

September 23, 2022

Manuel Dussault,
Acting Director General
Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa, ON K1A 0G5
Via Email: governanceconsultation-consultationgouvernance@fin.gc.ca

Dear Mr. Dussault,

Re: Corporate Governance Consultation

The Canadian Coalition for Good Governance (CCGG) welcomes the opportunity to provide the Department of Finance Canada with our comments in respect of the Department's consultation on Improving Diversity and Facilitating Electronic Communications in Federally Regulated Financial Institutions (FRFIs).

CCGG's members are Canadian institutional investors that together manage approximately \$6 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.

GENERAL COMMENTS

CCGG supports the Department of Finance Canada's public consultation on measures to adapt and apply the *Canada Business Corporations Act* (CBCA) diversity requirements for FRFIs and expand FRFIs' use of electronic communications with their owners, including the delivery and provision of governance documents, as well as virtual meetings.

CCGG advocates for enhancing diversity within Canadian public companies, including financial institutions. CCGG strongly supports the extension of diversity disclosure requirements to FRFIs aligned with the diversity disclosure obligations that have been in place since 2020 for public companies incorporated under the CBCA in order to enhance transparency and accountability within this sector. Given the significant role FRFIs play in Canadian capital markets, and the

economy more broadly, there is no reason that they should be subject to different disclosure obligations than other federally incorporated public companies. Investors are increasingly drawing from disclosure related to diversity representation and diversity and inclusion policies at the board level and among senior management in order to make voting and investment decisions. Consistent, robust and comparable disclosures, across sectors, drives both transparency and improves the decision useful data available to investors for this purpose.

Additionally, CCGG supports creating an effective electronic communications regime amidst the rapid digital acceleration of the financial sector to the extent that such regimes protect and enhance shareholder participation and the exercise of shareholder rights. To this end, CCGG promotes good governance and investor stewardship principles that work to mitigate risks and increase the benefits of electronic communications between public companies and shareholders, including FRFIs and their owners.

As CCGG's mandate is focused on improving corporate governance in Canadian public companies, our submission focuses on those questions we considered most relevant to FRFIs that are also reporting issuers and to our mandate.

RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

The Government is seeking feedback on measures that would align the financial institutions statutes with the diversity disclosure requirements in the *Canada Business Corporations Act*.

Q1: What are the potential benefits and limitations of applying the CBCA diversity disclosure model to financial institutions?

CCGG has long advocated that the single most important corporate governance requirement is to have directors of quality. What we mean by “quality” on an individual level, is someone with integrity, curiosity, expert knowledge, business, industry, or other relevant experience and with the time and motivation to understand and carry out his or her fiduciary duties in the long-term best interests of the corporation and all its stakeholders. While quality of individuals is paramount, boards should be diverse. As stated in CCGG's leading publication *Building High Performance Boards*¹, CCGG believes that the boards of all Canadian public companies including FRFIs should be comprised of directors with a wide variety of experiences, views and backgrounds that reflect, to the extent practicable, the ethnic, cultural, and other characteristics of the communities in which the corporation operates, from which it draws its employees, and into which it sells its good or services. CCGG assumes that diversity in all forms, is an inherent good and that increasing board diversity improves the quality of boards overall.

A key benefit of extending the CBCA diversity disclosure requirements to publicly held FRFIs is that such extension will contribute to more data becoming available, providing a clearer and more consistent picture of diversity characteristics for some of Canada's largest companies. While some

¹ See CCGG's [Building High Performance Boards](#).

banks and financial institutions are already making some diversity disclosures pursuant to capital markets regulatory requirements, notably with respect to women on boards and among senior executives, broader disclosures with respect to other forms of diversity are required only by corporations incorporated under the CBCA. With respect to diversity disclosures beyond gender for non-CBCA companies, investors must rely on voluntary disclosures, if any, made by other corporations, including FRFIs, which impedes comparability and consistency of data.

