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

This letter is submitted on behalf of the Institute of Corporate Directors (“ICD”) in response to the invitation to comment on the CSA’s Consultation Paper 52-404 *Approach to Director and Audit Committee Member Independence*.

The ICD is a not-for-profit, member based association with more than 12,500 members and eleven chapters across Canada. We are the pre-eminent organization in Canada for directors in the for-profit, not-for-profit and Crown Corporation sectors. Our mission is to improve trust and confidence in Canadian organizations by developing and activating directors.

We thank the CSA for the opportunity to comment.

Introduction

The Institute of Corporate Directors (ICD) believes that Canada's reputation as a global governance leader is enhanced by its strong director independence requirements.

In the ICD's work with our international colleagues at the Global Network of Director Institutes (GNDI), we are privy to insights into how boards around the world exercise their judgement, interact with management and relate with investors and other stakeholders.

In comparing the concerns and approaches across the nineteen jurisdictions that comprise the GNDI, it is continually reaffirmed that Canada's system of corporate governance, while not perfect, is a global leader. An important reason for this is our insistence and reliance on director independence to act as a check and to provide unbiased oversight of strategy, compensation decisions, financial accounting policies and practices and other critical corporate functions.

ICD position on board composition and director and audit committee independence

In the ICD's 2015 position paper, *Beyond Term Limits: Using Performance Management to Guide Board Renewal*, we argued that, "board renewal is complex and requires time, thought and analysis and must always align with the company's best interests while complementing its strategic direction," and that boards must "build a framework unique to their forthcoming challenges."

Inherent in this position is that boards themselves are best positioned to determine who should serve as directors.

Importantly though, while boards must determine the skills and competencies they need and which directors possess them, they must also exercise their oversight freely and independently.

In particular, audit committee members must be free to exercise independent judgement and question financial disclosures free of interference or conflict. Within this context, the ICD views the current regulations regarding director independence, including guidance and "bright line tests" to be value additive to the process of determining who should sit on boards.

Bright line tests

Bright line tests are, by their nature, restrictive and we appreciate that they can disqualify certain otherwise qualified individuals from serving on certain boards and/or audit committees. Nevertheless, we believe there are enough qualified candidates to fill public company board positions in Canada and that boards of every type of company have access to talented and experienced directors.

Further, in discussing "bright line tests", senior directors we consulted explained that they "take pressure off of directors" when determining member independence. In other words they provide consistency and clarity.

Availability of qualified independent directors and audit committee members

The current regulations have been cited as factors that may limit the pool of qualified candidates who could serve as independent directors or audit committee members. The ICD does not support this argument. We represent over 12,500 members, of whom approximately 6000 have achieved the ICD Director Designation (ICD.D).

Given the size of our capital markets, the pool of qualified, independent candidates in Canada is strong.

International comparators

The CSA's discussion paper outlines differences between Canada's approach and those in select other markets (Australia, the UK, Sweden and the US). While it is important to continually monitor international developments and to ask whether they may be applicable here, as a global governance leader Canada can be confident that our approach works well for our market.

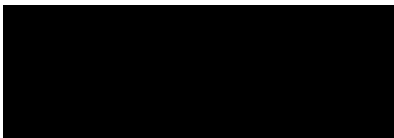
This said, it is difficult to understand why Canada would want to move away from an independence standard that we share with our closest economic partner, the United States– particularly given the significant number of companies listed in both jurisdictions.

Conclusion

Independence alone does not guarantee that companies will succeed or that their boards will always make the best possible decisions but the ICD believes it is a fundamental element of effective board oversight.

We are of the view that the current rules work effectively to promote independence, provide boards with clarity and predictability and have been incorporated into the composition and renewal processes of most Canadian boards. As such, the ICD does not see a particular need for the CSA to amend these rules at this time.

Yours truly,



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