



March 7, 2014

Director General  
Marketplace Framework Policy Branch  
Industry Canada  
235 Queen Street, 10<sup>th</sup> Floor  
Ottawa, Ontario K1A 0H5

**RE: Consultation on the Canada Business Corporations Act**

To Whom It May Concern:

We are pleased that Industry Canada has asked for public consultation on the Canada Business Corporations Act (CBCA) and we respectfully submit our comments herewith.

Qube Investment Management Inc. (Qube) is a registered portfolio management firm in the Canadian provinces of Alberta and British Columbia. We represent approximately 125 high net worth investors, using an integrated approach, blending fundamental analysis with Environmental, Social and Governance (ESG) factors.

**Executive Compensation**

We believe that it is reasonable to expect a rational link between the compensation of all employees at a corporation. The idea that one employee could contribute hundreds of times more value than the average seems a fantastic concept to us. Nonetheless, executive pay disclosure indicates this is indeed what is happening in many large public companies.

The premise used in the design of executive pay is “peer benchmarking”. We view the approach using horizontal comparisons as flawed. Market studies report that near three quarters of vacant CEO positions are filled from internal promotions, not movement amongst peer firms. As the CEO is an employee of the corporation, pay should be conducted within the context of compensation for the organization as a whole and an extension of the infrastructure that governs the rest of the corporate wage program. The current executive pay disconnect could demotivate employees and compromise the confidence of shareholders, both leading to lower share values.

Some believe capping executive compensation will create a competitive disadvantage for the firm. We believe this perspective is ripe for a challenge. Certainly any lost competitiveness would be offset by great improvements to the corporate reputation and increased demand for the shares.

**Our Proposed Action** – Industry Canada consider including reporting requirements modeled after the proposed US SEC regulations under Item 402 of Regulation S-K. Here each listed corporation is required to disclose the median annual total compensation of all employees, excluding the chief

executive officer (CEO) and the ratio of the CEO to this median wage.

### Shareholder Rights

In an effort to modernize the Canadian governance framework, Qube supports the following recommendations:

- Mandatory voting by ballot at shareholder meetings and results disclosure by public companies;
- Prohibition of slate voting;
- Prohibition of staggered board terms, and adoption of annual elections;
- Requirement of majority voting.

We believe here that the benefits outweigh potential costs and these proposals would bring Canada into closer alignment with global best practices.

***Our Proposed Action*** – Industry Canada proceed with the proposed amendments discussed above.

### Shareholder and Board Communication

As the number of shareholders has increased over the past century, the role played by the shareholder in Director nominations has greatly decreased. Shareholders with many public corporations now number in the tens of thousands, so a “nomination committee” has become the practical reality. While some argue that shareholder involvement in the nomination process would be chaotic and expensive, we believe shareholder-led nominations are both a fundamental right and a key element to secure corporate accountability.

We have seen in recent years other global marketplaces adopt such models, including Brazil and Sweden and they have not experienced market disruption. Allowing eligible shareholders to nominate members of the board is a healthy step towards a renewed and respectful engagement of the shareholders.

***Our Proposed Action*** – Industry Canada proceed with the proposal to permit shareholders (holding collaboratively 5% of shares) to include their alternate nominees for directors in the management proxy circular at no cost, or to allow for reimbursement of costs by the corporation.

The CBCA consultation also discussed various procedural matters that hinder the ability of shareholders to make proposals at the AGM. In addition to the matters discussed in the consultation paper, Qube would like to additionally press for clarity on proof of ownership requirements. In recent filings, we found insurmountable technical challenges that greatly hindered the task at hand; encouraging shareholder dialogue and engagement on topics intended for the AGM. A very low minority of proposals in both the US and Canada make it to the AGM. Recent surveys in the US indicate that only 25-30% of proposals pass SEC no action reviews. This is a severe limitation on shareholder engagement and dialogue.

**Our Proposed Action** – Industry Canada consider clarification and simplification to the guidelines on submission of a shareholder proposal including proof of ownership requirements. Further, that a forum is offered to mediate the process when there is disagreement between the corporation and its shareholders.

### **Board Accountability**

It is the responsibility of the Board of Directors to protect shareholders' interests by providing independent oversight of management, including the Chief Executive Officer (CEO). When a CEO serves as board chair, this arrangement can hinder the board's ability to effectively monitor the CEO's performance. An independent Chairman is the prevailing practice in the United Kingdom and many other international markets. We believe that an independent Chairman who sets agendas, priorities and procedures for the board can enhance board oversight of management and ensure its objective functioning. We also believe that having an independent Chairman will improve accountability to shareholders. A number of respected institutions have previously recommended such separation. CalPERS' Corporate Core Principles and Guidelines state that the independence of a majority of the Board is not enough and the leadership of the board must embrace independence. In 2009, the Milstein Center at Yale School of Management issued a report, endorsed by a number of investors and board members that recommended splitting the two positions as the default provision for U.S. companies.

**Our Proposed Action** – As the prevalence of combination CEO/Chair roles is rapidly disappearing in Canada anyway and the separation reflects best global governance practice, we recommend Industry Canada consider mandating the separation of Chair and CEO. Further, we would also recommend the following policy amendments:

- Board members have a mandated term limit of 10 years service (one decade);
- Age limits are prohibited, due to their discriminatory nature;
- Boards must carry a minimum two-thirds ratio of independent to non-independent membership.

### **Board Diversity and Management**

Qube notes recent progress on the stride towards the promotion of diversity in Canada. Nonetheless, we still see alarmingly low proportions of women serving on Boards. According to a survey by Davies Ward Phillips & Vineberg (Davies Insights 2013), there were less than 11% of the 3275 board seats on the Canadian Composite and Small Cap Index awarded to women in 2013.

**Our Proposed Action** – In alignment with other global efforts, the CBCA be amended to require as a best practice expectation minimum diversity guidelines of the board. Failure to comply with this requirement would require disclosure and explanation.

### **Corporate Social Responsibility**

The CBCA consultation paper also requested comment on the Board's understanding of the impact of social and environmental matters on corporate operations. Qube believes that the best material

method for this is the production of a Sustainability Report. Such reports are now guided by the Global Reporting Initiative (GRI), an international not-for-profit involving thousands of organizations using a sustainability-reporting framework and database.

**Our Proposed Action** – Industry Canada amend the CBCA to include a required best practice of producing a Sustainability Report submitted to the Global Reporting Initiative. Failure to comply with this requirement would require disclosure and explanation.

Again, we appreciate the opportunity to participate in this consultation.

Best regards,



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