In the context of Canadian public companies, and subject to our specific comments below, we cannot see any limitations in extending the CBCA diversity disclosure to widely held FRFI's. There should not be different corporate governance requirements, including with respect to the diversity disclosure regime, for publicly traded companies depending on their type of business. FRFI's should not be relieved of an obligation to disclose diversity information that other federally incorporated public companies are required to disclose solely because they are established under a different statutory and regulatory regime. Investors in FRFIs, which are some of Canada's largest and most widely held companies, are the same investors as in CBCA companies and are looking for the same kinds of transparency with respect to diversity among Boards and senior management.

Q2: Are the scope and content of the CBCA's disclosure requirements appropriate for financial institutions? Please explain.

Please see response to Question 1. There should be no difference in the scope and content of the CBCA's disclosure requirements and those applying to FRFIs.

We view the CBCA requirements as a good starting point and disclosures have already improved data transparency and consistency in the prescribed areas. As we expect that the CBCA requirements will evolve over time as the data improves and the discourse matures, the requirements for FRFIs should also evolve and remain consistent with those of the CBCA. Further recommendations on this point are found in the responses to the questions below.

Q3: Are the four designated groups outlined in the CBCA model (i.e., Indigenous peoples, members of visible minorities, persons with disabilities, and women) adequate for capturing the information investors and the public require in order to assess the state of diversity on the boards and senior management of financial institutions? If not, how should this be modified?

We agree that the four designated groups outlined in the CBCA model are a good starting point for capturing the information investors require to assess the state of diversity on the boards and senior management of financial institutions. As noted above, aligning with the CBCA model which already exists and is in effect, will improve and enrich the data pool available to investors. It would make sense at this stage not to reinvent the wheel for FRFIs in order not to delay implementing a disclosure regime that gets additional consistent data into the public realm. Creating a patchwork of disclosure requirements as between FRFIs and other entities should be avoided.

That said, the concept of diversity in Canada is complex and nuanced. The CBCA model recognizes this complexity to a degree by encouraging but not mandating voluntary disclosures of diversity considerations identified by companies which are not covered by the four designated groups.

In the future, we recommend that Canada should take a whole of government approach to improving the quality of disclosures over time to reflect the breadth of Canadian diversity and leverage work occurring in other government departments. For example, the federal government's 50/30 Challenge, which is referenced in the Department of Finance's consultation paper, is a voluntary initiative that brings together the federal government, private business and diversity organizations in the shared goal of achieving 50% gender parity and 30% significant representation of equity deserving groups on boards and in senior management.²

In support of that initiative, a Publicly Available Specification (PAS) document has been developed and published after a process of public consultation.³ The PAS provides context and guidance in order to develop a shared understanding of diversity related terms and definitions for those entities who have chosen to participate in the challenge. The PAS goes beyond the four categories of disclosure currently included in the CBCA model. Gender parity is defined as 50% women and/or non-binary people; and "significant representation of equity-deserving groups" encompasses members of other equity-deserving groups, which include those who identify as racialized, Black, and/or a person of colour, as a person with disabilities (including invisible and episodic disabilities), as a member of the 2SLGBTQ+ community and/or gender and sexual minorities, and/or as a member of Indigenous Peoples.⁴

While the objectives of the 50/30 Challenge are voluntary, the terms and definitions developed in the PAS document are thoughtful and helpful and offer an example of how a whole of government approach could be deployed with respect to future evolutions of corporate diversity disclosures beyond gender. This position also aligns with the guidance that CCGG provided to Ontario's Capital Markets Modernization Taskforce in 2020 wherein we advocated for a broader approach to the concept of diversity beyond gender.⁵

Q4: For investors and owners of FRFIs, are the CBCA diversity disclosures adequate to inform your investment/voting decisions for directors?

See response to Question 3.

² Government of Canada, 2022: [The 50 - 30 Challenge: Your Diversity Advantage - Innovation, Science and Economic Development Canada](#).

³ Diversity Institute, Ryerson University, 2021: [The 50 - 30 Challenge \(diconsulting.ca\)](#); Diversity Institute Ryerson University, Publicly Available Specification (PAS) The 50 - 30 Challenge, [Di-PAS_EN_vf.pdf \(secureservercdn.net\)](#).

⁴ Ibid.

⁵ See [Capital Markets Modernization Taskforce Final Report \(2021\)](#) at pg. 64; See CCGG's September 2020 response to [Consultation - Modernizing Ontario's Capital Markets](#) at pg. 11.

