

May, 15, 2014

Director General
Industry Canada
Marketplace Framework Policy Branch
235 Queen Street, 10th Floor
Ottawa, ON K1A 0H5

Dear Madam/Sir:

Re: Consultation on the Canada Business Corporation Act

We are pleased to provide you with the banking industry's views on the Consultation on the *Canada Business Corporations Act* (the "CBCA").

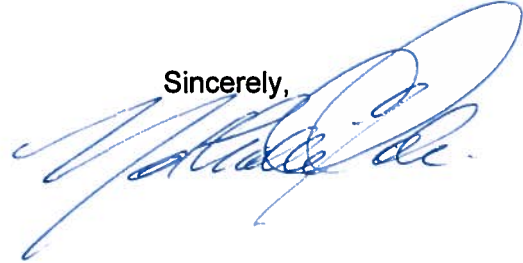
The Canadian Bankers Association (the "CBA" or the "Association") works on behalf of 60 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 275,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness. www.cba.ca.

On a general note, we are of the view that most of the proposals set out in the Consultation Document overlap with securities legislation that has been in place for the past decade. The current "comply or explain" system for corporate governance matters, which has not only been supported by a large number of issuers but also has solid historical roots in Canada, is considered to be efficient and well-understood all across Canada. We believe that any overlap with securities legislation will simply cause inefficiencies and ultimately impact competition in the markets.

We have set out in the Appendix to this letter the CBA's detailed views on the topics covered in the Consultation Document.

Thank you for allowing us to contribute to the process, and we welcome the opportunity to comment on specific regulatory measures that may be developed as a result of this Consultation.

Sincerely,

A handwritten signature in blue ink, appearing to be 'M. P. de...', written in a cursive style.

Enclosure

Canada Business Corporations Act Consultations

Appendix Submission by the Canadian Bankers Association

May 15, 2014

Description	Committee Considerations	Canadian Bankers Association Comments
I. Executive Compensation	<ul style="list-style-type: none"> Shareholder review of executive compensation should be required by law under the CBCA (“advisory votes” by shareholders). Do provincial securities laws adequately protect all stakeholders? If so, is federal regulation in this area needed? 	<p>Executive compensation disclosure should remain within the realm of securities laws and the rules of stock exchanges. The CBA supports Canada’s current voluntary approach to “Say on pay”. A company’s board is best positioned to make decisions on the level and form of appropriate executive compensation and each company’s circumstances may vary as to how and why they approach the “Say on pay” vote. While many of Canada’s banks have held “say on pay” votes since 2010, we support the voluntary approach to this advisory resolution.</p>
II. Shareholder Rights: A. Voting	<ul style="list-style-type: none"> Mandatory recorded votes for public corporations under the CBCA. Is there overvoting as a result of increasing “beneficial” ownership, rather than “direct” ownership? Is there “empty voting” because some shareholders are insulated from a decline in the value of the shares or can benefit from a lower share price? Requiring a majority vote of all shareholders to elect directors rather than “plurality”. Slate voting should be prohibited in the context of election of directors. Requirement to elect directors annual and prohibiting “staggered” boards with overlapping terms of office for directors. 	<p>Canada’s proxy voting system is highly complicated. While the CBA fully supports efforts to improve the integrity, accuracy and transparency in all proxy voting matters, we believe that provincial regulators are better placed to ensure that any recommendations and changes to the current voting infrastructure are implemented and followed by all market participants. Otherwise, there is risk of duplication, which could lead to confusion and inefficiencies.</p>

