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August 4, 2011

Attention: The Secretariat, Corporate Governance Council
c/o Capital Markets Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Sent via e-mail

Dear Sir/Madam,

The Ontario Teachers' Pension Plan (Ontario Teachers') is an independent corporation responsible for investing over $107 billion in assets and administering the pensions of 175,000 elementary and secondary school teachers and 114,000 retired teachers in the province of Ontario, Canada.

Recently, the Asian Corporate Governance Association (ACGA) wrote to you outlining their views on the Monetary Authority of Singapore's Proposed Revision to the Code of Corporate Governance. A copy of their submission is attached.

As an ACGA member with significant investments throughout Asia, we would like to indicate our support of the ACGA's comments on the proposed revisions.

We appreciate the opportunity to provide our views on this issue. Please do not hesitate to contact us if we can be of further assistance.

Yours sincerely,

Wayne Kozun
Senior Vice President, Public Equities

Attachment

ACGA Response to the "Consultation Paper on Proposed Revisions to the Code of Corporate Governance"

August 3, 2011

ACGA is pleased to have the opportunity to respond to the proposed revisions to the Code of Corporate Governance published by the Corporate Governance Council on June 14, 2011. Our submission contains responses on selected questions and issues in the consultation paper. We would be pleased to discuss any of these issues further with MAS.

(III) Director Independence

Key Proposal 1: To include in the Code the following relationships as additional instances where a director will be deemed non-independent:

- if the director is or was, in the current or any of the past three financial years, a substantial shareholder, partner, executive officer, or director of organisations to which the company or any of its related corporations made, or received significant payments or material services in the current or immediate past financial year;
- if the director is a substantial shareholder or an immediate family member of a substantial shareholder of the company,
- if the director is or has been directly associated[1] with a substantial shareholder of the company in the current or any of the past three financial years; and
- if the director has served on the Board for more than nine years from the date of his or her first election.

ACGA: We generally support the changes proposed. However, there are a few features that we believe could be amended. Firstly, for better clarity and to circulate the information as widely as possible to all stakeholders, it should be explicitly stated in the amended Guideline 2.3 that "The board should state its reasons **in both continuous and permanent disclosure documents, such as the Annual Report, AGM agenda, company website and any ongoing company announcements between AGMs,** if it determines that a director is independent

[1] A director will be considered "directly associated" to a substantial shareholder when the director is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder. A director will not be considered "directly associated" to a substantial shareholder by reason only of his or her appointment having been proposed by that substantial shareholder.

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notwithstanding the existence of relationships or circumstances which may appear relevant to its determination…"

Secondly, we would argue that anybody who has worked for a company or has had professional ties to a controlling shareholder or senior management should not be considered for the post of independent non-executive director. If their contribution to a board is deemed valuable, they should instead be appointed as a non-executive director. In the Asian context of family and state-controlled companies, it is extremely unlikely that former employees or professional advisors closely related to the company, its controlling shareholders or senior management would ever be completely free of their loyalty to the company. A "cooling-off" period of three years, therefore, would not have a great deal of meaning in this context.

Thirdly, while directors should be independent of controlling shareholders and management, the proviso that they should also be independent of all "substantial shareholders"[2] could create an anomalous situation. For example, suppose a company proposed to appoint a person who had a direct connection to an independent institutional investor which was also a substantial shareholder of the company, yet otherwise had no connection to the controlling shareholder or management, then under these guidelines that person would not be deemed independent (even though they could be entirely independent in reality). While the Code does allow the company to explain if it chooses not to comply with these provisions, we feel this area should be more explicitly discussed and a carve-out or exception provided for situations where substantial shareholders are entirely independent of both management and the controlling shareholder. With the growth of large institutional stakes in Singapore companies, this issue is likely to become more significant in future.

Finally, while we agree that a director who has served on a company board for more than nine years may have his independence compromised, he or she could still contribute positively to the board and so could remain on the board but be redesignated as a non-executive director.

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[2] The term "**substantial shareholder**" shall have the same meaning as currently defined in the Companies Act (Chapter 50 of Singapore), i.e. a person who has an interest or interests in one or more voting shares in the company and the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares in the company. "Voting shares" exclude treasury shares.