Q5: Should the requirements apply to all federally incorporated financial institutions, or should they be differentiated based on the institution's ownership or type?

a. If differentiation is preferred, why?

CCGG's mandate is to improve corporate governance in public companies, and it strongly supports the extension of the disclosure regime to publicly traded FRFIs. While not our main area of focus, we note that establishing different reporting requirements for public and large non-public companies has the potential to incent companies not to seek capital in the public markets. Such arbitrage should be avoided where possible. In addition, institutional investors also invest in private equity and are increasingly expecting potential investee companies to demonstrate strong corporate governance practices. Data with respect to the diversity of boards and senior management also supports investor decision-making in respect of private equity.

Q6: In your view, what is the impact of these disclosure requirements on non-distributing FRFIs (i.e., credit unions, small- and medium-sized banks, and certain insurance companies)?

CCGG will not be responding to this question.

Q7: What are the benefits and limitations of introducing targets to achieve broader diversity goals? Should federally regulated financial institutions be required to set their own targets, or should Government introduce suggested targets or guidance in this area?

A key benefit of targets for both investors and companies is that they create an accountability mechanism against which progress can be measured and provide an opportunity for engagement between a company and its shareholders.

Regarding the limitations of targets, we acknowledge that the comply or explain approach taken by securities regulators with respect to setting targets for women on boards and senior management⁶ and by the CBCA with respect to women and other forms of diversity is an imperfect solution with respect to achieving diversity goals.

Data trends with respect to company progress toward achieving self-determined targets drawn from CBCA company disclosures remains limited given that disclosures only began in 2020. Data trends with respect to progress for companies reporting to securities regulators clearly demonstrates that progress for women on boards and in senior management has been slow notwithstanding the increase in adoption of targets within some companies. In addition, the voluntary adoption of targets overall has also been fairly slow and has not catalyzed rapid change.⁷

⁶ Ibid.

⁷ [CSA Multilateral Staff Notice 58-313 Review of Disclosure Regarding Women on Boards and in Executive Officer Positions \(osc.ca\) \(2021\)](#); For example, in its 2021 report the CSA reports that the total board seats occupied by women increased from 11% in year 1 to 22% in year 7 even though the number of companies with targets increased from 7% in year 1 to 32% in year 7; with respect to executive officer positions the progress as tied to target setting is even slower. Issuers with at least one woman in an executive officer position increased

Despite this slow progress, it is our view that the comply or explain approach to target setting with respect to women on boards, has provided issuers with time to acclimatize and integrate gender diversity processes and thinking into their board refreshment policies and practices.

In fact, the consultation document notes that Canada's financial services sector generally and in particular, Canada's largest widely held FRFIs, including the major banks and insurance companies already have greater representation of women directors than other TSX-listed companies, indicating that a level of maturation and integration has been achieved on this issue among FRFIs.

Targets for gender representation:

Subject to our responses to Questions 2 and 3, we support that FRFIs be required to set targets for the representation of women on boards and in executive officer positions. Rather than the government setting a prescriptive common target for all FRFIs, we suggest that FRFIs be required to set their own target, and to explain any target that is not within a range of 40-60 percent representation of each of women and men. We would support expressing the benchmark gender target as a range that incorporates both women and men as it facilitates putting both genders on an equal footing which further encourages achieving a critical mass of both genders⁸ and also creates space for inclusion of non-binary articulations of gender within that balance. A range also does not imply that a target is a cap or quota, rather it is an expression that the ultimate goal is for no single gender to predominate in the composition of the board. It also provides more flexibility for boards to manage board refreshment and board size than a 50% target.

In addition, we support a maximum 5-year timeframe for achievement of the self-determined targets.⁹ This approach provides a reasonable next step building from the progress made to date. In 2021 the CSA reported that 35% of new board appointments were women, representing an increase of 5% from the prior year¹⁰, suggesting opportunity for acceleration in progress going forward. The approach would also allow for appropriate board renewal and executive succession planning.

