

Toronto

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Montréal

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Our Matter Number: 1181738

Calgary

Ottawa

Ms. Leah Anderson
Assistant Deputy Minister, Financial Sector Policy Branch
and

Vancouver

Ms. Eleanor Ryan
Senior Chief, Structural Initiatives, Financial Institutions Division
Department of Finance
90 Elgin Street
Ottawa, Ontario
K1A 0G5

New York

Dear Ms. Anderson and Ms. Ryan:

Proxy Access and Proposed Legislative Amendments

We are writing on behalf of The Toronto-Dominion Bank and Royal Bank of Canada (the “**Banks**”) to propose amendments to the *Bank Act* (Canada) (the “**Bank Act**”) and the *Meetings and Proposals (Banks and Bank Holding Companies) Regulations* thereunder to permit Canadian banks to provide ‘proxy access’ to their shareholders on a basis consistent with the “3/3/20/20” model based on share ownership which reflects full voting and economic ownership (the “**Proxy Access Model**”) that has become the market standard in the United States context, and which is discussed in more detail below.

As you may be aware, earlier this year both Banks received a shareholder proposal requesting that their respective boards of directors take steps necessary to adopt a ‘proxy access’ by-law, pursuant to which qualifying shareholders would be permitted to submit director nominations to be included in the Bank’s proxy circular and form of proxy. The shareholder proposal was considered by the shareholders of The Toronto-Dominion Bank and Royal Bank of Canada at their respective shareholder meetings this spring. It received significant support at both Banks, being approved by 52.2% of the votes cast at The Toronto-Dominion Bank meeting and receiving the support of 46.83% of the votes cast at the Royal Bank of Canada meeting.

Each Bank engaged in extensive consultations with its shareholders on proxy access, both before and after its shareholder meeting, and such discussions are ongoing. The two Banks are both comfortable that the introduction of a proxy access regime that is consistent with the Proxy Access Model appropriately balances the desire of shareholders for greater choice in the selection of Bank directors with appropriate protections for the corporate governance of Canadian banks.

However, in order to implement such a proxy access regime, changes to banking legislation are needed. Pending such changes, the Banks propose to voluntarily introduce a policy to provide proxy access rights to their shareholders that reflects the Proxy Access Model, except that it will require a minimum ownership threshold of 5%, rather than the 3% standard adopted in the Proxy Access Model, unless and until the proposed legislative changes are made.

Consistent with their respective commitments to update shareholders on the proxy access issue, both Banks intend to disclose to their shareholders that they have made this submission to the Department of Finance.

Evolution of Proxy Access in the U.S.

Proxy access has been an issue of significant focus in the U.S. for government, regulators, shareholders and corporations alike for a number of years. The most recent developments were prompted in part by section 971 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* which authorized the Securities and Exchange Commission (the “SEC”) to promulgate rules allowing certain shareholders to include director nominees in the corporation’s proxy materials. In 2010, the SEC therefore adopted a proxy access rule that would have permitted a shareholder or a group of shareholders holding at least 3% of the outstanding shares over a continuous period of three years to submit nominees for up to 25% of the board. However, the SEC rule was the subject of a successful court challenge and struck down. Subsequently, U.S. institutional shareholders sought to introduce proxy access by initiating shareholder proposals in line with the SEC’s proposed rule, and have had considerable success. Research released in July 2017 shows that over 85% of S&P 100 companies, and over 60% of S&P 500 companies, have now amended their by-laws to provide for proxy access.¹

Proxy access generally has received the support of several large U.S. institutional shareholders, including BlackRock, California Public Employees’ Retirement System, California State Teachers’ Retirement System, State Street, T. Rowe Price and Vanguard. Proxy advisory firms, such as Institutional Shareholder Services (ISS) and Glass Lewis, generally recommend in favour of the adoption of proxy access provided it conforms with their expectations.

¹ As reported in Sullivan & Cromwell LLP’s 2017 Proxy Season Review dated July 17, 2017, available at: https://www.sullcrom.com/siteFiles/Publications/SC_Publication_2017_Proxy_Season_Review.pdf (last referenced on September 22, 2017).

As noted above, the Proxy Access Model that has evolved in the U.S. includes the following features:

- up to 20 registered or beneficial owners of shares may form a nominating group;
- the nominating shareholder (or a group of nominating shareholders) must meet an ownership threshold of 3%;
- shares equal to the 3% minimum ownership threshold must have been held by the nominating shareholder (or by the group of nominating shareholders collectively) for at least three years prior to the date the nomination is submitted; and
- the number of proxy access nominees does not exceed the greater of 20% of the board or two proxy access nominees.