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(IV) Board Composition

Key Proposal 2: To introduce in the Code a new provision that independent directors should make up at least half of the Board where (i) the Chairman and the Chief Executive Officer ("**CEO**") is the same person; (ii) the Chairman and CEO are immediate family members[3]; (iii) the Chairman and CEO are both part of the management team; or (iv) the Chairman is not independent.

ACGA: We agree that a board should have a strong independent element to it. However, we believe that it is equally important that the Code provides guidelines on how companies disclose board composition, including: how and why their independent and non-executive directors were selected; what their qualifications are; and what value the company thinks these directors will bring to the board and the company. A good example of comprehensive disclosure is Eisai, a Japanese pharmaceutical company (www.eisai.com): its detailed AGM agenda provides a section on its directors that not only lists the qualifications of each, but requires each director to write a statement as to what they intend to contribute to the board. (We note that Principle 4 and its Guidelines have been amended to reflect most of the points we raise here.)

We further recommend that Principle 4 be reinforced to include the need for nominating committees to look for directors from a broader pool of people, such as foreigners, women and younger men (ie, in their 40s and 50s). This would enhance diversity on boards, a point that was briefly mentioned in Principle 2.5, and substantially expand the pool of available independent directors.

Additionally, it is commendable that the Council has chosen to amend Guideline 3.3 on lead independent directors so that it is now a "Code Provision" (and subject to comply or explain) rather than just a "commentary" (and only a recommended best practice). We agree that companies should provide a lead independent director under the circumstances outlined in the Code. However, we believe that there could be problems with the provision stating that the:

[3] The term "immediate family" shall have the same meaning as currently defined in the Listing Manual of the Singapore Exchange (the "Listing Manual"), as the person's spouse, child, adopted child, step-child, brother, sister and parent.

"lead independent director (if appointed) should be available to shareholders where they have concerns and for which contact through the normal channels of the Chairman, the CEO, the Chief Financial Officer (the "CFO") has failed to resolve or is inappropriate".

In our view, this language does not provide a sufficiently clear process for companies and shareholders to follow. For example, it is possible that companies and shareholders may disagree about whether an issue has been resolved and, therefore, whether a lead independent director should be made available for a meeting. We recommend that the Code more positively state that companies should normally make lead independent directors available, unless the issue has already been resolved by the Chairman, CEO or CFO to the satisfaction of the shareholders making the request.

(V) Director Training

Key Proposal 3: To introduce in the Code new requirements for companies to arrange and fund training for new and existing directors, and disclose the induction, orientation and training provided to new and existing directors in its annual report.

ACGA: We fully support a "comprehensive and tailored induction" for incoming directors and training for "first-time directors in areas such as accounting, legal and industry-specific knowledge", as well as continuing training for all directors. The responsibilities of directors have become increasingly complex and, no matter how experienced, they have to keep abreast of changes that are happening in a variety of areas besides legal and accounting issues, including internal controls and risk management.

While we agree that listed companies are a diverse group, this should not be used as a reason for not providing guidance on the minimum number of hours of training each year for each director. A minimum of 10-15 hours per year is reasonable, in our view, based in part on what professional bodies require of their members in "continuing professional development" (CPD) programmes, and in part on the need to keep abreast of changing regulatory systems, market expectations and environmental issues. Moreover, time spent by non-executive directors meeting middle management and visiting company factories in the field could legitimately be included in total training hours (excluding travel time).

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Key Proposal 4: To introduce in the Code a new requirement for the Nominating Committee to review and make recommendations to the Board on training programmes for the Board.

ACGA: We agree with this new guideline. Nominating committees should also be encouraged to look at a mix of training methods.

(VI) Multiple Directorships

Key Proposal 5: To introduce in the Code a provision that the Nominating Committee should decide if a director is able to and has been adequately carrying out his or her duties as a director, taking into consideration the director's number of listed company board representations and other principal commitments. The Board should further determine the maximum number of listed company board representations which any director may hold, and disclose this in the company's annual report.

