



VIA EMAIL

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Director General
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Industry Canada
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Re: Industry Canada Consultation on the *Canada Business Corporations Act* (the “Consultation”)

This submission is made by Alberta Investment Management Corporation (AIMCo) in response to the Industry Canada Consultation issued on December 11, 2013. The Consultation invites comments as to whether certain amendments to the *Canada Business Corporations Act* (the “CBCA”) should be required in light of changing corporate governance trends.

AIMCo invests approximately \$80 billion of assets under management on behalf of 28 Albertan pension plans and government funds, and is an active participant in Canada’s equity markets. AIMCo is a signatory member to several responsible investment initiatives including the UNPRI, ICGN, PIAC, and CCGG. This submission is made by AIMCo, and not on behalf of any of its clients or other stakeholders.

We thank Industry Canada for conducting public consultations to invite feedback on how to approach updating the statute. It is noteworthy that the vast majority of the 235,000 federally incorporated corporations regulated by the CBCA are small to medium-sized privately held companies. Any attempt to modernize or alter the CBCA should take into account the original intent and scope of the CBCA. What is considered normative for large, publically traded companies may place an undue regulatory burden upon a small, family owned business entity.

Publicly listed companies created under the CBCA are subject to regulation by provincial securities regulators and stock exchanges. AIMCo considers these regulatory authorities to be best positioned to regulate publicly listed companies. In general, AIMCo is of the view that the CBCA is not the appropriate mechanism to introduce regulation of federally incorporated publicly listed companies. AIMCo sees no need to layer additional securities regulation upon publicly listed federally incorporated companies through the CBCA. AIMCo does support harmonized and consistent securities regulation across all provincial jurisdictions as it is more efficient and decreases costs. Adding an additional layer of regulation for federally incorporated entities does not seem to align with the desire to reduce costs and create efficient markets.

Please find AIMCo's feedback to the consultation questions as follows:

I. Executive Compensation

Industry Canada has requested public comment on: a) 'shareholder advisory votes on compensation packages' and b) 'respective roles of federal and provincial jurisdictions on this issue.'

AIMCo strongly endorses the principle of shareholder voice as it pertains to the approval of executive compensation packages, and we fully support an annual advisory vote on executive compensation for publically traded companies above a certain market capitalization. It is noteworthy that of the approximately 4,000 Canadian publically traded companies, just 99 have adopted an advisory say on pay vote, or 2.5%. Canada may be considered to be lagging behind several developed country counterparts such as the UK, US, Australia and several European countries which have adopted say on pay for all publically traded companies (with vote outcomes considered binding in the UK and Switzerland.)

However, any changes contemplated by the federally mandated CBCA should harmonize with pertinent provincial securities regulations and with the Toronto Stock Exchange (TSX) requirements, so as not to cause confusion. One way to accomplish this is for the CBCA to defer to provincial securities regulations and the TSX requirements for publically traded companies.

II. Shareholder Rights – Voting

Industry Canada has asked for public comment regarding:

A. Voting

- i) 'Mandatory voting by ballot at shareholder meetings and disclosure of the voting results by public companies.'

AIMCo supports mandatory voting by ballot and public disclosure of the voting results so that shareholders may discern the relative level of support or lack of support on any given voting item.

- ii) 'Individual elections of directors and 'slate voting.'

AIMCo supports individual elections of directors and opposes slate voting for publically traded companies. As the TSX requirements already prohibit slate voting and require individual director elections, we suggest the CBCA remain silent on this issue.

- iii) Maximum one-year terms and annual elections for directors.

AIMCo supports term limits and annual director elections for publically traded companies, in alignment with Canadian Coalition for Corporate Governance (CCGG) recommendations and with the TSX requirements. Board terms should be designed by the individual company in order to promote board refreshment, independence and diversity. The appropriate length of time for director terms and term renewals varies when considering factors such as whether a company is private or publically traded and size.

While AIMCo sees no need to change the provisions of the CBCA with respect to private companies. We fully support the key principles underlying these recommendations of board renewal, independence, continuity, director accountability and shareholder voice, but question whether the CBCA is the appropriate mechanism to legislate these types of changes.

- iv) Industry Canada asked for public comment on director election by majority vote.

AIMCo supports the TSX proposed amendments requiring each director of a TSX-listed issuer (excepting majority controlled issuers) to be elected by a majority of the votes cast with respect to his or her election (excepting contested meetings.) While we support this amendment in principle, it should also be accompanied by a requirement for directors to resign where there is not majority support.

At present CBCA permits plurality voting which allows the election of a director with only 1 vote in an uncontested election. Should this be amended to require majority voting for all companies, then quorum restrictions may result in more failed elections. Then quorum becomes the issue. Again, AIMCo suggests that any new CBCA regulations harmonize with the TSX requirements for publicly listed companies. We see no requirement for changes for privately held companies.

- v) Industry Canada asked for public comment on 'over-voting' of voting rights attached to corporate shares and 'empty voting' by shareholders without an economic interest in the corporation.

AIMCo and six major Canadian pension plans submitted a joint response to the Canadian Securities Administrators (November 13, 2013) request for comments on consultation paper OSC 54-401 Review of the Proxy Voting Infrastructure. This paper acknowledges that unresolved over-voting is a systemic problem which impedes vote accuracy and reliability and invites a thorough end- to- end audit of the system. The letter is attached for your consideration.

B. Shareholder and Board Communication

- i) Industry Canada requests comment regarding electronic meetings for public companies.

AIMCo supports the right and ability of shareholders to electronically participate in a meeting; however we suggest that the CBCA not allow public companies to limit shareholder participation to an electronic format, as this could be construed as a potential impediment to shareholder rights by limiting shareholder access to in person meetings of the board and executive officers.

- ii) Industry Canada requests comment on facilitation of "notice and access" provisions under the CBCA.

Notice-and-Access provisions should be aligned with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* which allows issuers to post meeting materials to the internet for the benefit of shareholders. Shareholders may still request paper copies be sent to them. This allows issuers to mail a simpler set of materials rather than the traditional proxy package in paper form. The main advantages are cost savings for the company, convenience for the shareholder and improved communication between the shareholder and the issuer, which may

facilitate shareholder engagement. AIMCo supports these improvements and recommends conferring with the Canadian Coalition for Corporate Governance (CCGG) to address any potential misalignments in the design of notice and access provisions.

- iii) Industry Canada asked for public comment on access to a proxy circular by 'significant' shareholders (more than 5-percent share ownership).

AIMCo endorses the principle of shareholder voice, and supports permitting significant shareholders to have access to include their own alternate nominees in the proxy circular- however we suggest setting a lower threshold for share ownership plus a required holding period for the shares, such as a minimum of eighteen months, as a precondition for the significant shareholder to obtain access to the proxy circular.

- iv) Industry Canada asked for public comment on equal treatment of shareholders in the proxy process, irrespective of shareholder privacy concerns.

AIMCo supports the equal treatment of shareholders, and endorses the protection of shareholder anonymity, which are concepts that adequately addressed by National Instrument 54-101. AIMCo is of the opinion that issuers should send proxy related material to all of their shareholders while respecting all of the conditions pursuant to National Instrument 54-101 including the OBO-NOBO distinction.

- v) Industry Canada asked for public comment on shareholder proposal provisions, including the filing deadline and reasonable time to speak to a proposal at an annual meeting.

AIMCo recommends that the CBCA's requirement which states that, in order for shareholder proposals to be considered for voting at the AGM, they must be submitted at least *ninety* days before the anniversary date of the *notice date* for the previous AGM, be amended to align with The *Ontario Business Corporations Act* (OBCA) and so avoid confusion. The OBCA requirement for formal notification of a shareholder proposal to be brought to the annual meeting is at least *sixty* days before the anniversary date of the *last annual meeting*.

While AIMCo supports the principle of shareholder voice, we have no position with respect to defining the parameters for a reasonable time to speak to a shareholder proposal.

C. Board Accountability

- i) Roles of the CEO and the Chair of the Board

AIMCo's Proxy Voting Guidelines support separation of the CEO and chairman positions for publically traded companies, and at a minimum we expect there to be a lead independent director of the board where the chairman is non-independent. Considering that the vast majority of companies within the scope of the CBCA are small and privately held, we suggest the CBCA avoid prescriptive requirements that would require separate CEO and chairman positions, which could create compliance difficulties for private companies.

ii) Shareholder approval of significantly dilutive acquisitions

AIMCo endorses the concept of requiring shareholder approval for any potentially dilutive acquisitions that would dilute existing shareholders shares by over 25%. However, we recommend that the CBCA defer to the TSX requirements for all prescriptive details.

iii) Access to oppression remedy by shareholders

AIMCo remains unconvinced that the oppression remedy set out in Section 241 of the CBCA is in need of any drastic overhaul. It is also AIMCo's view that it is important to discourage frivolous lawsuits.

iv) Should the CBCA require public companies to disclose potential environmental and social impacts?

While AIMCo fully supports public disclosure by issuers of potentially negative and positive environmental and social impacts, AIMCo does not view this as a requirement within the applicable purview of the CBCA. Normative disclosure practices for environmental and social compliance and certification with such bodies as the international standards organization (ISO) or Carbon Disclosure Project (CDP) vary greatly by market capitalization, industry and by country. To require companies across vastly differing industries to disclose social and environmental impacts without also requiring comparative metrics could render any reconciliation of this data across companies and industries virtually meaningless. It is suggested that this type of disclosure requirement be the purview of industry specific regulatory bodies instead.

III. Securities Transfers and other CG issues

i) The potential removal of the CBCA provisions relating to securities transfers:

AIMCo concurs with the suggestion that there is no longer a need to regulate these issues as they are already sufficiently regulated under provincial statutes

ii) Canadian residency requirements for CBCA directors

AIMCo is of the opinion that the CBCA Canadian residency requirements which state that at least 25% of the board must be Canadian residents, and that at any given meeting 25% of the directors present are Canadian residents are both necessary and sufficient, and should be kept as is within the CBCA.

iii) Regulation of trust indentures under CBCA

AIMCo has no comment on this matter at this time.

iv) The CBCA's modified (2001) liability regime

It is AIMCo's view that the 2001 amendments are sufficient, and that a company is only liable for its portion of the damages commensurate with its degree of responsibility for the loss.

IV. Incorporation Structure for socially responsible enterprises (SRE's.)

It is AIMCo's recommendation that more research be done regarding the utility of SRE's in the Canadian context; however it is also recommended that legislative provisions treat SRE entities as separate and distinct from for-profit entities.

V. Corporate Transparency

AIMCo supports the adoption of regulatory and security measures to mitigate instances of tax evasion, money laundering and terrorist financing. AIMCo would support improved access to accurate and timely information by competent legal and tax authorities, and only to those authorities, of beneficial ownership in a corporation. At the same time it is important that beneficial owners confidential information be treated as such, and not be revealed to any other individuals outside the delegated legal and tax authorities. Again, we question whether the CBCA is the appropriate mechanism to introduce this type of regulatory requirement.

VI. Corporate Governance and Combating Bribery and Corruption

AIMCo fully supports the goals of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. AIMCo offers that this goal should also naturally extend domestically. However, we reserve comment regarding the adequacy of current CBCA provisions regarding corporate records, accounting standards and audits to combat bribery in international and domestic transactions, and suggest that more research be conducted.

VII. Diversity of Boards and Management.

AIMCo strongly endorses the principle of board diversity, and we refer the reader to our recent submission to OSC-58-101F1 regarding disclosure of gender diversity for board and executive management.

VIII. Arrangements under CBCA

AIMCo reserves comment.

IX. Corporate Social Responsibility

While AIMCo upholds the principle of corporate social responsibility, the CBCA is not viewed as the appropriate vehicle to encourage CSR objectives.

X. Administrative and Technical

- i) Should property of dissolved corporations vested in the Crown be returned to revived CBCA corporations?

No comment

- ii) Should there be a time limit on money held by receiver general for unknown claimants of dissolved corporations?

No comment

iii) Should there be a time limit on the revival of a corporation that has been dissolved?

No comment

iv) Should the CBCA recognize beneficial owners of shares by giving them more of the rights of registered SH such as the right to vote?

AIMCo views the relationship between the holders of the beneficial interest in shares and the holder of the legal title to such shares to be a matter of contract between the two parties. AIMCo does not see why the CBCA should attempt to regulate those contractual relationships.

We trust that our responses have been helpful. Thank you again for this opportunity to comment on this consultation. Please do not hesitate to contact us if you have any further questions or concerns.

Yours sincerely,



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