Ownership of shares under the Proxy Access Model is tested on the basis of full voting and economic ownership. This is an important feature of the Proxy Access Model as it helps to mitigate the risk of “empty voting” or other situations where a person holding a voting right attached to a share has reduced or eliminated its economic interest in that share, meaning that the person may realize economic consequences from a vote that are different from those that would be realized by other shareholders.

Shareholder Proposals Including Director Nominations Under the Bank Act

Proxy access has historically received less attention in Canada than in the U.S. as a result of the more expansive shareholder proposal mechanics contained in the *Canada Business Corporations Act* and under the various provincial corporate law statutes. The Bank Act contains similar provisions which permit qualifying shareholders to submit a shareholder proposal which includes director nominees to be included in management proxy circular for a bank’s annual meeting. The minimum ownership threshold for submitting such a shareholder proposal is 5%. For all shareholder proposals (including a proposal which includes director nominees), the shareholder must have held at least the prescribed number of shares for at least six months prior to submitting the proposal. The number of director nominees which may be submitted is unlimited and there are no limits under the Bank Act on the number of registered or beneficial owners of shares who may form a nominating group.

Canadian Institutional Shareholders Advocate for Proxy Access

Despite the shareholder proposal mechanics generally available under Canadian corporate law (and the corresponding provisions in the Bank Act), in May 2015 the Canadian Coalition for Good Governance (“CCGG”) issued a policy paper entitled “Shareholder Involvement in the Director Nomination Process: Enhanced Engagement and Proxy Access”. CCGG’s members include a wide range of institutional investors with interests in

Canada, including pension funds, mutual funds and third party money managers, who together manage approximately \$3 trillion in assets.

The proposal set out in CCGG's policy paper contemplated lowering the ownership threshold from 5% to 3% in the case of corporations with a market capitalization of \$1 billion or more, but did not require the nominating shareholder to hold any shares for a period of time prior to the submission, and would have limited the number of nominees to a maximum of three or 20% of the board. However, we understand that CCGG is reviewing the position taken in its policy paper and that it will support a requirement that the nominating shareholder must hold shares equal to the relevant minimum ownership threshold for at least three years prior to the date the nomination is submitted (i.e. at a 3% threshold for the Banks, since both have a market capitalization of greater than \$1 billion). In addition, we understand that CCGG will be making a separate submission to you in support of legislative amendments in this regard.

Proposed Legislative Changes

In light of these various developments, both of the Banks support the adoption of proxy access on a basis which incorporates all features of the Proxy Access Model. Although the 3% ownership level in any such regime would be lower than the 5% minimum required for a shareholder proposal including nominations for the election of directors submitted under the Bank Act, the Banks believe that the requirement for the shares to have been held for at least three years prior to the submission of the proposal adequately ensures that only those shareholders with a material investment may take advantage of the proxy access mechanism. In addition, the limit on the number of proxy access nominees that may be submitted via proxy access in any such regime provides protection against the risk (which exists today under the Bank Act shareholder proposal regime) that directors may elect a board whose composition fails to meet the standards prescribed under the Bank Act, applicable securities law or provided for in applicable regulatory guidelines.

Legislative changes are necessary to introduce proxy access in the form outlined above. The Banks propose that section 143(4) of the Bank Act be amended to provide that a shareholder proposal may include nominees for director if shares representing at least 3% of the outstanding shares have been held for at least 3 years by up to 20 nominating shareholders and the nominations are for not more than 20% of the board and other requirements prescribed by regulation are met. These prescribed requirements would be set out in an amendment to the *Meetings and Proposals (Banks and Bank Holding Companies) Regulations*. Attached as Appendix A is the proposed text of these legislative changes.

The Banks also support the harmonization of the definition of “solicitation” and the solicitation exemptions under the Bank Act with the corresponding provisions under applicable Canadian securities law.

We look forward to speaking with you about the proposed changes.

