

## Legal update

### Best practices for information circular disclosure

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**January 2020**

**Corporate governance**

**Corporate, M&A and securities**

The Canadian Coalition for Good Governance (CCGG) has released its 2019 guide on best practices for information circular disclosure. The guide includes updated guidance on say-on-pay, director continuing education, the independence of the board chair, reporting past voting results and the chair's letter to shareholders. In addition, CCGG provides new guidance on using non-GAAP measures in executive compensation.

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#### **Say-on-pay**

CCGG continues to advocate for offering shareholders a say-on-pay vote, advising that more than 70% of the issuers in the S&P/TSX composite index now offer their shareholders such an advisory vote. In its 2019 guide, CCGG has highlighted as a best practice that if less than 70% of the votes cast are in support of the say-on-pay vote, the board should oversee a shareholder consultation process, particularly with those who voted against the resolution, in order to understand shareholder concerns. In addition, the issuer should provide all shareholders with a summary of the feedback received and any action taken.

#### **Director continuing education**

CCGG continues to recognize the importance of ongoing education for directors, highlighting in its 2019 guide that both internal and external education programs are needed to expand the board's knowledge of the issuer's operations and relevant ongoing and emerging issues.

#### **Independence of board chair**

CCGG continues to believe that the position of board chair should be separate from the CEO and the chair should be independent of an issuer's management team. CCGG advises in its 2019 guide that where an issuer has a controlling shareholder, it is acceptable for the board chair to be a "related director," provided that the issuer has appointed a lead independent director.

#### **Reporting past voting results**

In addition to disclosing the results for each matter voted upon promptly following the shareholder meeting (as is required of TSX-listed issuers under securities regulations), CCGG considers it best practice to include the prior year's voting results in the current year's information circular. In its 2019 guide, CCGG clarifies that the details of the previous year's election results should be included with each director's biography and the previous year's say-on-pay vote results should be included in the description of the current year's say-on-pay proposal.

## Chair's letter to shareholders

Through a letter to shareholders, board chairs can communicate key corporate governance-related activities to the shareholders. CCGG commends issuers that include in their letter an indication of the company's commitment to managing and reporting on important environmental and social issues and, new for 2019, referring shareholders to the Sustainability section included in the information circular.

## Use of non-GAAP measures in executive compensation

In December, CCGG published a position paper summarizing the results of a study it undertook of using non-GAAP performance measures in incentive compensation programs and provided its recommendations for improved disclosure on the use of these measures.

In its paper CCGG noted that, in both short-term and long-term incentive plans, it is not uncommon for boards to apply a high weighting to non-GAAP measures when determining executive compensation awards for senior management, which measures are not audited and allow for a range of potential adjustments. Although CCGG expressly does not suggest that using these measures is inappropriate, it does consider that the disclosure in the Compensation Discussion & Analysis section of issuers' information circulars about these measures is often inadequate. In particular, CCGG has found the following information lacking:

- an acknowledgement of the board's responsibility for vetting these performance measures and scrutinizing any adjustments proposed by management, along with a discussion of the process involved in doing so;
- an explanation of the parameters used by the board to determine the appropriateness of individual adjustments and rationale for any material adjustments made in the previous year;
- clear definitions of all measures used;
- where applicable, a detailed reconciliation of the measures used to their nearest GAAP equivalent and some context regarding the magnitude and trend of adjustments historically approved by the board;
- confirmation as to the year-over-year consistency in calculation of these measures or, alternatively, disclosure of changes made to calculation methodology, along with a rationale for such changes and their implications in terms of year-over-year comparability of performance measures; and
- a report of any involvement of independent third parties in the review process (for example, in ensuring year-over-year consistency in calculating key metrics).

Click [here](#) to access a copy of the CCGG 2019 Best Practices for Proxy Circular Disclosure publication.

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