Karen McCarthy
Vice-President, Associate General Counsel & Secretary

Royal Bank of Canada
Royal Bank Plaza
P.O. Box 1
Toronto, ON M5J 2J5

Tel.: 416-974-4664
Fax: 416-974-4555

karen.mccarthy@rbc.com

1 Place Ville Marie
P.O. Box 6001
Montreal, QC H3C 3A9

Tel.: 514-874-6678
Fax: 514-874-3890

January 31, 2018

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

Ms. Eleanor Ryan
Senior Chief, Structural Initiatives, Financial Institutions Division

Department of Finance
90 Elgin Street
Ottawa, Ontario K1A 0G5

Dear Ms. Anderson and Ms. Ryan:

Proxy Access and Proposed Legislative Amendments – Supplemental Submission

We are writing in support of the attached supplemental submission regarding proxy access made on behalf of The Toronto-Dominion Bank (TD) on January 17, 2018 (Supplemental Submission) relating to an original submission made on behalf of both TD and Royal Bank of Canada (RBC) on September 27, 2017 (Original Submission).

RBC supports (to the extent outlined below) the positions expressed in the Supplemental Submission relating to the Canadian Coalition for Good Governance's (CCGG) updated policy on proxy access and its subsequent letter to you dated November 30, 2017. Specifically, RBC agrees that:

- the proposed amendments contained in the Original Submission, if adopted, would align Bank Act requirements with practice as it has evolved in the United States;

- a bank is not currently permitted to adopt the lower minimum ownership threshold of 3% (as reflected in the Proxy Access Model and advocated for by CCGG) rather than the statutory 5% minimum ownership threshold provided for in the Bank Act, unless and until such proposed amendments are adopted; and

- it would be inappropriate, unnecessary and confusing to include two proxy access frameworks in the Bank Act as proposed by CCGG in its November 30, 2017 letter. In particular, RBC strongly supports TD's submission that only one mechanic is necessary to serve the purpose of proxy access, which is to provide a shareholder with an opportunity to bypass the bank's normal director nomination process and submit nominees directly to shareholders for consideration, and that it would be confusing to shareholders and give rise to certain avoidable risks if both the existing statutory framework and proxy access rights were permitted to operate concurrently.

Consistent with the views expressed in the Supplemental Submission, RBC believes that the proposed amendments contained in the Original Submission and reflected in the proxy access policies adopted by Canadian banks remain appropriate, and that it would be a mistake to provide for two different statutory proxy access rights.

We would be pleased to speak with you regarding our views at your convenience.

Sincerely,

Karen McCarthy
Vice-President, Associate General Counsel & Secretary
Royal Bank of Canada

cc:
Ms. Kathleen Taylor, Chair of the Board, Royal Bank of Canada
Mr. David McKay, President and Chief Executive Officer, Royal Bank of Canada
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
Ms. Mary O'Connor, Financial Institutions Division, Department of Finance

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

January 17, 2018

Andrew MacDougall
Direct Dial: 416.862.4732
AMacDougall@osler.com
Our Matter Number: 1181738

Ms. Leah Anderson
Assistant Deputy Minister, Financial Sector Policy Branch
and
Ms. Eleanor Ryan
Senior Chief, Structural Initiatives, Financial Institutions Division
Department of Finance
90 Elgin Street
Ottawa, Ontario
K1A 0G5

Dear Ms. Anderson and Ms. Ryan:

Proxy Access and Proposed Legislative Amendments – Supplemental Submission

On behalf of The Toronto-Dominion Bank (the "**Bank**"), we are writing in furtherance of our submission on behalf of the Bank and Royal Bank of Canada on September 27, 2017 proposing amendments to the *Bank Act* (Canada) ("**Bank Act**") and the *Meetings and Proposals (Banks and Bank Holding Companies) Regulations* thereunder (the "**Proposed Amendments**") 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.

Following our submission, the Canadian Coalition for Good Governance ("**CCGG**") on November 27, 2017 issued a policy on proxy access updating its views from its May 2015 policy paper entitled "Shareholder Involvement in the Director Nomination Process: Enhanced Engagement and Proxy Access" which was described in our prior submission.

As discussed in more detail below, the Proposed Amendments outlined in our prior submission are consistent with CCGG's position in its updated policy on proxy access and, if adopted, would align Bank Act requirements with practice as it has evolved in the United States. As such, the Proposed Amendments reflect the next step in the evolution of the shareholder proxy access right in Canada and the Proxy Access Model taken as a whole reflects a better balancing of shareholder rights and costs than the existing statutory framework.

