

SEP - 7 2005

September 7, 2005

Dear Mr. Allen,

The Canadian Coalition for Good Governance now has 45 members representing some \$850 billion of assets under management. The Coalition has published and promulgated its guidelines on governance and principled compensation as well as a document entitled "Best Practices in Director Disclosure".

The Coalition is also deeply involved in trying to influence the shape of the legislative and regulatory environments in which members operate. Following a series of members meetings and discussions, the following are the issues that the Coalition members feel most deserve the attention of your Task Force.

The coalition recommendations fall into three groupings:

1. Overarching concerns
2. Strategic Improvement Opportunities
3. Tactical Improvement Opportunities

Each of these groupings is expanded in the paragraphs that follow.

The Coalition would also encourage the Task Force, wherever appropriate, to stress the benefits and importance of clear and transparent disclosure.

### **1. Overarching concerns**

**a) Enforce the existing laws:** Many observers have noted that it is not Canadian laws that are deficient but rather the enforcement of those laws. We hope that the Task Force can devise a series of recommendations to ensure better federal/provincial coordination and adequate funding for enforcement.

**b) Broaden your mandate.** The goal of the Task Force is to "recommend revisions to *Canadian securities legislation* and regulation to achieve a dynamic, fair, efficient and competitive capital market." To be effective, the Task Force mandate should be expanded to include recommendations on corporate law, securities law and regulations, trust law and other regulations that support the same capital market objectives.

**c) Give CPAB better legal status.** The Coalition is concerned that the underlying authority establishing The Canadian Public Accountability Board may not be robust enough.

## **2. Strategic Improvement Opportunities**

**a) Sunset dual class voting shares.** The Coalition is opposed to dual class shares and believes in a “one share one vote philosophy”. The Coalition members believe that:

- **no new** dual class share companies should be allowed to trade publicly
- **existing** dual class share companies should only be allowed to continue public trading if there is a plan to revert to a “one share one vote” share structure (such schemes should not be transferable and be realized within a specified period of time –say 5 years ?)

**b) Ensure Income Trusts provide the same protections to unit holders that are afforded to shareholders in corporations.** Legislation should be amended/introduced to address appropriate investor protections, governance and disclosure requirements for alternative public entity structures (e.g., trusts), and impose the current corporate/securities protections and requirements on such entities.

**c) Require majority voting for directors.** Legislation should be amended/introduced to provide investors with the ability to vote for or against each individual director and to require majority voting on such elections. Such a system is in force in the UK, Australia, New Zealand and most of Europe and poses no undue practical difficulties. Indeed, it seems to be an anomaly that the current system exists.

**d) Establish a new code for proxy voting and solicitation fees.** Shares held in custodial accounts should only be voted by the custodian when instructed by the shareholder. Voting rights should not be ‘loaned’ and fees for proxy solicitation should not be allowed. Only beneficial shareholders should be able to vote their proxies.

**e) Improve Shareholder Remedy Processes.** Consideration must be given to eliminating the protracted timeframes for shareholder remedies that exist under current legislation.

## **3. Tactical Improvement Opportunities**

**a) Proxy Solicitation Rules.** The CBCA amendments with respect to proxy solicitation rules (allowing investors to discuss issues amongst themselves for example) should be replicated in all Canadian securities and corporate laws. Amending the current NI 51-102 to include the CBCA language may be an effective short term solution.

**b) Fairness Opinions.** Eliminate conflicts of interest when financial advisors provide fairness opinions. There should be no success based fees when fairness opinions are

SEP - 7 2005

September 7, 2005

Dear Mr. Allen,

The Canadian Coalition for Good Governance now has 45 members representing some \$850 billion of assets under management. The Coalition has published and promulgated its guidelines on governance and principled compensation as well as a document entitled "Best Practices in Director Disclosure".

The Coalition is also deeply involved in trying to influence the shape of the legislative and regulatory environments in which members operate. Following a series of members meetings and discussions, the following are the issues that the Coalition members feel most deserve the attention of your Task Force.

The coalition recommendations fall into three groupings:

1. Overarching concerns
2. Strategic Improvement Opportunities
3. Tactical Improvement Opportunities

Each of these groupings is expanded in the paragraphs that follow.

The Coalition would also encourage the Task Force, wherever appropriate, to stress the benefits and importance of clear and transparent disclosure.

