

June 3, 2021

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Via email: rule-comments@sec.gov

Dear Ms. Countryman,

Re: File Number S7-24-16 Reopening of Comment Period for Universal Proxy

The Canadian Coalition for Good Governance (CCGG) thanks the Securities and Exchange Commission for reopening the above noted comment period for universal proxies and for the opportunity to provide additional feedback to the SEC on this topic.

CCGG's members are Canadian institutional investors that together manage approximately \$5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

OVERVIEW/GENERAL COMMENTS

CCGG supports the SEC reopening the comment period with respect to its 2016 proposal to require the use of universal proxy cards in all non-exempt solicitations in connection with contested elections of directors (Proposed Rule). CCGG further supports mandating voting disclosure to each side when universal ballots are used.

Practical considerations for implementation:

CCGG supports the use of a mandatory universal proxy (or ballot) to facilitate the proxy voting system reflecting as closely as possible the experience and rights available to a shareholder

attending a meeting in person. By universal proxy, we mean a form of proxy that lists the names of all director nominees on a single form of proxy, regardless of whether they are nominated by the company or by dissidents. [CCGG's Universal Proxy Policy](#) highlights some of the practicalities regulators should consider when drafting the necessary amendments to implement the use of mandatory universal proxies in contested director elections, including that the form of universal proxy should:

- Name all company nominees and all dissident shareholder nominees (the company nominees and director nominees may be listed separately provided they are listed on the same page); and
- Provide every nominee equal prominence on the form of proxy (e.g. regulators should consider stipulating the same size and font be used for all nominees).

Universal proxies should be mandated in all contested elections:

CCGG is firmly of the view that the use of universal proxies should be mandatory, and the SEC should not pursue any rule that leaves the use of universal proxies up to the discretion of one of the parties in a contested election. In our view, such an approach would not sufficiently promote or incentivize the use of universal proxy ballots, since presumably their use will be subject to strategic considerations and ultimately be dependent on whether one party or the other determines there are advantages to be gained through their use. Universal proxy ballots are currently legal in Canada, and nothing prevents parties from using them now and yet they are seldom used, presumably because the parties do not see an advantage.

The justification for universal proxy ballots is to provide shareholders with greater voting flexibility. This goal should not be dependent on one side in a proxy battle/contested transaction perceiving that there is an advantage to be gained by their use. In the situation of a contested election, regulation should facilitate a neutral process enabling shareholders to elect the combination of directors they consider best qualified to oversee the company, regardless of strategic considerations by the issuer or dissidents regarding the form of proxy ballot.

Similarly, the greater transparency afforded to issuers and dissidents on disclosure of voting tallies benefits both issuers and dissidents and should not be dependent on the choice of one of those parties to use a universal proxy ballot.

Recent developments in Canada:

In Ontario, Canada's largest capital market, the Ontario Capital Markets Modernization Taskforce, an independent Taskforce appointed by the provincial government to review and provide recommendations to modernize Ontario's capital markets and regulatory framework, recommended that Ontario require the use of universal proxy ballots in all contested meetings. The Taskforce also supported consideration through additional consultation with the provincial securities regulator, of additional requirements, similar to those included in the Proposed Rule, including notice requirements, minimum solicitation requirements applicable to dissidents, as well

as form requirements for universal proxies¹. To the extent that such requirements can be aligned going forward as between the US and Canadian capital markets regulatory frameworks, such alignment reduces regulatory burden for issuers and enhances investors' ability to meaningfully exercise their voting rights and exercise the "fair corporate suffrage" available to them under state law, which the SEC has noted is the guiding concept underpinning the Proposed Rule.

CONCLUSION

In closing, we would refer the Commission to the detailed 2016 submission made by the Council of Institutional Investors in response to the initial public consultation period for the Proposed Rule². CCGG is supportive of the positions taken in that submission. We encourage the SEC to move forward to a final rule which adopts a requirement to use universal proxies in all non-exempt solicitations with contested elections of directors.

We thank you again 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, Catherine McCall, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville, at sneville@ccgg.ca.

Yours truly,



Marcia Moffat
Chair, Canadian Coalition for Good Governance

¹ [Capital Markets Modernization Taskforce, Final Report, January 2021, Her Majesty the Queen in Right of Ontario](#), see Recommendation 42: Require the use of universal proxy ballots for all contested meetings and mandate voting disclosure so each side in a dispute when universal ballots are used.

² [K. Bertsch, Re: Comments on SEC Release No. 34-79164 - Universal Proxy \(File No. S7-24-16\), December 28, 2016, Council of Institutional Investors](#).

CCGG MEMBERS 2021

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec
- 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
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OPSEU Pension Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- TD Asset Management Inc.
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund