure that the persons representing the equity holders have the confidence of a majority of the owners of the issuer.

What is "Majority Voting"?

CCGG believes that each director of a corporation should have the confidence and support of a majority of its shareholders and that this should be a legal requirement for every public issuer in Canada. CCGG continues to urge the securities and corporate law regulators to require all public issuers in Canada to have shareholders vote "for" or "against" each individual director nominee.

Until the law is amended in Canada to require true majority voting for directors, CCGG has supported the practice that has developed at many leading issuers of effectively implementing majority voting through a board "majority voting policy". A majority voting policy ensures that shareholders can vote separately for each nominee and that, if a director nominee has more "withhold" votes than votes in favour, the nominee will be considered not to have received the support of a majority of shareholders, even though duly elected as a matter of corporate law. Such a nominee would immediately tender his or her resignation to the board, which the board would be expected to accept absent extraordinary circumstances.

Level of Adoption of Majority Voting Policy – Work to be Done

The boards of most large Canadian corporations have voluntarily adopted a majority voting policy similar to the CCGG 2006 suggested policy. More than half of all of S&P/TSX composite index issuers – 75% by market capitalization – have adopted a majority voting policy [2]. However, many large Canadian issuers have failed to adopt reasonable levels of shareholder democracy, which is of considerable concern to most investors.

CCGG has informally tracked the adoption of key elements of majority voting and shareholder democracy for a number of years, and is now undertaking a complete study of issuers in the S&P/TSX composite index. This initial study will compare adoption rates from the founding of CCGG in 2003 until early 2011, and will be published in spring 2011 at www.ccgg.ca.

Implementing "Majority Voting" in Articles or Bylaws

Under most Canadian corporate laws, an issuer may adopt majority voting by inserting a provision into its articles or bylaws[3]. Alternatively, the board of directors of an issuer can adopt a voluntary board policy providing that, if a director nominee receives more votes "withheld" than "for", the nominee will tender his or her resignation, which would generally be accepted by the board.

In the view of CCGG, it is preferable for a board to obtain shareholder approval to implement majority voting by adding it to the company's articles or bylaws, as this provides stronger protection for shareholders than a board policy which can be changed by the board without shareholder approval. CCGG recognizes that a change to the articles or bylaws of an issuer can take time and may add expense, and that many boards would prefer to at least initially adopt a board policy before making more permanent changes to its articles or bylaws.

[2] Based on CCGG research as of December 2010.

[3] CCGG is aware of at least one issuer that has taken this approach – Nexen Inc. implemented majority voting in Section 4.03 of its Bylaw No. 3.

Board Majority Voting Policy

Many boards have implemented majority voting by adopting a board policy that applies to all current directors and future nominees to the board which provides flexibility for the board to deal with problematic situations. For example, if a director who does not get the support of shareholders is a corporate executive or chair of the board or of a significant board committee, time might be required for the board to make appropriate transitional arrangements. As well, there may be rare circumstances where accepting a resignation immediately would result in a lack of quorum of directors in office.

Filling a Vacancy

If a director resigns because he or she receives more votes "withheld" than "for", the board has several options as to how the resigning director is replaced. For example, the board can leave the vacancy open until the following annual meeting, fill the vacancy with a suitable candidate or call a special shareholder meeting to elect a new director.

Terms of a "Majority Voting" Policy

To ensure effective shareholder democracy in the election of directors, CCGG recommends that the board of every public company adopt a majority voting bylaw or board policy that applies to the board and to all future director nominees. The bylaw or policy should include the following key provisions:

1. The company will list each individual director separately on the Form of Proxy or the Voting Instruction Form to allow shareholders to vote for each director individually.

2. The company will promptly disclose the results of the vote director by director. If the vote is by a show of hands rather than by ballot, the company will disclose the number of shares voted by proxy in favour or withheld for each director and the outcome of the vote by a show of hands.

3. If a director has 50% + 1 of the total votes "withheld" from him or her, the withheld votes will be considered "No" votes and the director will be expected to immediately tender his or her resignation to the board, which will be referred to the board or its nominating/corporate governance committee (or equivalent) for consideration.

4. The board will promptly accept the resignation unless it is determined that there are extraordinary circumstances relating to the composition of the board or the voting results that should delay the acceptance of the resignation or (in very rare cases) justify rejecting it.

5. The board will make its decision and reasons available to the public.

Suggested Form of Majority Voting Policy

The following is a suggested form of majority voting policy that can be adopted as a policy of the board of a Canadian public company:

Majority Voting Policy

The board believes that each director should have the confidence and support of the shareholders of the corporation. To this end, the board has unanimously adopted this policy and future nominees for election to the board will be required to confirm that they will abide by this policy.

Forms of proxy for the election of directors will permit a shareholder to vote in favour of, or to withhold from voting, separately for each director nominee. The Chair of the Board will ensure that the number of shares voted in favour or withheld from voting for each director nominee is recorded and promptly made public after the meeting. If the vote was by a show of hands, the company will disclose the number of shares voted by proxy in favour or withheld for each director.

If a director nominee has more votes withheld than are voted in favour of him or her, the nominee will be considered by the board not to have received the support of the shareholders, even though duly elected as a matter of corporate law. Such a nominee will be expected to forthwith submit his or her resignation to the board of directors, effective on acceptance by the board. The board will refer the resignation to the nominating/corporate governance committee (or equivalent) for consideration.

The board will promptly accept the resignation unless the committee determines that there are extraordinary circumstances relating to the composition of the board or the voting results that should delay the acceptance of the resignation or justify rejecting it. In any event, it is expected that the resignation will be accepted (or in rare cases rejected) within 90 days of the meeting.

Subject to any corporate law restrictions, the board of directors may (1) leave a vacancy in the board unfilled until the next annual general meeting, (2) fill the vacancy by appointing a new director whom the board considers to merit the confidence of the shareholders, or (3) call a special meeting of shareholders to consider new board nominee(s) to fill the vacant position (s).

This policy does not apply where an 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 director nominees supported by the board of directors.

Approved by the board of CCGG: February 2, 2011

CCGG thanks the law firm of Torys LLP and Cornell Wright, Partner, and James Baillie QC, Counsel, for providing legal advice to CCGG in the preparation of this and the original CCGG majority voting policy.