Sincerely,



AJM:JMY

cc:

Mr. Brian Levitt, Chairman of the Board, TD Bank Group

Ms. Kathleen Taylor, Chair of the Board, Royal Bank of Canada

Mr. Bharat Masrani, Group President and Chief Executive Officer, TD Bank Group

Mr. David McKay, President and Chief Executive Officer, Royal Bank of Canada

Ms. Norie Campbell, Group Head and Chief General Counsel, TD Bank Group

Mr. David Onorato, Executive Vice President and General Counsel, Royal Bank of Canada

Ms. Judy Cameron, The Office of the Superintendent for Financial Institutions

Ms. Carolyn Rogers, The Office of the Superintendent for Financial Institutions

APPENDIX A
Proposed Legislative Changes

(See Attached)

Excerpt from the *Bank Act*

Proposals

143 (1) Subject to subsections (1.1) ~~and~~, (1.2) and (4), a registered holder or beneficial owner of shares of a bank that is not a federal credit union that may be voted at an annual meeting of shareholders may

- (a) submit to the bank notice of any matter that they propose to raise at the meeting (in this section and section 144 referred to as a “proposal”); and
- (b) discuss at the meeting any matter in respect of which they would have been entitled to submit a proposal.

Eligibility to submit proposal

(1.1) ~~To~~ Subject to subsection (4), to be eligible to submit a proposal a person shall

- (a) for at least the prescribed period be the registered holder or beneficial owner of at least the prescribed number of the bank’s outstanding shares; or
- (b) have the support of persons who, in the aggregate and including or not including the person who submits the proposal, have for at least the prescribed period been the registered holders or beneficial owners of at least the prescribed number of the bank’s outstanding shares.

Information to be provided

(1.2) A proposal is to be accompanied by the following information:

- (a) the name and address of the person submitting the proposal and the names and addresses of their supporters, if any; and
- (b) the number of shares held or owned by the person and their supporters, if any, and the date that the shares were acquired.

Information not part of proposal

(1.3) The information provided under subsection (1.2) does not form part of a proposal or of the supporting statement referred to in subsection (3) and is not to be included for the purpose of the prescribed maximum number of words referred to in subsection (3).

Proof may be required

(1.4) If the bank requests within the prescribed period that a person provide proof that they are eligible to submit a proposal, the person shall within the prescribed period provide proof that they meet the requirements of subsection (1.1) or the requirements in connection with a proposal submitted pursuant to subsection (4), as the case may be.

Management proxy

(2) A bank that solicits proxies shall, in the management proxy circular required by subsection 156.05(1), set out any proposal of a shareholder submitted for consideration at a meeting of shareholders or attach the proposal to the management proxy circular.

Supporting statement

(3) At the request of the person who submits a proposal, the bank shall set out in the management proxy circular or attach to it the person's statement in support of the proposal and their name and address. The statement and proposal together are not to exceed the prescribed maximum number of words.

Nomination of directors

~~143~~(4) A proposal may include nominations for the election of directors if it is signed by one or more ~~registered holders or beneficial owners of shares representing in the aggregate not less than 5% of the shares of the bank or 5% of the shares of a class of its shares entitled to vote at the meeting at which the proposal is to be presented~~ persons and

(a) each of whom individually owns shares as determined in the prescribed manner and which have been owned for a continuous period of at least three years immediately before and including the day on which the proposal is submitted;

(b) who collectively own an aggregate number of shares determined pursuant to subsection (4)(a) equal to not less than 3% of the shares of the bank or 3% of the shares of a class of shares entitled to vote at the meeting at which the proposal is to be presented;

(c) in the case of a proposal signed by more than one person, the number of persons signing the proposal does not exceed 20 persons, subject to any prescribed exception; and

(d) if the persons signing the proposal rely on an exception as provided under subsection (4)(c) and the bank requests within the prescribed period that the persons signing the proposal provide proof of entitlement to rely on the prescribed exception, such proof is provided within the prescribed period.

(4.1) The maximum aggregate number of persons which may be nominated for election as directors at a meeting of shareholders pursuant to one or more proposals submitted under subsection (4) shall not exceed the greater of (a) two; and (b) the number that is not in excess of

20% of the total number of directors of the bank on the last day on which a proposal may submitted under subsection 143(5)(a).

(4.2) The maximum aggregate number of persons which may be nominated for election as directors at a meeting of shareholders pursuant to one or more proposals submitted under subsection (4) shall be reduced in the prescribed circumstances.

(4.3) If the aggregate number of persons nominated for election as directors at a meeting of shareholders pursuant to one or more proposals submitted under subsection (4) exceeds the maximum number which may be nominated as calculated pursuant to subsections (4.1) and (4.2), then the selection of the persons to be nominated for election as directors pursuant to subsection 143(4) from among such aggregate number shall be determined in accordance with the prescribed process.