Description	Committee Considerations	Canadian Bankers Association Comments
<p>B. Shareholder and Board Communication</p>	<ul style="list-style-type: none"> • Not limit shareholder meetings to electronic-only formats to preserve ability of shareholders to directly communicate with corporate management. • Ability to post documents on company website for shareholders to download (currently restricted by “paper copy” provisions in the CBCA) • Ability of corporation to send proxy-related material to shareholders, notwithstanding the decision of shareholders to protect their personal information. • Deadline for filing CBCA proposals should be in reference to the last annual meeting and not the date of the notice of the last annual meeting. • Shareholder should have a reasonable period of time to speak to their proposals at the annual meeting. 	<p>We are supportive of advancements in the area of access to electronic document delivery. Any simplification and clarity on issuer/investor electronic communications would be welcome.</p> <p>With respect to determination of the deadline for filing CBCA proposals, we would submit that it is more appropriate to calculate it in relation to the date of mailing of the previous year's notice than in relation to the date of the previous year’s annual meeting. The notice of meeting is issued with the proxy circular, which contains the proposal and the board's response. The date of mailing of the notice of meeting and proxy circular is determined within regulatory parameters. The board must have sufficient time to consider each proposal carefully and to engage with and respond to the filer of the proposal before the circular is finalized, approved by the board, printed and mailed to shareholders.</p> <p>Section 137(1)(b) of the CBCA already allows shareholders to discuss at a meeting of shareholders any matter in respect of which the person would have been entitled to submit a proposal. As many as 20 shareholder proposals have been submitted and included in a proxy circular of a Canadian issuer. We would therefore submit that it would be inappropriate to amend the CBCA to stipulate a minimum period of time to speak to a shareholder proposal. What may be reasonable may depend upon circumstances specific to the meeting and flexibility should accordingly be left to the Chair of the meeting to end discussion when necessary. It is not appropriate for the CBCA to legislate how meeting procedure should be handled.</p>

Description	Committee Considerations	Canadian Bankers Association Comments
<p>C. Board Accountability</p>	<ul style="list-style-type: none"> • CEO and Chair of the Board should be independent of one another. • Require shareholder approval of acquisitions that would result in dilution of existing shareholders' interests in the corporation in excess of 25% (because shareholder approval is not required if paid in shares rather than cash) • Provide for more meaningful ways to resolve oppression claims (such as arbitration or other ADR mechanisms) • Require publicly traded corporations to disclose the board's understanding of the impact and potential impact of social and environmental matters on the corporation's operations. 	<p>While the trend is that most publicly traded companies in Canada have adopted the practice of separating the roles of CEO and Chair of the Board, in the case of privately-held companies and those with a controlling shareholder, the rationale for separating the roles is not clear. We do not support this being mandated by legislation. Rather, we support Canada's general approach to such matters through the 'comply or explain' approach to corporate governance practices.</p> <p>The Toronto Stock Exchange Rules already require shareholder approval in circumstances where the number of securities issued in payment of the purchase price for an acquisition exceeds 25% of the number of issued securities of listed issuers.</p> <p>We consider that the access to oppression remedy by shareholders set by the CBCA works effectively and should not be amended.</p>

Description	Committee Considerations	Canadian Bankers Association Comments
<p>III. Securities Transfer and Other Corporate Governance</p>	<ul style="list-style-type: none"> Given the concurrent regulation of these matters under provincial statutes, there may no longer be a need to regulate these issues under federal corporate law statutes such as the CBCA. It was suggested that greater reliance on civil remedies such as class actions, along with a greater harmonization of the CBCA with provincial securities laws, could be considered for the regulation of insider trading under the CBCA. It was proposed to the Committee that there may no longer be a need to preserve board nationality and residency requirements in the CBCA. On the other hand, nationality requirement allows for the expression of a Canadian viewpoint at directors' meetings. The residency in Canada requirement enhances the effectiveness of Canadian director liability laws. But relaxing Canadian nationality and residency requirements would allow for stronger international representation on boards and may encourage multinational corporations to further invest in Canada. The CBCA trust indenture provisions apply unless the Director of the CBCA determines that the obligations under the trust indenture are subject to the laws of another jurisdiction that are "substantially equivalent" to the CBCA. While jurisdictions such as Ontario and the United States meet this test, it was submitted to the Committee that a CBCA company may be required to meet the CBCA requirements when issuing debt in foreign jurisdictions. 	<p>We agree that there is no longer a need to regulate transfer of securities under the CBCA.</p> <p>The CBA does not support adding provisions on insider trading as the matter is comprehensively covered by the <i>Criminal Code</i> and by National Instrument 55-104 respecting Insider Reporting Requirements (adopted in April 2010 as a result of the Standing Committee's hearings on this topic).</p> <p>On the Canadian residency requirements, we believe the current provisions are adequate.</p> <p>On the issue of trust indentures, we believe it would be burdensome with little or no corporate purpose. This area is more adequate for securities laws.</p>