### **1. Overarching concerns**

**a) Enforce the existing laws:** Many observers have noted that it is not Canadian laws that are deficient but rather the enforcement of those laws. We hope that the Task Force can devise a series of recommendations to ensure better federal/provincial coordination and adequate funding for enforcement.

**b) Broaden your mandate.** The goal of the Task Force is to "recommend revisions to *Canadian securities legislation* and regulation to achieve a dynamic, fair, efficient and competitive capital market." To be effective, the Task Force mandate should be expanded to include recommendations on corporate law, securities law and regulations, trust law and other regulations that support the same capital market objectives.

**c) Give CPAB better legal status.** The Coalition is concerned that the underlying authority establishing The Canadian Public Accountability Board may not be robust enough.



## **Presentation to the IDA Task Force**

Catherine Jackson  
for the  
Canadian Coalition for Good Governance



## The CCGG mission:

To improve the performance of publicly traded corporations through the promotion of good governance practices across Canada

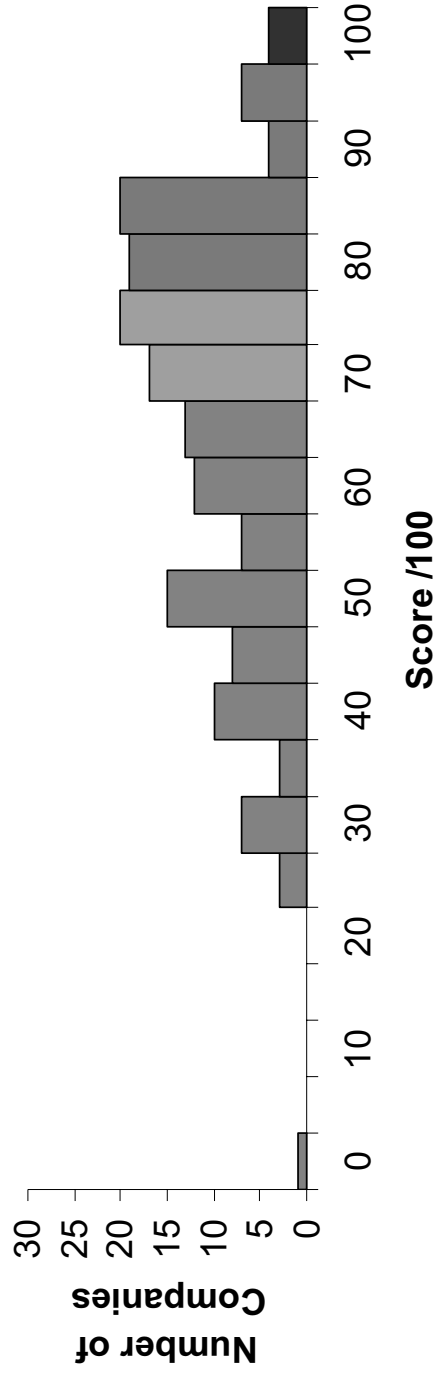
## The Coalition works with the boards of major listed companies on a “principle’s based philosophy”

1. Governance practices (as measured against the CCGG Guidelines) continue to improve
2. Disclosure practices (as appraised against the CCGG Best Practices) continue to improve
3. Majority voting policies are beginning to replace plurality voting
4. Compensation practices (as appraised against the CCGG Working Paper on Principled Executive compensation) has just been published