On November 30, 2017 CCGG submitted a letter to the Department of Finance stating that it now believes that the existing statutory framework, pursuant to which shareholders holding at least 5% of a bank's shares can submit a shareholder proposal including nominees for director to be included in the bank's proxy circular, should be retained in

addition to incorporating the Proxy Access Model in the Bank Act. The Bank believes it would be inappropriate, unnecessary and confusing to include two proxy access frameworks in the Bank Act.

Updated CCGG Policy Paper on Proxy Access Consistent with Proposed Amendments

As described in our prior submission, in its earlier publication CCGG, on behalf of its members, proposed that shareholders be entitled to submit nominees for director to be included in a company's proxy circular if the nominating shareholders owned 5% of the outstanding shares, or 3% of the outstanding shares in the case of corporations with a market capitalization of $1 billion or more. CCGG would not have required the nominating shareholder(s) 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. We noted that CCGG was reviewing the position taken in its policy paper and that it would 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 Bank, since it has a market capitalization of greater than $1 billion).

CCGG's updated proxy access policy confirms its support for adoption of proxy access rights consistent with the Proxy Access Model. The updated policy states:

> "CCGG believes that shareholders should have the right to nominate directors on the following terms:
>
> - A shareholder or group of shareholders must hold an aggregate economic and voting interest of at least 3% of the outstanding shares.
> - The 3% minimum threshold must have been held for at least 3 years.
> - The number of directors to be nominated by shareholders using the proxy access mechanism cannot exceed the greater of 2 or 20% of the board."

As noted above, the Proposed Amendments to the Bank Act included in our prior submission are consistent with CCGG's position in its updated policy and reflect the next step in the evolution of the shareholder proxy access right. If adopted, they would also align Bank Act requirements with practice as it has evolved in the United States. Although CCGG states that it has received an opinion that it would be possible to adopt a by-law provision that reflects a lower minimum ownership threshold of 3% notwithstanding the statutory 5% minimum ownership threshold, the Bank does not believe this is currently permitted by the Bank Act. The Proposed Amendments are needed to resolve this difference of opinion.

Proposed Amendments Are A Further Evolution of the Shareholder Proxy Access Right

The shareholder proxy access right has evolved significantly since it was first introduced into Canadian federal law.

In 1970, *Canada Corporations Act* was amended to introduce for the first time in Canada a statutory right for shareholders to submit a proposal to be voted on at the annual meeting. The new provision prescribed certain requirements in order to be eligible to submit a proposal and expressly stated that a shareholder proposal could include nominees for director provided that the proposal for director nominees was submitted by at least 10 shareholders who collectively held at least 20% of the outstanding shares at the time the proposal was submitted.

In 1971, the report of the Dickerson Committee on a model for a new business corporations statute for Canada was released. The draft model statute included a modified version of the new shareholder proposal mechanism and lowered to 5% the ownership threshold for submitting director nominees and for requisitioning a shareholder meeting. These provisions of the draft model statute were incorporated in the *Canada Business Corporations Act* ("**CBCA**") when it was proclaimed in force on December 15, 1975. Identical provisions were eventually added to the Bank Act in 1980.

Further amendments made to the CBCA in 2001 modified the eligibility requirements to submit a shareholder proposal. The corporation's ability to reject a proposal on the basis that it was primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes was deleted, and the amendments introduced minimum ownership and length of ownership eligibility requirements. No change was made to the 5% ownership threshold for submitting director nominees and for requisitioning a shareholder meeting. The stated purpose for introducing the new restrictions was to "curtail abuse" of the shareholder proposal mechanism by shareholders who have not "manifested a genuine interest and stake in the affairs of the corporation".

In January 2003, the Department of Finance released a consultation paper entitled "Corporate Governance of Financial Institutions." Among other things, the consultation paper discussed shareholder proposals. It noted that concerns had been raised that certain aspects of the proposal rules should strike a more appropriate balance between the ability of shareholders to exercise their governance rights, as against the cost implications of doing so. The consultation paper then referenced the specific amendments that had been made to the CBCA to adjust the balance between these considerations. In particular, it was stated (at p.17) that the CBCA amendments added "new threshold requirements (e.g., minimum periods in which shareholders must hold shares prior to making a proposal) to ensure the proposals can only be made by shareholders who have a long term interest in

the financial viability of the company." In 2005, corresponding amendments were made to the Bank Act.

CCGG's Additional Views on Proxy Access

In its updated policy paper, CCGG states that, in addition to the terms of its proxy access policy outlined above, shareholder proxy access should be "subject to the following terms:

> - Nominating shareholders must represent that they are not seeking control and that their economic ownership interest is at least equal to 3% of the issuer's outstanding voting shares.
> - Disclosure about shareholder nominees should be set out fairly in the company's proxy circular, including being located in the same section of the proxy circular with the same prominence and on essentially the same terms as disclosure about the company's nominees, along with the use of a fair "universal proxy" form.
> - Shareholders nominating directors should be able to use the company's proxy circular to solicit support (i.e., as referred to below, they should not be required to deliver a dissident circular).
> - Shareholders must continue to hold the prescribed percentage of shares up to the time of the meeting at which the shareholder-nominees are proposed for election.
> - Proxy access be adopted in the form of a by-law rather than a board policy."