ACGA: We believe that companies must make an effort to take into account the workload of each director before nominating or re-nominating them for election, as well as on an ongoing basis, to assess if they are able to adequately meet their responsibilities. While we agree that setting a limit on the number of directorships an individual director may hold can be challenging, there are certain broad guidelines that can be given to companies. If a director is retired, then his or her capacity to take on non-executive directorships increases (assuming good health and mental acuity). If in full-time work, their capacity diminishes—especially if the person is a chairman, CEO or CFO. Indeed, there should be a lower limit of possibly one to two for the latter category, especially if they also sit on their own boards.

Indeed, the Code should require companies to disclose how an executive Chairman, CEO or CFO has sufficient time for any outside directorships. Shareholders would normally expect that a well-remunerated executive would devote the vast majority of his or her time to their primary job.

Four to five independent directorships, meanwhile, seems a reasonable upper limit for any individual not in full-time employment. While some individuals may be able to cope with more, the increasing complexity in the role of directors, the greater knowledge and skills required, and the heightened responsibilities and legal liabilities all argue against setting a higher number. Indeed, even four to five independent directorships could be a considerable time commitment, depending on the nature and size of the companies in question, where they are located (ie, do directors have to travel to board meetings) and so on. And if individuals also sit on the boards of unlisted companies, charities or non-governmental organisations, then four to five independent director positions may be too many.

A limit of four or five directorships is also in line with guidelines set by global institutional investors. For example, the California State Teachers' Retirement System (CalSTRS) recommends that people who do not have full-time employment should only hold four independent director positions, while those who hold full-time jobs (eg, CEOs), should only hold one or two independent director positions.

The California Public Employees' Retirement System (CalPERS) adopts the recommendations from the Report of the NACD (National Association of Corporate Directors) Blue Ribbon Commission on Director Professionalism, which in its 2005 edition stated that, "the Commission recommends that boards in general should consider the following guidelines for different categories of candidates:

> "If the person is an executive chairman, CEO or senior manager of another company, however, then five will almost certainly be too many outside directorships to manage. One to two additional directorships should be the maximum.
>
> "CEOs and other senior executives of public corporations: Boards should prefer individuals who hold no more than one or two public-company directorships[4] (including the position to be offered) in addition to membership on their own company board.
>
> "Other individuals with full-time positions: Boards should prefer individuals who hold no more than three or four public-company directorships (including the position to be offered) in addition to membership on their own organization's board.
>
> "Other individuals: Boards should prefer individuals who hold no more than five or six public-company directorships (including the position to be offered)."

[4] Significant time commitments to non-profit and private-company directorships should also be considered in evaluating director availability.

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(VIII) Remuneration Practices and Disclosures

Key Proposal 7: To include in the Code that the level and structure of remuneration should be aligned with the long-term interests and risk policies of the company. Additional guidance will also be given to companies to consider provisions allowing the company to reclaim incentive components of remuneration from directors and key management personnel in exceptional circumstances of misstatement of financial results, or of misconduct resulting in financial loss to the company.

ACGA: We support the amendment to this Principle and the accompanying Guidelines. However, Guideline 8.4 could be re-worded to read, "The remuneration of non-executive directors should be appropriate to their level of contribution, taking into account factors such as effort and time spent, and responsibilities, whilst ensuring that they are not over-compensated and their independence compromised". Joining the two sentences, we believe, would provide better guidance and clarity to companies.

We fully support the new Guideline 8.5 providing companies guidance on a clawback provision.

Key Proposal 10: To introduce in the Code a provision that companies should fully disclose the remuneration of each individual director and the CEO on a named basis. Companies should disclose in aggregate the total remuneration paid to the top five key management personnel (who are not directors or the CEO).

ACGA: We support the amendment to disclose the remuneration of each individual director and the CEO on a named basis, instead of within bands. This is in line with best practice elsewhere in Asia and in many developed markets. We believe it is also important that companies disclose in their annual remuneration reports the reasoning behind the fees they pay to directors (including non-executive and independent directors), how these are benchmarked, and why they have been staying the same or rising. It is not always clear what value companies are getting from the fees they pay, especially to their non-executive and independent directors.