1. Governance scores continue to improve year over year...

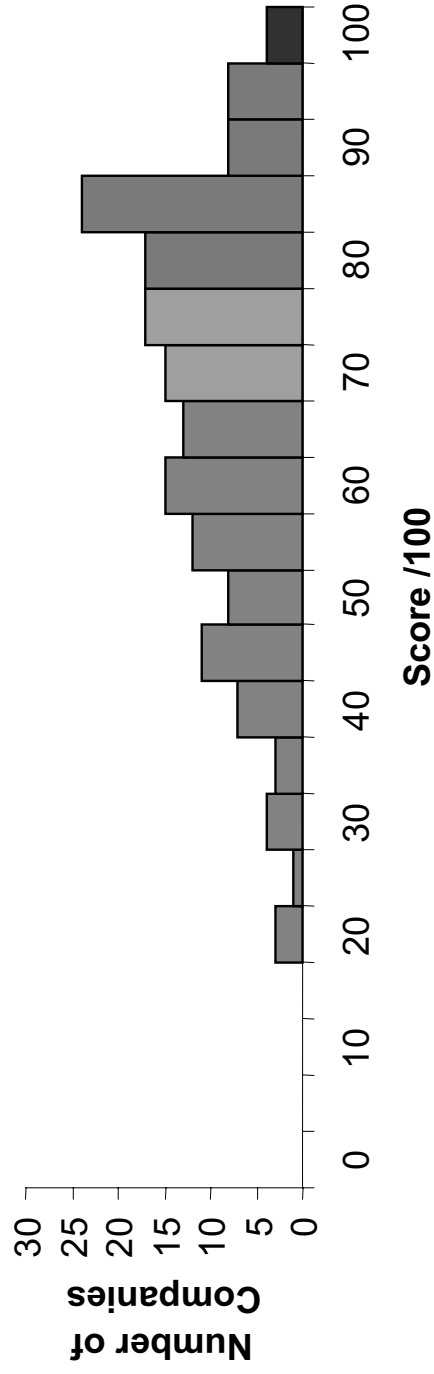
**Histogram of 2002 Scores - Companies Measured  
Each Year  
n = 170**



© 2002 to 2005, Rotman School of Management

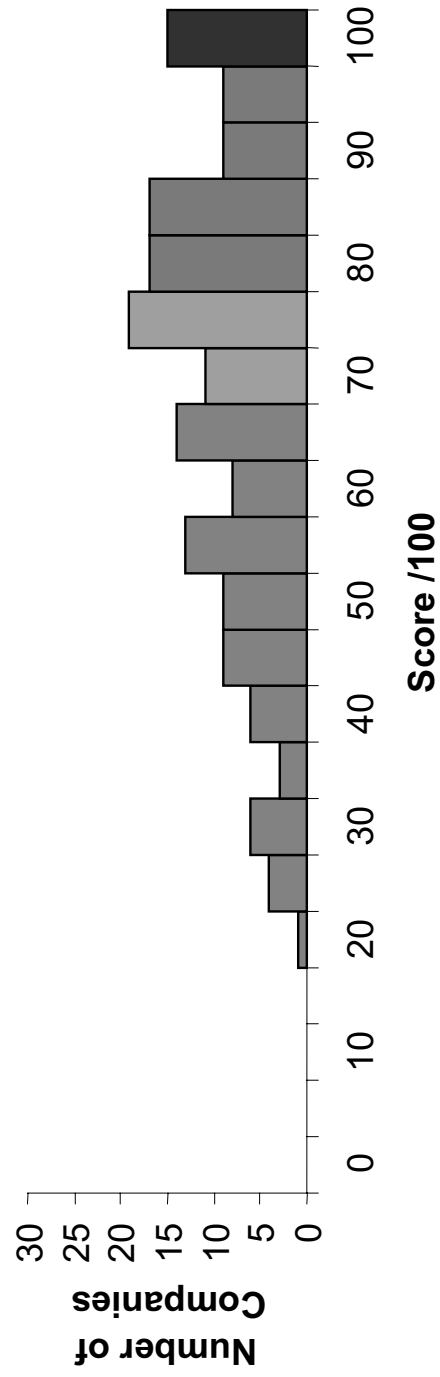
1. Governance scores continue to improve year over year...

**Histogram of 2003 Scores - Companies Measured  
Each Year  
n = 170**



# 1. Governance scores continue to improve year over year...

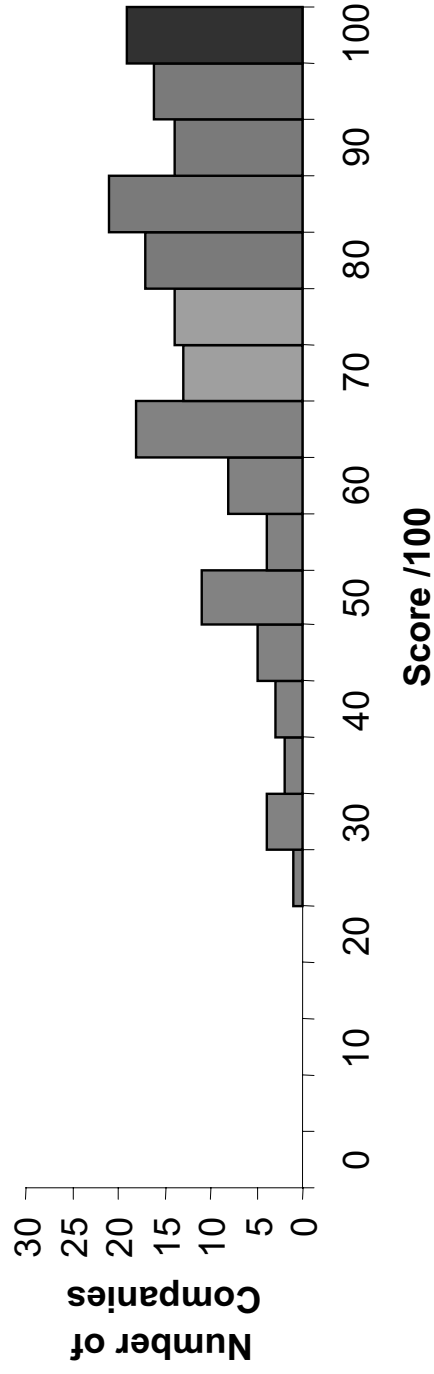
**Histogram of 2004 Scores - Companies Measured  
Each Year  
n = 170**