Targets for diversity beyond gender

Subject to our responses to Questions 2 and 3, we support that FRFIs be required to disclose, on a comply or explain basis, whether or not they have targets for representation on the board and in executive positions in a manner consistent with the CBCA model. Consistent with the CBCA model, such disclosure requirements should also encourage voluntary disclosures of diversity considerations identified by companies which are not covered by the other three designated groups. In addition, we would recommend that any self-determined target for diversity beyond gender that

from 60% in year 1 to 67% in year 7 and the number of companies with targets did not increase meaningfully from 2% in year 1 to 6% in year 7, at pages 4-5.

⁸ See CCGG's [Gender Diversity Policy](#).

⁹ This time frame is consistent with Recommendation 34 of the final recommendations of the Ontario Capital Markets Modernization Task Force, see [Capital Markets Modernization Taskforce, Final Report, January 2021 \(ontario.ca\)](#).

¹⁰ CSA, supra note 7, at pg. 6.

is less than 30 percent should be supported by specific disclosures as to why self-determined targets are not at these levels.

Given the importance of diversity beyond gender as a dynamic and multi-faceted issue, we are of the view that there needs to be a period of evolution to allow for FRFIs to meaningfully contribute to the dialogue, data and disclosure on underrepresented groups before the government considers regulating or mandating targets. This period began with the 2020 disclosures required under the CBCA and will be enhanced by the disclosures proposed for FRFIs. Ultimately, investors will be looking for disclosures that indicate the issuer is developing a culture that values diversity and inclusion in a way that is aligned with the context of its business, workforce, community and stakeholders, balances appropriate representation, and is making measurable progress toward achieving those self-identified goals.

Similar to our guidance with respect to women's representation, we recommend that the Department of Finance track progress on target setting, and progress made to achieve any targets set over a period of time, and revisit whether or not targets should be regulated or mandated in the future. We recommend this be revisited after a period of seven years.¹¹

Q8: In your view, do director term limits create more opportunities to recruit diverse candidates? What are the potential challenges to achieving this outcome?

a. Should federally regulated financial institutions be required to set their own term limits, or should Government prescribe term limits?

The issue of board entrenchment and board renewal is a concern from a governance perspective as continued refreshment of the board helps to ensure that independent, fresh, and diverse perspectives and skills are brought into the boardroom.¹² Addressing board renewal is important for enhancing board diversity.

Term limits are an important tool for achieving predictable board refreshment and turn-over, but they are not the only tool. Rather than recommending government prescribed term-limits, we encourage the Department of Finance to consider legislative mechanisms linking tenure of board service to assumptions of director independence such that a member of the board of directors of an FRFI who has been a director of the FRFI for a specified number of years from the date of their first appointment would no longer be considered independent, absent additional disclosures.¹³ This approach is employed in the UK Corporate Governance Code where a non-executive board member that has served on the board for more than nine years from the date of their first appointment is

¹¹ This time frame is consistent with Recommendation 34 of the final recommendations of the Ontario Capital Markets Modernization Taskforce see [Capital Markets Modernization Taskforce, Final Report, January 2021 \(ontario.ca\)](#).

¹² Ibid., at pg. 65.

¹³ We acknowledge that the concept of director independence is currently defined in securities regulations but we do not consider this prohibitive to a legislative amendment of the governing corporate law: See CSA NI 58-101 s1.2 and NI 52-110 s1.4; In addition, under NI 58-101 and CP 58-201, if an issuer does not have a majority of independent directors, additional disclosure and scrutiny are triggered.

presumed to have their independence impaired, subject to a clear explanation being provided to investors should the board nonetheless consider the director to be independent.¹⁴ For CCGG members that have established their own working definitions for director independence, the number of years has been set variously between nine and twelve.

Our proposed approach builds from the current CBCA Model, under which companies must disclose on a comply or explain basis whether or not they have term limits or use other board renewal mechanisms. By linking director term length to independence, it advances the use of term-limits and other board refreshment mechanisms and establishes consequences for FRFIs with low board renewal, while allowing FRFIs flexibility in respect of specific company circumstances, size and changes in business structures. Widely held FRFIs that lack board renewal would see consequences at board elections because the proportion of independent board members is a factor commonly considered by Canadian institutional investors when casting proxy votes.

Q9: What are the benefits and limitations of introducing a prescribed form for reporting?

