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Ms. Michal Pomotov
Legal Counsel
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The Exchange Tower
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E-mail: tsxrequestforcomments@tsx.com

Sent via e-mail

Dear Ms. Pomotov,

With more than \$117.1 billion in assets as at December 31, 2011, the Ontario Teachers' Pension Plan ("Teachers'") is the largest single-profession pension plan in Canada. An independent organization, it invests the pension fund's assets and administers the pensions of 300,000 active and retired teachers in Ontario. On behalf of our members, we thank you for the opportunity to comment on proposed amendments to Part IV of the Toronto Stock Exchange (TSX) Company Manual. We hope that you find our comments thoughtful and relevant.

We have previously indicated our support for TSX mandating majority voting in our letter of October 11, 2011 filed in response to TSX's then-proposed changes to Part IV of the Company Manual.

More specifically, we would like to address each of the questions presented in the most recent consultation on proposed amendments to Part IV of the TSX Company Manual.

1. Do you support TSX mandating that its listed issuers have majority voting, which may be satisfied by adopting majority vote policy for uncontested director elections? Please identify potential positive and negative impacts if issuers are required to have majority voting.

While we would ultimately prefer to see the relevant Canadian corporate laws revised so as to eliminate plurality voting in its entirety, we support the Amendments as an excellent first step in establishing the majority vote standard.

We do not see any negative impact by requiring issuers to move to a majority vote policy. A currently unpublished study¹ conducted by the Clarkson Centre for Board Effectiveness at the University of Toronto (2012) found that 65% (160 out of 245) S&P/TSX Composite companies surveyed had adopted a majority voting policy similar to what is being proposed by TSX. A similar survey from 2011 found that 58% (148 out of 254) S&P/TSX Composite companies adopted majority voting.

¹ This is the annual Board Shareholder Confidence Index which is in part sponsored by Ontario Teachers' Pension Plan. The study will be released later this year in conjunction with the annual Globe and Mail Report on Business Board Games supplement.

We note that during the previous consultation, a number of commenters were concerned that adopting majority voting would result in failed boards (where a majority of directors do not receive shareholder support and are required to resign leaving the company without a properly constituted board) or the loss of directors with specific experience and/or expertise. However, to our knowledge, the adoption of a majority vote policy has not resulted in a detrimental increase in withheld votes for directors or directors not receiving a majority vote, or the occurrence of failed boards; shareholders continue to execute their votes in a responsible and thoughtful manner. We do believe that electing directors via a majority vote policy enhances directors' accountability to shareholders.

2. Do you believe it would be useful for TSX to provide specific guidelines that it expects that the board of directors will typically accept the resignation of a director that receives a majority of "Withhold" votes, absent exceptional circumstances? If you agree, please suggest the preferred means to provide it (for example in a Staff Notice, in commentary about the Amendment or in drafting of the Amendment itself).

Yes we believe TSX providing specific guidelines would bring clarity to how a board addresses the situation of a director receiving a majority of "Withhold" votes. The guidance, included in the Amendment, should clarify that delaying the acceptance of a resignation is appropriate only under exceptional circumstances related to the ability of a board to reach quorum or significant issues related to voting results and an outright refusal of a resignation be limited to only the rarest of instances. We believe in arriving at these decisions to either delay or refuse a director resignation, the board should be allowed to exercise its discretion in a manner consistent with their fiduciary duty and accountability to shareholders. We note that the draft Amendment already requires that issuers disclose their reasons for deciding whether to accept a director's resignation.

Without such guidance, we have concerns that some companies could adopt a majority voting policy by TSX rule, yet be unresponsive to shareholder concerns when a director receives a majority of "Withhold" votes. This situation has unfolded at a number of US companies where directors have received majority "Withhold" votes yet remain on the board regardless that shareholders have clearly demonstrated a loss of confidence in the individual's ability to serve as a director. Furthermore, these boards have not provided a cogent argument supporting the director remaining on the board. A report issued by the IRRC Institute in August 2012 found that from 2010 to 2012, only 5% of directors resigned shortly after the meeting at which a majority of "Withhold" votes was received.²

3. What positive or negative impacts may the Amendments have on other market participants or the market in Canada in general?

We believe that the adoption of majority voting will have a positive impact on the Canadian market in general. Canada and the United States are the only large capital markets with a plurality system in place for the election of directors. The vast majority of jurisdictions around the world provide shareholders with a "for" or "against" option when voting for directors. The adoption of a majority vote requirement by TSX is a significant first step in bringing the Canadian market in line with global standard governance practices and should increase the attractiveness of the Canadian market to foreign investors.

² See <http://irrcinstitute.org/pdf/Final%20Election%20of%20Directors%20GMI%20Aug%202012.pdf> page 7.

4. Do you support the jurisdiction of TSX to adopt and enforce the Amendments? If not, please support your response and differentiate the Amendments from the RFC Amendments being finalized today.

We believe that TSX has the appropriate jurisdiction.

5. Are there any additional ancillary rule amendments or other relevant issues not discussed in the Request for Comments that should be considered in adopting the Amendments?

We do not have any ancillary amendments or other relevant issues that should be considered at this time.

We appreciate the opportunity to respond to your public consultation and hope that you find our feedback helpful. Feel free to contact us if we can be of further assistance.

Yours sincerely,



Wayne Kozun
Senior Vice President, Public Equities

cc Susan Greenglass, Director, Market Regulation, OSC, e-mail: marketregulation@osc.gov.on.ca