



January 22, 2018

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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**Response to the CSA Consultation Paper 52-404 on the Approach to Director and Audit
Committee Member Independence**

Dear Sir/ Madam,

We welcome the opportunity to respond to the Consultation Paper 52-404 on the Approach to Director and Audit Committee Member Independence.

British Columbia Investment Management Corporation (bcIMC) is an asset manager with more than \$135 billion Canadian dollars in assets under management, making it one of the largest institutional investors in Canada. Our investment activities help finance the pensions of approximately 554,000 people in our province. On behalf of these pension beneficiaries, we provide long term capital to companies around the world that we believe will provide strong and stable financial returns.

As a long-term investor, bcIMC relies on well-functioning capital markets. We see it as our responsibility to contribute to the overall stability of the financial system. As an active participant in the capital markets, we address systemic risks with the expectation that our efforts will lead to greater stability and integrity within the markets. We regularly engage with regulators and advocate for legal and regulatory changes to ensure that principles of good governance are integrated into the regulatory framework.

As a starting point, bcIMC believes that the board of directors must be able to objectively evaluate company and executive performance, and that this is best achieved by ensuring at least two-thirds of the board members are independent directors. Furthermore, we believe that the entire audit committee should be comprised of independent directors.

This being said, we recognize that an individual director's independence goes beyond a bright line test. Independence is a state of mind, and is not only reflected in a director's affiliations or relationships, but also in the decisions they make around the board table. For this reason, we acknowledge that the current approach may lack a certain level of flexibility. However, bcIMC does not see this as a particularly problematic restriction. We note that the consultation highlights the argument that the application of the CSA's approach may unduly limit the pool of individuals who could be considered independent, to the detriment of certain issuers. bcIMC does not agree with this argument. We believe that the pool of available director candidates reaches far and wide, and as a result, fail to see how the CSA's approach to director and audit committee members independence would place such a restriction on a board that this would be to an issuer's detriment.

Further to the above point, we believe that such an argument highlights the critical importance of an effective board selection and recruitment process. bcIMC sees this process, combined with a robust and thoughtful board evaluation, as fundamental to ensuring that the board has the right mix of people, and would argue that the only limitation on the pool of available individuals is the limitation caused by the recruitment and selection process itself, rather than the CSA's approach to determining whether a board member is independent. We believe that such a process, which should cast the widest possible net when searching for potential director candidates and embrace diversity at its core, removes any perceived limitations, and by extension, results in a board composed of highly effective people.

Ultimately, bcIMC believes that the current, well-established approach to determining director and audit committee member independence should remain. Not only does this provide the degree of certainty, consistency and predictability that the consultation document highlights, but from a practical point of view, we see difficulties in changing a process that was introduced in 2004, and

is therefore well-understood and embedded in corporate culture. In addition, and perhaps most significantly, Canada's proximity to the United States, and the resultant number of cross-listings, necessitate an approach that is similar to the bright line model used in the US. Any deviation from this is likely to cause difficulty for those companies that are cross-listed, as well as investors in those companies.

Furthermore, we believe that the CSA's approach to determining director and audit committee member independence is appropriate for all issuers in the Canadian market. We apply our guidelines on board independence consistently across all Canadian companies, irrespective of size or structure, because independent oversight is a critical foundation of confidence in the capital markets. Therefore we see no reason to apply less strict requirements to venture issuers, and believe that the current CSA approach should be applied consistently.

One area that we believe the CSA could provide enhanced guidance on is the issue of board tenure. In 2015, bcIMC adopted a policy on board tenure, as we believe that refreshment of the board is a positive process, which is fully complementary to enhancing its levels of independence and diversity. We have chosen to examine average board tenure, as we believe that this is a more appropriate assessment of the issue, and therefore in situations where the average tenure of the board exceeds ten years, we will take a closer look at some of the longest-standing directors to determine if a withhold vote is necessary.

In our 2014 response to the CSA's consultation on proposed amendments to National Instrument 58-101 Disclosure of Corporate Governance Practices, we stated the importance of term limits in ensuring board renewal. We also highlighted that the addition of term limits would improve the director evaluation process, because in our opinion it is rare for directors to be removed by peers serving on the same board. Having term limits in place would necessitate a conversation around succession and ensure that underperforming directors are not able to remain in place for an excessive period of time.

Given that the UK and Australia have adopted guidelines on board tenure – where board terms greater than a certain number of years compromise independence – and an increasing number of institutional investors are now considering it as part of their voting policies, we believe the time is right for the CSA to revisit their approach to this issue. This would in turn provide a level of expectation to the market, instead of the current comply or explain requirement, which has resulted in a low proportion of issuers adopting term limits, and little impetus for issuers to do so. We believe this approach has resulted in less regular board refreshment and fewer opportunities to increase diversity levels on boards of directors.

To conclude our response to this consultation, bcIMC believes that the current approach to determining board and audit committee independence remains effective. We do not believe that this should be seen as a limitation, and instead should cause boards to reassess their evaluation, selection and recruitment processes, in order to ensure that optimal value is gained from these.

We greatly appreciate the opportunity to respond to this consultation and sincerely hope that our comments will assist you in your discussions.

Please feel free to contact jennifer.coulson@bcimc.com as you consider these comments, or if you require further clarification.

Regards,

A handwritten signature in blue ink that reads "Daniel Garant". The signature is fluid and cursive, with the first name "Daniel" and last name "Garant" clearly legible.

Daniel Garant
Senior Vice President, Public Markets