As stated in our prior submission, pending changes to the Bank Act, the Bank, in common with other Canadian banks, has voluntarily introduced a proxy access policy to provide proxy access rights to its shareholders reflecting the Proxy Access Model. As previously noted, the Bank is not in a position to adopt proxy access in any form reflecting a 3% minimum ownership threshold unless and until the Proposed Amendments are made. The Bank expects that, following the enactment of changes to the Bank Act flowing from the ongoing consultation process, it will give effect to the terms of its proxy access policy in its by-laws.

Dual Proxy Access Mechanisms Inappropriate, Unnecessary and Confusing

We also wish to comment specifically on CCGG's November 30, 2017 letter to the Department of Finance in which CCGG states that it has now determined that its proposals for enhanced proxy access should be incorporated into the Bank Act through a new standalone provision and not by revising section 143(4) of the Bank Act in the manner proposed by the Proposed Amendments.

CCGG's stated reason for this approach is that the existing s. 143(4) of the Bank Act "extends an important and unique right to shareholders" that is somehow distinct from the Proxy Access Model, and that shareholders should have the ability to exercise either right. The assertion that the existing statutory provision provides "an important and unique right" distinct from the Proxy Access Model is surprising in light of CCGG's long-standing position, first articulated in its May 2015 policy paper and reaffirmed in its updated proxy access policy issued on November 27, 2017, that existing statutory rights in this regard are "impractical, ineffective, onerous to implement and unreasonably expensive".

The Bank does not agree with all of CCGG's criticisms of the existing statutory framework, but it does believe that the Proxy Access Model taken as a whole reflects a better balancing of shareholder rights and costs than the existing statutory framework. The Proposed Amendments are therefore necessary and appropriate, and also provide an opportunity to modernize the shareholder proxy access right to reflect developments in the capital markets in order to ensure that the shareholder proxy access right continues to operate in the fashion originally intended. For example, the three year pre-submission ownership requirement ensures that the right is exercised by those with a long-term interest in the Bank. In addition, there is added clarity regarding the meaning of ownership to preclude 'empty voting' and ensure that those who exercise the right have a real economic interest in the Bank. Finally, the limit on the number of nominees under the Proxy Access Model ensures that the director nomination right will not be abused as an attempt to gain control of the Bank.[1] The Proposed Amendments are not revolutionary, but rather reflect the next step in the evolution of the shareholder proxy access right.

The Bank also believes it would be inappropriate, unnecessary and confusing to retain the existing statutory framework following the addition of the Proxy Access Model to the Bank Act. Only one mechanic is necessary to serve the purpose of proxy access, which is to provide a shareholder with an opportunity to bypass the bank's normal director nomination process and submit nominees directly to shareholders for consideration. It would be confusing to shareholders if both the existing statutory framework and proxy access rights were permitted to operate concurrently, and it raises the potential of the dual rights being abused to effect a change in corporate control on a basis that is not fully transparent to shareholders. Moreover, as noted above, the Proposed Amendments

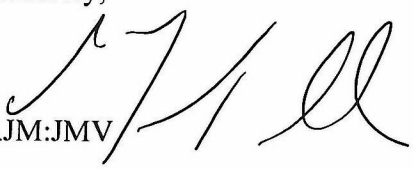
[1] For example, without providing the disclosure that would be required in a dissident proxy circular an activist investor currently could propose replacing a majority of the board with nominees committed to the pursuit of the activist's strategy and may succeed if a 'wolf pack' of similarly-minded hedge funds and other activist investors support that strategy.

provide an opportunity to modernize the existing statutory framework to reflect developments in the capital markets.

Accordingly, the Bank believes the Proposed Amendments enclosed with our prior submission and reflected in the proxy access policies adopted by Canadian banks are necessary and appropriate, and that it would be a mistake to provide for two different statutory proxy access rights.

We would be pleased to speak with you regarding our letter and our prior submission at your convenience.

Sincerely,



AJM:JMV

cc:
Mr. Brian Levitt, Chairman of the Board, TD Bank Group
Mr. Bharat Masrani, Group President and Chief Executive Officer, TD Bank Group
Ms. Ellen Patterson, Group Head and General Counsel, TD Bank Group
Ms. Judy Cameron, The Office of the Superintendent for Financial Institutions
Ms. Carolyn Rogers, The Office of the Superintendent for Financial Institutions
Ms. Mary O'Connor, Financial Institutions Division, Department of Finance