© 2002 to 2005, Rotman School of Management

1. Governance scores continue to improve year over year...

**Histogram of 2005 Scores - Companies Measured  
Each Year  
n = 170**



© 2002 to 2005, Rotman School of Management

## The Coalition works with the boards of major listed companies on a “principle’s based philosophy”

1. Governance practices (as measured against the CCGG Guidelines) continue to improve
2. Disclosure practices (as appraised against the CCGG Best Practices) continue to improve
3. Majority voting policies are beginning to replace plurality voting
4. Compensation practices (as appraised against the CCGG Working Paper on Principled Executive compensation) has just been published

The Coalition believes that good director disclosure is vital to shareholders...

“The Coalition has focused on the importance of transparency and exemplary disclosure because this is the only window shareholders have into the boardroom. Shareholders have no choice but to assess the calibre of directors, the board and its governance regime based on the quality and clarity of its disclosure.”

Michael Wilson, Chair CCGG

Examples of best disclosure practices have been published



Director equity ownership, including year over year changes

Committee membership and attendance

Nominee for Election as Director	Common Shares Owned, Controlled or Directed <sup>(1)</sup>		Deferred Share Units <sup>(2)</sup>		Outstanding Options <sup>(3)</sup>	Public Board Memberships During Last Five Years <sup>(4)</sup>
	2004	2003	2004	2003		
<b>Ivan E.H. DUVAR, B.E., P. Eng., LL.D. (Hon.)</b> Arrhenst, Nova Scotia Director Since: 1989 Age: 65	7,856	7,608	2,886	2,065	6,000	2000-2002 Alliant Inc. Maritime Telegraph and Telephone Company, Limited Wajax Limited

Attendance: Board  
 Audit Committee (ceased as Chair Dec. 5/03)  
 Corporate Governance Committee (left committee Dec. 5/03)



Mr. Duvar is President and Chief Executive Officer of MJAC Inc., a private investment company. He served as Chairman of Maritime Tel & Tel Limited from 1995 to 2000 and as President and Chief Executive Officer of Maritime Telegraph and Telephone Company from 1985 to 1995. Mr. Duvar is a director of several Canadian corporations in addition to those set out above, including ING Insurance Company of Canada, Corpratel Inc. and FS Industries. He is a member of the Advisory Board of Oxford Frozen Foods Limited, a member of Professional Engineers of Nova Scotia and a fellow of the Canadian Academy of Engineering.

Biography

Other directorships



Examples of best disclosure practices have been published and promulgated through the CSCS Annual gatherings