The benefit of introducing a prescribed form of reporting is the establishment of a consistent and reliable reporting procedure. Additionally, if a prescribed form is created, it enhances the searchability of data and allows investors to be able to easily locate the disclosed information, saving them time and resources. In our view, a prescribed form of reporting should be located in the proxy circulars of widely held FRFIs, to maintain consistency and transparency.

However, a prescribed form of reporting comes with potential limitations including that it may be perceived to create an additional reporting burden for issuers. It also may convert the disclosure into a box-checking exercise and create limitations on an FRFI's ability to put the diversity numbers into a narrative context that may be useful to investors in understanding what the numbers mean in the circumstances of the FRFI, its board size and composition, and its business and performance, thus diminishing the importance of the 'explain' component of 'comply or explain' based disclosures.

Q10: In your view, what are effective approaches and policies to achieve compliance?

CCGG will not be responding to this Question.

Q11: In your view, what are effective approaches and policies to increasing diversity in financial institutions?

In 2018 CCGG published our Gender Diversity Policy¹⁵, creating a guiding framework for our members to establish gender diversity as a necessary corporate governance best practice. CCGG acknowledges that challenging systemic barriers exist for both women and underrepresented groups at all levels of the corporate hierarchy, including employment, development, promotion to

¹⁴ Financial Reporting Council (FRC). UK Corporate Governance Code, (July 2018): <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf> at pg. 6, Provision 10.

¹⁵ See CCGG's 2018 [Gender Diversity Policy](#).

senior management and appointment to boards. Below we draw on current diversity research to identify corporate governance best practices and noteworthy considerations to address such barriers.

Osler’s 2021 report, *Diversity Disclosure Practices*¹⁶, demonstrates that addressing corporate culture¹⁷ is the foundational link required to enhance recruitment and talent development initiatives, foster mentorship programs, and implement effective diversity, equity & inclusion (DEI) programming, which are cited as useful methods to increase diversity in financial institutions.¹⁸ Similarly, the importance investors place on the connection between diversity and inclusion is the focus of a recent report by the Investor Leadership Network (ILN) which observes that inclusion “is the tool which unlocks the business benefits of diversity”.¹⁹ The ILN report identifies practical inclusion metrics and provides investor focused case studies.²⁰ Likewise, a recent report on diversity and inclusion within financial services²¹ by the US Consumer Financial Protection Bureau details recommendations for best practices that are uniquely tailored to organizational size. Some noteworthy illustrations of effective approaches to increase diversity and inclusion include a strong commitment from leadership, an increase or creation of workforce development opportunities, and importantly for the purposes of this consultation, publishing of DEI metrics.²² The challenge for FRFIs in the current policy landscape is to integrate these approaches into their core business models to ensure their commitments continue to remain a forefront of their business strategy.²³ In our view boards have a significant oversight role in achieving such integration, which further underscores the importance of diverse boards.

There is evidence that bolstering diversity generally and amplifying women’s voices on the board and among the senior management leadership pool has positive benefits, in terms of sustaining DEI initiatives and incorporating sponsorship programs to achieve gender parity and move women into

¹⁶ MacDougall, A. Valley, J. & Jeffrey J. Report: 2021 Diversity Disclosure Practices – Diversity and leadership at Canadian public companies, Osler, (2021): [Diversity of leadership in the workplace \(Canada – 2021\)](https://www.osler.com/~/media/2021/12/21-Diversity-Disclosure-Practices-Canada-2021.pdf) ([osler.com](https://www.osler.com)).

¹⁷ See CCGG’s 2018 [The Director’ E&S Guidebook](#): Recommendation I: Corporate Culture. The Guidebook’s first set of recommendations highlight that the board needs to be aware of and oversee corporate culture and play a role in setting the tone from the top. Culture is fundamental in defining employees’ views as to what matters to the company and what it is trying to achieve. From a governance perspective, cultural awareness requires a full understanding of the current state and how it got that way. Effective boards can speak to where they are in their journey toward the desired state, and where they aim to improve. This insight comes from regular check-ins with employees to assess the alignment of culture within the organization, at pgs. 12-14.

