



January 23, 2018

Sent via electronic mail

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

c/o

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

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

Dear Sirs/Mesdames:

We have reviewed Consultation Paper 52-404 *Approach to Director and Audit Committee Member Independence* and we thank you for the opportunity to provide our comments.

Addenda Capital Inc. is a privately-owned investment management firm responsible for investing more than \$27 billion in assets for pension funds, insurance companies, foundations, endowment funds, and third party mutual funds of major financial institutions. Addenda Capital supports the integrity and sustainability of financial markets through collaborative investor initiatives and public policy, regulatory and standards submissions.



General comments

We agree that independent judgement contributes to the effectiveness of boards and board committees. Our [Proxy Voting Guidelines](#) state our preferences that 1) boards be comprised of at least two thirds independent directors, and 2) important board committees (audit, compensation and nominating or governance) be comprised entirely of independent directors.

Directors in Canada have a fiduciary duty to act in the best interests of their corporation and may consider the interests of stakeholders including shareholders, employees, creditors, consumers, governments and the environment to inform their decisions. If a director's personal interests are in conflict with their corporation's interests, they are required to prioritize the corporation's interests. Likewise, a director must prioritize the corporation's interests over the interests of the party that appointed them. These conflicts can hinder independent decision making.

Given the importance we place on independent judgement, it is crucial that the approach employed to determine independence for the purpose of satisfying regulatory requirements also fosters truly independent decision making.

Responses to specific questions

Question 1.a. Do you consider our approach appropriate for all issuers in the Canadian market? Please explain why or why not.

Yes, we consider your approach to determining director and audit committee member independence to be appropriate for all issuers in the Canadian market. We do not believe that your approach precludes individuals with the requisite expertise and sound judgement from being considered independent members of the board or being able to serve as audit committee members. Nor do we believe that your approach has unnecessarily limited the pool of individuals who could be considered independent.

Question 1.b. In your view, what are the benefits or limitations of our approach to determining independence? Please explain.

One benefit of your approach are the clear bright line tests that expressly prohibit individuals with certain types of relationships (for example, having been an executive officer of the issuer within the past three years) from being considered independent and hence do not require the board to determine if the exercise of independent judgement can be expected. Another benefit is the ability of the board to determine whether a director could reasonably be expected to exercise independent judgement when the prescriptive elements are not breached.

However, one of the limitations of your approach is that the bright line tests for independence do not consider someone's demonstrated or potential ability to exercise independent judgement - our primary interest with regard to director independence.

Question 1.c. Do you believe that our approach strikes an appropriate balance in terms of:



- i. the restrictions it imposes on issuers' boards in exercising their discretion in making independence determinations, and*
- ii. the certainty it provides boards in making those determinations and the consistency and predictability it provides other stakeholders in evaluating the independence of an issuer's directors or audit committee members?*

Yes, your approach strikes the appropriate balance between restrictions on the issuers' board to exercise its discretion and the consistency and predictability of independence determinations for other stakeholders.

Question 2. *Should we consider making any changes to our approach to determining independence as prescribed in NI 52-110, such as changes to:*

- a. the definition of independence;*
- b. the bright line tests for directors and audit committee members; or*
- c. the exemptions to the requirement that every audit committee member be independent?*

Are there other changes we should consider? Please explain.

We recommend you consider changes to your approach to determining independence in two areas:

- A. Director tenure - Two (Australia and United Kingdom) of the jurisdictions considered in your comparative overview of the approaches to determining independence in other countries highlight the length of time a director has served on a board as a factor that might compromise independent judgement. Perhaps a flexible mechanism could be developed to maintain the average tenure of a board of directors below a threshold like 10 years or increase scrutiny of directors once their tenure exceeds 10 years.
- B. Director disclosure - Would it be possible to require all directors and proposed directors to disclose circumstances and relationships applicable to them that could reasonably be perceived as a material relationships to the chair of their nominating committee and the chair of their board?

Question 3. *What are the advantages and disadvantages of maintaining our approach to determining independence versus replacing it with an alternative approach? Please explain.*

The advantages of maintaining your approach to determining independence include maintaining the consistency and predictability of an approach that is understood by stakeholders.



In closing, thank you for soliciting comments on the topic of director and audit committee member independence. If you would like to discuss our comments, please do not hesitate to contact me at +1 647-253-1029 or b.minns@addendacapital.com.

Yours Sincerely,

Brian Minns, CFA
Manager, Sustainable Investing