The first ever

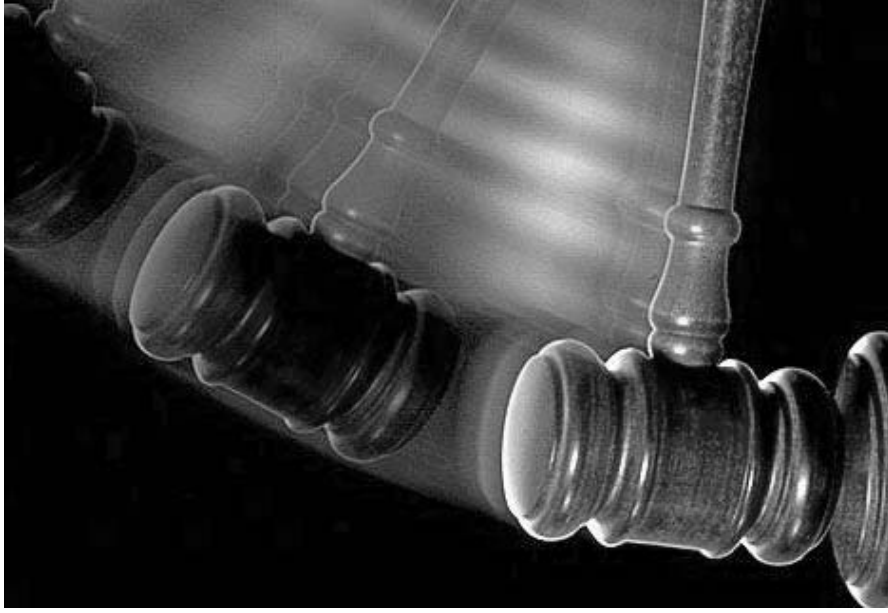
**GOVERNANCE GAVEL AWARDS  
for  
DIRECTOR DISCLOSURE**

**GRAND PRIZE WINNER**



Honourable Mentions:

**CANADIAN PACIFIC RAILWAY**





## The Coalition works with the boards of major listed companies on a “principle’s based philosophy”

1. Governance practices (as measured against the CCGG Guidelines) continue to improve
2. Disclosure practices (as appraised against the CCGG Best Practices) continue to improve
3. Majority voting policies are beginning to replace plurality voting
4. Compensation practices (as appraised against the CCGG Working Paper on Principled Executive compensation) has just been published



We are starting a movement towards an 'effective' majority voting system

Current Canadian proxies allow a vote FOR or a WITHHOLD

For or Withhold  
"Plurality" voting ...

TransCanada's 2005 form of proxy

**1. Election of Directors**

	For	Withhold
01. D. D. Baldwin	<input type="checkbox"/>	<input type="checkbox"/>
02. W. K. Dobson	<input type="checkbox"/>	<input type="checkbox"/>
03. P. Gauthier	<input type="checkbox"/>	<input type="checkbox"/>
04. R. F. Haskeyne	<input type="checkbox"/>	<input type="checkbox"/>
05. K.L. Hawkins	<input type="checkbox"/>	<input type="checkbox"/>
06. S.B. Jackson	<input type="checkbox"/>	<input type="checkbox"/>
07. P. Gauthier	<input type="checkbox"/>	<input type="checkbox"/>
08. D.P. O'Brien	<input type="checkbox"/>	<input type="checkbox"/>
09. J.R. Paul	<input type="checkbox"/>	<input type="checkbox"/>
10. H.G. Schaefer	<input type="checkbox"/>	<input type="checkbox"/>
11. W.T. Stephens	<input type="checkbox"/>	<input type="checkbox"/>
12. J.D. Thompson	<input type="checkbox"/>	<input type="checkbox"/>





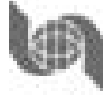
We are starting a movement towards an 'effective' majority voting system



### NEW CIBC DIRECTOR POLICY

“Board has amended its Director Tenure Policy to require any director who does not receive majority support in an uncontested election to submit his or her resignation....” CIBC December 1, 2005

The CCGG believes that the other major financial institutions will follow suit in their annual proxy statements early in 2006 ....



...and then we will exhort others to follow

## The Coalition works with the boards of major listed companies on a “principle’s based philosophy”

1. Governance practices (as measured against the CCGG Guidelines) continue to improve
2. Disclosure practices (as appraised against the CCGG Best Practices) continue to improve
3. Majority voting policies are beginning to replace plurality voting
4. Compensation practices (as appraised against the CCGG Working Paper on Principled Executive compensation) has just been published

## Need to know what CEOs are paid

CN provides a meaningful summary of what was paid to the CEO...

Compensation	Value (US\$)
Base salary	1,250,000
Bonus	3,500,000
Other annual compensation	1,162,823 <sup>(1)</sup>
Grant of 180,000 restricted share units under the annual grant	5,078,000 <sup>(2)</sup>
Grant of 202,500 restricted share units pursuant to the 2004 CEO Employment Agreement allocated to 2004	1,453,000 <sup>(3)</sup>
Value of defined contribution pension plans accrued in 2004	550,823 <sup>(1)</sup>
<b>Total compensation</b>	<b>12,994,646</b>

<sup>(1)</sup> Detailed information on these amounts is presented in the "Summary Compensation Table".