¹⁸ Ibid.; Rogish, A., Sandler., S & Shemluck, N. Diversifying the path to CEO in financial services, *Deloitte Insights*, (July 13 2020): [Gender diversity and inclusion in financial services | Deloitte Insights](#)

¹⁹ Investor Leadership Network. ILN Launches an Inclusion Playbook To Help Investors Assess and Engage on Inclusion Throughout Their Portfolios, (March 24, 2022): [Investor Leadership Network, Inclusive Finance Playbook: Setting the Standard for Workforce Inclusion, March 24, 2022](#) at pg. 6.

²⁰ Ibid. at pgs.8-10 for metrics; and pgs. 11-17 for case studies.

²¹ US Consumer Financial Protection Bureau (CFPB), Office of Minority Women Inclusion (OMWI). CFPB Report on Diversity and Inclusion within Financial Services. (2022): https://files.consumerfinance.gov/f/documents/cfpb_diversity-inclusion-within-financial-services_report_2022-01.pdf.

²² Ibid., at pgs. 11-15.

²³ Rogish, A., Sandler., S & Shemluck, N. Diversifying the path to CEO in financial services, *Deloitte Insights*, (July 13 2020): [Gender diversity and inclusion in financial services | Deloitte Insights](#).

leadership roles at financial services firms.²⁴ Chiefly, visibility of diverse leaders and building leadership training, plays a crucial role in establishing an inclusive corporate culture.

Furthermore, investors will continue to act during the proxy season with requests for metrics on diversity data, aiming to hold companies accountable to stated diversity commitments.²⁵ Thus, increasing equity research, policy evaluation and diversity data collection, are essential components to understanding if financial institutions are meeting their respective DEI goals and targets.²⁶

Comparatively, as noted in our response to Question 3, incorporating a consistent, whole of government Gender Based Analysis plus (GBA+) lens and intersectional approach in the evaluation of government policies and programs is important for enhancing diversity across Canadian institutions.²⁷ CCGG recommends the Department of Finance draw on best practices within the Federal government, across domestic jurisdictions and globally to identify innovative diversity policies and approaches.

ACCESS EQUALS DELIVERY

Consultation Questions

The Department of Finance is seeking feedback on two potential models for electronic communications, notice-and-access, and access equals delivery.

Q1: What are the benefits and limitations of a notice-and-access or access equals delivery model for: i) financial institutions and ii) their owners?

See response to Question 2 below.

Q2: Were a notice-and-access or access equals delivery model to be implemented, to which governance documents should it apply?

CCGG has existing positions on access equals delivery and notice and access, most recently articulated in our June 2022 submission to the CSA in respect of its Notice and Request for Comment on Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment fund Reporting Issuers, and in our September 2020 response to the Ontario Capital Markets Modernization Task Force's draft recommendations.²⁸

²⁴ Ibid.

²⁵ Smith, J. What investors expect from the 2022 proxy season. EY, (February 7, 2020): [What investors expect from the 2022 proxy season | EY - US](#).

²⁶ Williams, J. C., & Dolkas, J. Data Driven Diversity. *Harvard Business Review*, (March – April 2022): [Data-Driven Diversity \(hbr.org\)](#).

²⁷ Government of Canada, Treasury Board of Canada Secretariat. Integrating Gender-Based Analysis Plus into Evaluation: A Primer (2019): [Integrating Gender-Based Analysis Plus into Evaluation: A Primer \(2019\) - Canada.ca](#).

²⁸ CCGG June 2022 submission to CSA re [Notice and Request for Comment on Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment fund Reporting Issuers](#); See CCGG September 2020 submission to the Ontario Capital Markets Modernization Task Force re [Consultation on](#)

CCGG is generally supportive of the benefits of enhancing electronic delivery of documents under a 'notice and access' model and movement toward an access equals delivery model for a limited scope of investor documents, provided that institutional investors retain a right to "opt in" to receive a paper copy. We were pleased to note that the access equals delivery model the Department of Finance is contemplating is not intended to remove the option of having paper copies of documents delivered for those who prefer this option, and that the needs and preferences of investors (such as investors' standing instructions) would inform FRFIs' decisions as to whether to choose an access equals delivery model.