However, we are somewhat confused by Guideline 9.3, which sets a lower standard of disclosure for the top five management personnel (who are not directors). Since senior executives are primarily responsible for running a company, surely their remuneration is as important, if not more important, than the fees paid to non-executive directors?

(IX) Risk Management

Key Proposal 11: To introduce in the Code provisions that (i) the Board is responsible for the risk governance of the company and should determine the nature and extent of risks which the company may undertake, and that it should ensure that management maintains a sound system of risk management and internal controls; and (ii) the Board should assess appropriate means to carry out its responsibility of overseeing the company's risk management framework and policies.

ACGA: We generally support this amendment as risk management and internal controls are increasingly important for a company. The focus on "risk management" broadens the previously more narrow discussion in the Code on just internal controls, and encourages companies to more explicitly discuss risk at the board level.

However, we find the term "risk governance" somewhat ambiguous. It could be read as putting the onus for risk management on the board, whereas we believe that managers are fundamentally responsible for managing risk. Managers are more aware of the range of risks a company faces on a daily basis and the changing face of those risks as time goes on. Boards, in contrast, are responsible for supervising the management of risks and ensuring that risk policies are being implemented and proper processes are in place. While Key Proposal 11 does touch on most of these distinctions, we remain concerned that too much of the responsibility for risk management seems to be shifting from full-time executives to part-time directors.

(X) Shareholder Rights and Role:

Key Proposal 13: To introduce in the Code a new principle, and accompanying guidelines, on 'Shareholder Rights' to guide companies in their engagement with shareholders.

ACGA: We fully support this amendment and believe it is an important addition to the Code. Engagement with shareholders is in line with global developments and market expectations. "Responsible investment" has gained currency over the past few years as more and more institutional investors take their fiduciary duties seriously, vote their shares and engage with companies. Since many mainstream institutional investors seek to have an open and constructive dialogue with their portfolio companies, companies that make their senior management available will strengthen their reputation for good governance.

We also support the inclusion of Guideline 14.1 advising companies to sufficiently inform shareholders of changes in the company or its business that may materially affect the value of the company's shares, as well as the inclusion of Guideline 14.2 stating that companies should ensure all shareholders can effectively participate in and vote at general meetings. However, Guideline 14.1 should also encourage companies to archive such information for their shareholders for as long as possible (even 10 years or more), as historical information can be useful to investors.

Key Proposal 14: To introduce as an annexure to the Code a statement on the role of shareholders in engaging with the companies in which they invest.

ACGA: We support this addition as it is in line with heightened expectations of institutional investors as stewards of their members' or clients' capital. In recent years, several guidelines have been developed for investors to follow. The ICGN Statement of Principles on Institutional Shareholder Responsibilities, published in 2007, sets out the Network's views on the "responsibilities of institutional shareholders both in relation to their external role as owners of company equity, and also in relation to their internal governance". The UN Principles for Responsible Investment adopts a comply or explain approach, requiring signatories to report on how they implement the Principles, or provide an explanation where they do not comply. The UK Stewardship Code, published in July 2010, "sets out good practice on engagement with investee companies to which the FRC (Financial Reporting Council) believes institutional investors should aspire".

It is important for institutional shareholders to fulfil their fiduciary responsibilities to beneficiaries and clients, and the addition of this annexure to the Code is a step forward.

However, it should be recognised that shareholders, especially those linked to large financial institutions and banks, face numerous conflicts of interest in addressing corporate governance issues. It may be necessary for the relevant authorities in Singapore to work with investment and financial industry associations to ensure that this part of the Code is taken seriously and implemented.

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Key Proposal 15: To introduce in the Code a provision that companies should put all resolutions to vote by poll and make an announcement of the detailed results showing the number of votes cast for and against each resolution and the respective percentages.

ACGA: We fully support this amendment, which is in line with the recent amendment proposed by the Singapore Exchange to its Listing Manual. We believe all companies should vote by poll as this is the only way to uphold the principle of 'one share, one vote' and treat all voting shareholders fairly. This is an issue that ACGA first raised in the region a number of years ago in our inaugural "ACGA Asian Proxy Voting Survey 2006".

End.

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