<sup>(2)</sup> Represents the expected value of the 180,000 performance-based restricted share units granted in 2004. At the time of the grant, the expected value of the award was estimated at US\$5,078,000. See "Long-Term Incentive Plan - Awards in the Last Financial Year".

<sup>(3)</sup> Represents one fifth of the expected value of the 202,500 restricted share units granted in 2004. At the time of the grant the expected value of the award was estimated at US\$7,265,000, which was spread over a five-year term. See footnote (9) of "Summary Compensation Table".

RSU grants and the accrued pension benefit for the year are stated in their dollar equivalents.

## Need to assess the pay to performance links

STEP 1: A “look-back, total-take” calculation details how much was paid to the CEO over a specified time frame...

	2001-2004	2004	2003	2002	2001
<b>CEO Annual Compensation</b>					
Base Salary		\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Bonus		\$2,000,000	\$2,000,000	\$1,100,000	\$1,000,000
Mid-term Performance share units (PSUs) at target		\$2,500,000	\$2,500,000	\$2,500,000	\$2,500,000
Grants of restricted share units (RSUs)	na	na	na	na	na
Option Gains realised	\$19,500,000	\$6,500,000	\$6,000,000	\$7,000,000	\$0
<b>sub-total annual</b>	<b>\$39,600,000</b>				
<b>CEO Longer Term Compensation</b>					
Total SERP value estimate		\$20,000,000	\$17,000,000	\$15,000,000	\$13,500,000
Year end “in the money” stock option value		\$27,000,000	\$35,000,000	\$20,000,000	\$18,000,000
<b>sub-total long term</b>	<b>\$33,500,000</b>				
<b>TOTAL CONSIDERATION PAID/OWING TO CEO</b>	<b>\$73,100,000</b>				
<b>ANNUAL AVERAGE</b>	<b>\$18,275,000</b>				

In this example, the CEO received an average of \$18.275 million per year over four years.

Need to assess the pay to performance links

STEP 2: Evaluate linkages to any parameter i.e. market cap increase...

	2001-2004	2004	2003	2002	2001
<b>CEO Annual Compensation</b>					
Base Salary	\$4,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Bonus	\$6,100,000	\$20,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Mid-term Performance share units (PSUs) at target	\$10,000,000	\$7.5			
Grants of restricted share units (RSUs)	na				
Option Gains realised	\$19,500,000	\$6.5			
<b>sub-total annual</b>	<b>\$39,600,000</b>				
<b>CEO Long-Term Compensation</b>					
<b>TOTAL</b>	<b>\$4,000,000</b>	<b>\$10,000,000</b>	<b>\$17,000,000</b>	<b>\$15,000,000</b>	<b>\$13,500,000</b>
<b>CHANGE</b>	<b>\$6,500,000</b>	<b>\$20,000,000</b>	<b>\$17,000,000</b>	<b>\$15,000,000</b>	<b>\$13,500,000</b>
	\$27,000,000	\$45,000,000	\$35,000,000	\$20,000,000	\$18,000,000
	\$33,500,000				
	\$73,100,000				
	\$18,275,000				
<b>ANNUAL AVERAGE</b>					
	\$10	\$28	\$25	\$22	\$20
Year End Market Capitalization in BILLIONS					Start 2001
Change over 2001-2004					\$18
	\$310,000	Millions per billion			
	0.73%	Sales commission			

How many millions of dollars were paid to the CEO for every billion dollar increase in market capitalization.

Dividing the total compensation paid to the CEO into the increase in market cap yields the CEO sales commission.



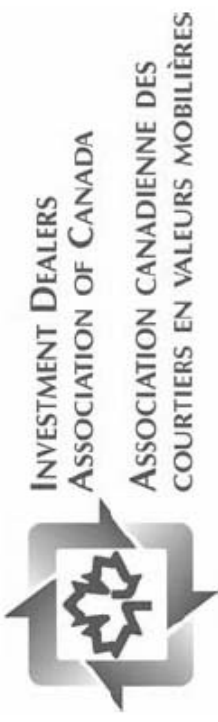
## The Coalition works with the boards of major listed companies on a “principle’s based philosophy”

1. Governance practices (as measured against the CCGG Guidelines) continue to improve
2. Disclosure practices (as appraised against the CCGG Best Practices) continue to improve
3. Majority voting policies are beginning to replace plurality voting
4. Compensation practices (as appraised against the CCGG Working Paper on Principled Executive compensation) has just been published