CCGG does not support proxy circulars or any voting information being subject to access equals delivery.²⁹

CCGG is of the view that proxy-related materials, and other documents upon which investors rely to exercise their rights as shareholders should not be deemed "delivered" by issuers, including FRFIs, under an electronic access equals delivery model, absent prior notice and consent. Requiring shareholders to proactively monitor all the websites and news releases of the issuers in which they are invested for proxy related materials, unreasonably shifts the burden from the issuer to the shareholder. Information related to the timing as to when and for what purpose an issuer may call a shareholder meeting is within the purview of the issuer and it is the responsibility of the issuer to proactively ensure that shareholders are made aware of such events and have timely access to the information they require to exercise their rights. Voting is one of the key mechanisms investors have to exercise oversight over the companies in which they are invested and therefore it is important for companies to be required to continue to provide notice to shareholders to facilitate shareholder participation in votes on both routine (e.g., election of directors) and special resolutions, whether included on the ballot at an Annual General Meeting or through a special meeting of shareholders. Requiring clear communication in this regard, prevents companies from seeking to game voting outcomes through reduced shareholder participation.

Conversely, absent the provision of notice, some companies, especially those with a dispersed or a retail investor heavy shareholder base, may have difficulty achieving quorum, ultimately creating barriers for issuers with respect to a company's ability to pursue corporate initiatives. Large institutional investors may, over time, have the resources to adapt to an access equals delivery model for proxy related materials, however, this will not be without cost to the investor, and there is a clear risk to retail investors' ability to meaningfully participate in Annual General Meetings and other shareholder votes. To the extent that institutional investors' operational processes surrounding solicitation and submission of voting instructions would be impacted by an access equals delivery model for proxy related material, including requiring security holders to access information such as their proxy control number, the ability to continue to receive notice and to request paper copies is paramount.

[Modernizing Ontario's Capital Markets.pdf](#); also see CCGG March 2020 submission to [CSA re Access Equals Delivery](#).

²⁹ See CCGG's March 2020 submission to [CSA re Access Equals Delivery](#) at pg. 2.

Q3: If a notice-and-access model were implemented, are there any modifications we should make to the notice-and-access model as described in National Instruments 51-102 and 54-101 to better reflect the way financial institutions communicate with their owners? Please see Annex 1 for relevant parts of the National Instruments.

CCGG is not responding to this question.

Q4: If a notice-and-access model were implemented, are there any modifications we should make to the notice-and-access model as described in National Instruments 51-102 and 54-101 to better reflect the way financial institutions communicate with their owners? Please see Annex 1 for relevant parts of the National Instruments.

See response to Question 2.

Q5: In your view, how should future regulations address:

a. how, where, and when paper copies can be accessed by owners; and,

Investors should always be provided with the opportunity to receive a paper copy.

b. how and when owners will be informed about the process for obtaining paper copies?

CCGG is not responding to this question.

Q6: If you are a non-distributing institution, would you make use of an e-communications model like notice-and-access or access equals delivery? If not, please describe elements of an electronic communications model that would be appropriate for your institution and its owners.

CCGG is not responding to this question.

VIRTUAL SHAREHOLDER MEETINGS

Consultation Questions

Q7: What are the risks and opportunities of holding virtual shareholder meetings for: i) financial institutions and ii) their owners? If applicable, please include information on topics such as:

- a. attendance, participation, and voting;**
- b. how questions are solicited, selected, and addressed;**
- c. if and how participants communicate with one another during the meeting; and,**
- d. if and how participants interact informally with management during the meeting.**

Shareholder meetings are the vehicle by which shareholders exercise some of their core rights as investors, including voting to elect board directors and to approve or reject a myriad of corporate actions brought forward by management. Shareholders are also able to convene meetings and bring shareholder proposals of their own. These rights are exercised only by shareholders and not available to other stakeholders which creates a unique relationship between a company and its shareholders. CCGG's members, as institutional investors, have stewardship obligations to their beneficiaries and clients which include responsibilities to report on voting activities and seeking to vote all the shares of the companies in their portfolios. This set of obligations and responsibilities underscore the importance of effective and accessible shareholder meetings to CCGG's membership.

Consistent with the status quo for FRFIs, CCGG recommends permitting hybrid meetings which, in our view, are preferable to virtual only shareholder meetings (VSM).