Description	Committee Considerations	Canadian Bankers Association Comments
IV. Incorporation Structure for Socially Responsible Enterprises	<ul style="list-style-type: none"> • SREs encompass a broad spectrum of entities from enterprising not-for-profits to benefit corporations. What SREs share in common is the use of a commercial business model to encourage social change. • Further consultation is recommended as to whether existing CBCA provisions are sufficient to enable these corporations or whether amendments are necessary to support the development of such enterprises. 	No comments
V. Corporate Transparency	<ul style="list-style-type: none"> • Should the CBCA address improved access to accurate and timely information, by competent authorities such as law enforcement and tax authorities, on beneficial ownership of corporations, including possibly through the establishment of a central repository of corporations incorporated under the CBCA? • Should the CBCA address disclosure of ownership information regarding bearer shares and bearer share warrants? • Should the CBCA address disclosure by nominee shareholders of information on the individuals for whom they are acting? 	No comments
VI. Corporate Governance and Combating Bribery and Corruption	<ul style="list-style-type: none"> • Whether current provisions on corporate records, accounting standards and audits are adequate to combat bribery in international transactions. 	<p>Although provisions facilitating the ability to comply with anti-bribery and anti-corruption obligations are welcomed, we question whether the CBCA is the appropriate venue. The <i>Corruption of Foreign Public Officials Act (CFPOA)</i> and the <i>Criminal Code</i> are adequate to address concerns about bribery and corruption. Any legislative changes to address these items should be done through the CFPOA, rather than by making amendments to the CBCA (which, if implemented, would potentially introduce interpretive complexity into an already complex area of law). Further, to respond directly to the question - the current provisions on corporate records, accounting standards and audits in the CFPOA are adequate to combat bribery in international transactions. Many new regulatory requirements are developing in this space. Accordingly, we see little additional value in the CBCA imposing additional requirements, which at very best would be duplicative, and could indeed result in conflicting or inconsistent standards and obligations.</p>

Description	Committee Considerations	Canadian Bankers Association Comments
VII. Diversity of Corporate Boards and Management	<ul style="list-style-type: none"> Whether new measures to promote diversity within corporate boards should be included in the CBCA and what such measures might entail. 	<p>The CBA is on record for supporting the Ontario Securities Commission’s proposal for a ‘comply or explain’ model for the question of increasing gender diversity on boards and in senior management. As such, we note that this initiative has already been addressed by proposed changes to provincial securities law. Should provisions to this effect be added to CBCA, it would cause confusion and overlapping requirements.</p> <p>The Ontario Securities Commission (OSC) undertook last year a consultation regarding gender diversity on corporate boards and in senior management of public issuers and at the beginning of this year, the OSC proposed amendments to Form 58-101F1 of National Instrument 58-101 on Disclosure of Corporate Governance Practices. We agree with the ‘comply or explain’ approach as outlined in the proposed amendments to Form 58-101F1 and do not agree with amending the CBCA to deal with this matter.</p>
VIII. Arrangements Under the CBCA	<ul style="list-style-type: none"> Recently, the arrangement provisions in the CBCA have increasingly been used to restructure the debts of an insolvent business as an alternative to a restructuring under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act. Whether the use of arrangements under the CBCA to restructure insolvent corporations is appropriate under certain circumstances and, if so, whether additional CBCA provisions may be necessary to safeguard the interests of creditors and other stakeholders similar to those found in insolvency statutes. 	No Comments
IX. Corporate Social Responsibility	<ul style="list-style-type: none"> Whether the existing provisions of the CBCA adequately promote CSR objectives and whether additional measures to promote CSR objectives are warranted in the CBCA. 	No Comments