## CCGG + Task Force

The CCGG mission:

To improve the performance of publicly traded corporations through the promotion of good governance practices across Canada

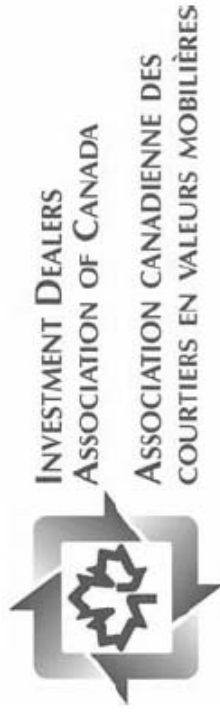


1. The CCGG will help in any way it can to further the objectives of the Task Force

## CCGG + Task Force

The CCGG mission:

To improve the performance of publicly traded corporations through the promotion of good governance practices across Canada



1. The CCGG will help in any way it can to further the objectives of the Task Force

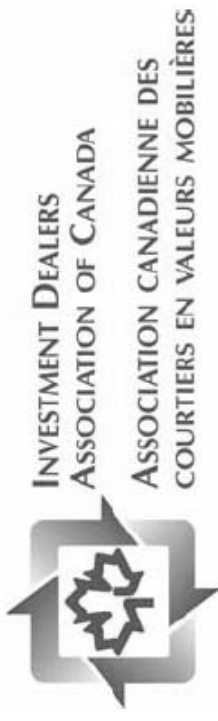
2. The CCGG looks for leadership on

1. Constraining dual class share structures by, for example:
  - no further listings without sunset provisions
  - sunset provisions for existing listings
  - limits on leverage for example “vote no more than 5 times the equity %”
  - Weightings in any index adjusted to voting leverage i.e. (%equity/%votes)

## CCGG + Task Force

The CCGG mission:

To improve the performance of publicly traded corporations through the promotion of good governance practices across Canada



1. The CCGG will help in any way it can to further the objectives of the Task Force

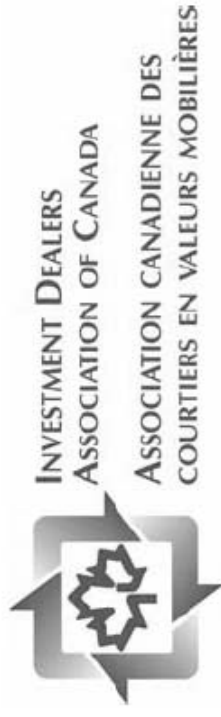
2. The CCGG looks for leadership on:

1. *Constraining dual class share structures*
2. Building back the shareholder's rights to "rely on the audited financial statements" as part of the auditors' engagement letters.

## CCGG + Task Force

The CCGG mission:

To improve the performance of publicly traded corporations through the promotion of good governance practices across Canada

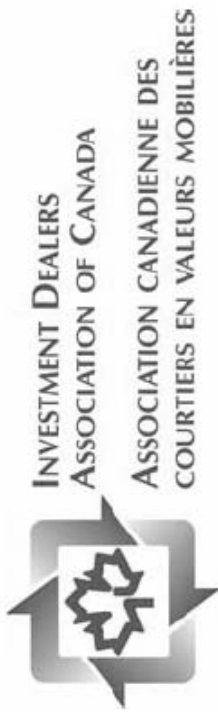


1. The CCGG will help in any way it can to further the objectives of the Task Force
2. The CCGG looks for leadership on:
  1. *Constraining dual class share structures*
  2. *Building back the shareholder's rights to "rely on the audited financial statements" as part of the auditors' engagement letters*
  3. Helping us amend the current Proxy Solicitation rules under NI 51-102 to allow the CCGG to continue to contribute effectively

## CCGG + Task Force

The CCGG mission:

To improve the performance of publicly traded corporations through the promotion of good governance practices across Canada



1. The CCGG will help in any way it can to further the objectives of the Task Force

2. The CCGG looks for leadership on:

1. *Constraining dual class share structures*
2. *Building back the shareholder's rights to "rely on the audited financial statements" as part of the auditors' engagement letters*
3. *Helping us amend the current Proxy Solicitation rules under NI 51-102 to allow the CCGG to continue to contribute effectively*

THANK YOU