The International Corporate Governance Network (ICGN) has published a thoughtful *Viewpoint on the Future of AGMs* which brings forward valuable insights on the risks of a virtual only environment.³⁰ For example, the ICGN highlights that during an AGM Q&A session, participants must be able to ask questions to hold directors accountable via a robust and interactive questioning and dialogue period, a virtual only format can significantly hinder this experience.³¹

With respect to opportunities, the imperative to adopt VSMs created by the global pandemic combined with evolutions in investor stewardship which place a greater focus on investor engagement and voting, have spurred both innovations in the capability of companies to create inclusive and high-quality participatory environments for VSMs and have increased the willingness of investors to participate virtually.³² Investors recognize that VSM or hybrid meetings conducted effectively can reduce costs for issuers, facilitate greater participation by shareholders and support dialogue and transparency.³³

In CCGG's view, the goal of digital and virtual processes, whether in support of virtual or, preferably, hybrid shareholder meetings should be to achieve an experience for shareholders that is as much aligned with the experience of an in person meeting as possible. This includes important considerations such as accessible technology that is easy for shareholders to navigate and use, and the capacity for real time shareholder participation. Synchronous shareholder participation in an electronic or hybrid meeting must facilitate communication among shareholders as well as between shareholders and the company's board and management and provide the ability for shareholders to vote and to pose questions from the floor to management in real time, without prior gatekeeping or

³⁰ ICGN Viewpoint, Shareholder Meetings and Investor Dialogue: The New Normal, (September 2020): [ICGN Viewpoint future AGMs.pdf](#) at pg. 7.

³¹ *Ibid.*, at pg. 7.

³² *Ibid.*, at pg. 5.

³³ See CCGG's February 2021 submission to the [Ontario Ministry of Government and Consumer Services MGCS](#) at pg. 2-3.

vetting by management. The need for shareholders to be able to communicate with the board, management and each other is essential.

Q8: How do the risks and opportunities differ for distributing and non-distributing FRFIs, including credit unions and certain insurance companies?

CCGG is not responding to this question.

Q9: In your view, how should the legal and regulatory framework be structured to ensure that communication during virtual meetings is inclusive and effective? Should regulations governing virtual shareholder meetings include provisions that require:

- a. communication among participants and owners**
- b. authentication of attendees;**
- c. transparent selection of shareholder questions;**
- d. accessible presentation of shareholder proposals;**
- e. publication of the recording after the meeting; and/or**
- f. any other elements for which regulatory provisions should be made?**

It is essential that the legal and regulatory framework is structured to ensure that communication during virtual meetings is both inclusive and effective. CCGG agrees that communication amongst participants and owners is a vital component of encouraging appropriate engagement of all participants. We are also in support of the authentication of attendees. Likewise, we strongly support components of transparent selection of shareholder questions, accessible presentation of shareholder proposals, and publication of the recording after the meeting. In sum, CCGG is a strong supporter of building a robust, consistent, and comprehensive legal and regulatory regime that enhances communication at virtual shareholder meetings.

OTHER CORPORATE GOVERNANCE IMPROVEMENTS

In 2016, CCGG submitted a response to the Department of Finance Canada's consultation document for the Review of the Federal Financial Sector Framework Supporting a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future.³⁴ In that submission CCGG advocated for enhanced diversity disclosures (which are the focus of the Department's current consultation) but also highlighted several other corporate governance reforms, notably implementation of majority voting and say on pay advisory votes, for the Department to consider, which align both with other relevant amendments made to the CBCA and best practice. We encourage the Department to review our prior submission and consider those additional proposed amendments which have not yet been implemented, in order to modernize the legislative corporate governance regime applicable to financial institutions.

³⁴ See CCGG's November 2016 submission to the [Department of Finance Canada re - A consultation document for the Review of the Federal Financial Sector Framework Supporting a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future](#).

CONCLUSION

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,

'Bruce Cooper'

Bruce Cooper
Chair of the Board of Directors
Canadian Coalition for Good Governance

CCGG MEMBERS 2022

- 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
- Capital Group Canada
- 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)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Provident10
- 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
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- TD Asset Management
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- York University Pension Fund