Description	Committee Considerations	Canadian Bankers Association Comments
X. Administrative and Technical Matters A. Vesting in Crown	<ul style="list-style-type: none"> Some stakeholders have submitted that since the CBCA also provides that the rights of a revived corporation are restored in the same manner and to the same extent as if it had not been dissolved, a separate procedure governing the return of property vested in the Crown is redundant, and places undue burden on revived corporations 	No Comments
B. Recovery-Time Limit	<ul style="list-style-type: none"> Unlike some provincial statutes, there is no time limit to establish a claim against the Receiver General in the CBCA. The result is that there are now cases where the Receiver General of Canada currently holds money for corporations dissolved since the 1920s. Should there be a time limit on the money held by the Receiver General for unknown claimants of dissolved corporations? 	No Comments
C. Return of property on revival	<ul style="list-style-type: none"> Unlike some provincial corporate statutes, there is no time limit on revival. An issue arises when money is spent on the property by the Crown while it is in its possession. There is currently no mechanism to allow recovery of money spent by the Crown on the property (e.g. when the Crown had to pay for decontamination). On revival, it is possible that a corporation may reacquire property, without set-off for increases in value due to Crown expenditures. 	No Comments
D. Right to Dissent	<ul style="list-style-type: none"> Stakeholders have advised of occasions where the dissent right was not exercised by existing shareholders but rather by a person who bought shares in a corporation after a major reorganization or sale of an important part of its assets was announced, but before the reorganization has been approved by shareholders, solely with the objective of exercising the right of dissent. Should there be a time limit on how long shareholders must hold shares before they can exercise the right of dissent? 	While we do not have any substantive comments on this topic, Industry Canada should be mindful of the significant administrative burden on issuers to distinguish between short and long-term shareholders.

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E. Squeeze-out transactions	<ul style="list-style-type: none"> • Since not all squeeze-out transactions require amendments to corporate articles, concerns have been expressed that the presence of the term "require an amendment to its articles" in the definition may unduly restrict the situations in which a corporation may use a squeeze-out transaction. • Should the definition of "squeeze-out transaction" in section 2 of the CBCA be amended to remove the reference to amendment of articles? 	No Comments
F. Prospectus – Distribution	<ul style="list-style-type: none"> • Shareholder consolidation can fall under the definition of “going-private transaction”, which in turn can result in a right to dissent by shareholders. Current provincial law excludes such transaction from the definition (see ON and QC) • Should the CBCA be amended to make it clear that a consolidation of shares, with or without a repurchase of fractional shares, is not a transaction that triggers a right of dissent? • Further, should "going- private transactions" permit the use of the right of dissent? 	No Comments
G. Security Certificates & Transfers Dealings with registered holder	<ul style="list-style-type: none"> • As most shares are now held indirectly through intermediaries, some have suggested that rights of beneficial shareholders should be expanded. • Should the CBCA provide beneficial owners with more rights (right to vote, the right to dissent, etc.)? 	No Comments – further discussions are required.
H. Mandatory Solicitation	<ul style="list-style-type: none"> • In the case of a non-distributing corporation, most of the shareholders are employees of the corporation who are aware of the corporation’s business. Should the requirement for non-distributing corporations to solicit proxies have a higher shareholder threshold or be removed altogether? Some suggested that this would save costs to small and medium-sized corporations. 	No Comments

Description	Committee Considerations	Canadian Bankers Association Comments
I. Soliciting proxies - Exception	<ul style="list-style-type: none"> Should the threshold exception in the CBCA be raised so that a person is permitted to solicit proxies, other than by or on behalf of the management of the corporation, without sending a dissident's proxy circular if the total number of shareholders whose proxies are solicited is more than fifteen? 	The current threshold should be maintained in the CBCA.