(4.4) A bank is not required to comply with subsections (2) and (3) in respect of any nomination for the election of directors, and shall not be required to consider any replacement or substitute nomination for director from the persons who signed the proposal or any other person, if

(a) the nomination is included in a proposal which does not meet the requirements of subsection (4) or ceases to meet such requirements prior to the end of the meeting;

(b) the nomination is withdrawn by the persons signing the proposal;

(c) it was necessary to select from among the persons to be nominated pursuant to subsection (4.3) and the person nominated was not selected; or

(d) the person nominated is or becomes unwilling to serve as a director of the bank.

Exemptions

(5) A bank is not required to comply with subsections (2) and (3) if

(a) the proposal is not submitted to the bank at least the prescribed number of days before the anniversary date of the notice of meeting that was sent to shareholders in respect of the previous annual meeting of shareholders;

(b) it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the bank or its directors, officers or security holders;

(b.1) it clearly appears that the proposal does not relate in a significant way to the business or affairs of the bank;

(c) the person submitting the proposal failed within the prescribed period before the bank receives their proposal to present, in person or by proxy, at a meeting of shareholders a proposal that at their request had been set out in or attached to a management proxy circular;

(d) substantially the same proposal was set out in or attached to a management proxy circular or dissident's proxy circular relating to, and presented to shareholders at, a meeting of shareholders held within the prescribed period before the receipt of the proposal and did not receive the prescribed minimum amount of support at the meeting; or

(e) the rights conferred by subsections (1) to (4) are being abused to secure publicity.

Bank may refuse to include proposal

(5.1) If a person who submits a proposal fails to continue to hold or own shares in accordance with paragraph (1.1)(a) or, as the case may be, does not continue to have the support of persons who are in the aggregate the registered holders or beneficial owners of the prescribed number of shares in accordance with paragraph (1.1)(b) until the end of the meeting, the bank is not required to set out any proposal submitted by that person in or attach it to a management proxy circular for any meeting held within the prescribed period after the day of the meeting.

Immunity for proposal and statement

(6) No bank or person acting on behalf of a bank incurs any liability by reason only of circulating a proposal or statement in compliance with subsections (2) and (3).

Excerpt from the *Meetings and Proposals (Banks and Bank Holding Companies) Regulations*

...

Shareholder and Member Proposals

4 (1) For the purposes of subsections 143(1.1) and 732(1.1) of the Act, the prescribed number of the bank's or the bank holding company's outstanding shares is the number of voting shares

(a) that is equal to 1% of the total number of the bank's or the bank holding company's outstanding voting shares as of the day on which the proposal is submitted; or

(b) whose fair market value, as determined at the close of business on the day before the day on which the proposal is submitted, is at least \$2,000.

(2) For the purposes of subsections 143(1.1) and 732(1.1) of the Act, the prescribed period for the person to have been the registered holder or beneficial owner is the six-month period immediately before the day on which the proposal is submitted.

(3) For the purpose of subsection 144.1(2) of the Act, the prescribed period is six months.

5 For the purposes of subsections 143(1.4), 144.1(5) and 732(1.4) of the Act,

(a) the bank or the bank holding company may request, within 14 days after it receives the person's proposal, that the person provide the proof that they meet the requirements; and

(b) the person shall provide the proof that they meet the requirements within 21 days after receiving the bank's or the bank holding company's request.

6 For the purposes of subsections 143(3), 144.1(6) and 732(3) of the Act, the proposal and the statement in support of it together are not to exceed 500 words.

7 For the purposes of paragraphs 143(5)(a), 144.1(8)(a) and 732(5)(a) of the Act, the prescribed number of days is 90 days.

8 For the purposes of paragraphs 143(5)(c), 144.1(8)(c) and 732(5)(c) of the Act, the prescribed period is two years.

9 (1) For the purposes of paragraphs 143(5)(d), 144.1(8)(d) and 732(5)(d) of the Act, the prescribed minimum amount of support for a proposal is

(a) if the proposal was introduced at one annual meeting, 3% of the total number of shares voted or 3% of the total number of members that voted if the bank is a federal credit union;

(b) if the proposal was introduced at two annual meetings, 6% of the total number of shares voted at its last presentation or 6% of the total number of members that voted at its last presentation if the bank is a federal credit union; and

(c) if the proposal was introduced at three or more annual meetings, 10% of the total number of shares voted at its last presentation or 10% of the total number of members that voted at its last presentation if the bank is a federal credit union.

(2) For the purposes of paragraphs 143(5)(d), 144.1(8)(d) and 732(5)(d) of the Act, the prescribed period is five years.

10 For the purposes of subsections 143(5.1), 144.1(9) and 732(5.1) of the Act, the prescribed period is two years.

11 For the purposes of subsections 144(1), 144.2(1) and 733(1) of the Act, the prescribed period for the person to be notified is 21 days.

Nomination of Directors

11.1 (1) For the purposes of subsection 143(4) of the Act, the prescribed requirements for determining whether shares of the bank are owned by a person are that the person possesses both

(a) the full voting and investment rights pertaining to such shares; and

(b) the full economic interest in (including the opportunity for profit and risk of loss on) such shares.

excluding any shares (i) purchased or sold by the person in any transaction that has not been settled or closed, (ii) sold short by the person, (iii) borrowed by the person for any purpose or purchased by the person pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (iv) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by the person, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of the bank, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, the person's full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by the person.

(2) For purposes of subsection 11.1(1), (a) the person "owns" shares of the bank held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares; (b) the person's ownership of shares of the bank shall be deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the person; and (c) the person's ownership of shares shall be deemed to continue during any period in which the person has loaned such shares provided that the person has the power to recall such loaned shares on not more than five business days' notice and continues to hold such shares through the date of the meeting of shareholders.

11.2 (1) For the purposes of subsection 143(4) of the Act, the prescribed exception for calculating the number of persons who have signed a proposal submitted under subsection 143(4) of the Act is that any two or more funds that (a) are under common management and investment control; (b) are under common management and funded primarily by a single employer; or (c) hold themselves out to investors as related companies for purposes of investment and investment services, shall be treated as one person for purposes of calculating the number of persons who have signed such proposal.

(2) For the purposes of subsection 143(4) of the Act, the prescribed time period for (a) the bank to request proof that the persons signing the proposal provide proof of entitlement to rely on an exception as provided under subsection 143(4)(c) of the Act is 14 days after the date on which the bank received the proposal; and (b) the person to provide the proof required pursuant to clause (a) above is 21 days after receiving bank's request.

11.3 For the purposes of subsection 143(4.2) of the Act, the maximum number of persons which may be nominated for election as directors at any meeting of shareholders shall be reduced by the number of

(a) persons included in a shareholder proposal for the meeting whom the bank decides to include as a nominee of the bank for election at the meeting;

(b) persons included in a shareholder proposal accepted by the bank who cease to satisfy, or were included in a shareholder proposal which ceases to satisfy the eligibility requirements under Act or as prescribed by regulation;

(c) persons included in a shareholder proposal which is withdrawn by the persons who signed the proposal or who are or become unwilling to serve on the board of directors of the bank; and

(d) incumbent directors of the bank being recommended by the bank at the meeting who were themselves included in a shareholder proposal at any of the preceding two annual meetings of shareholders of the bank at which directors were elected.

11.4 For the purposes of subsection 143(4.3) of the Act, the prescribed process for selecting the persons to be nominated for election as directors pursuant to subsection 143(4) of the Act from among the aggregate number of the nominees nominated pursuant to subsection 143(4) of the Act is as follows

(a) the bank will provide notice to each person who signed a shareholder proposal, which notice shall specify the date on which the bank anticipates finalizing its management proxy circular and which shall refer to the prescribed process described in this section;

(b) the person or persons who signed a shareholder proposal shall promptly select (by written notice to the bank) one of the persons included in such shareholder proposal as the first preferred nominee of such person or persons and, if applicable, one additional person included in such shareholder proposal as the second preferred nominee;

(c) the bank shall select the first preferred nominee from each valid shareholder proposal, going in order starting with the shareholder proposal signed by persons representing the largest number of owned shares as disclosed to the bank pursuant to subsection 143(1.2) of the Act but subject to subsection 143(1.4) of the Act, with such process to be repeated following the same order, until the maximum number of persons which may be nominated for election as directors at the meeting as calculated pursuant to subsections 143(4.1) and 143(4.2) of the Act is reached;

(d) if, prior to the date specified in the bank's notice under subsection 11.4(a), responses are not received pursuant to subsection 11.4(b) from the person or persons who signed a shareholder proposal, then only those persons nominated in a shareholder proposal in respect of whom a response has been received under subsection 11.4(b) prior to such date will be considered for selection.