

May 14, 2014

Director General  
Marketplace Framework Policy Branch  
Industry Canada  
235 Queen Street, 10<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H5  
Email: [cbca-consultations-icsa@ic.gc.ca](mailto:cbca-consultations-icsa@ic.gc.ca)

Dear Sir/Madam:

**Re: Industry Canada Consultation on the *Canada Business Corporations Act* (the "Consultation Paper")**

We have reviewed the Consultation Paper and we are grateful for the opportunity to provide our comments.

By way of background, Hermes is one of the largest asset managers in the City of London. As part of our Equity Ownership Service (Hermes EOS), we also respond to consultations on behalf of many clients from around Europe and the world, including PNO Media (Netherlands) VicSuper of Australia, and the UK's BBC Pension Trust, British Coal Staff Superannuation Scheme, Mineworkers Pension Scheme and Lothian Pension Fund (only those clients which have expressly given their support to this response are listed here). In all, EOS's advises clients with regard to assets worth more than 188 billion Canadian Dollars (as at 31 March 2014).

**OVERVIEW**

Overall, Hermes EOS is supportive of the initiatives put forward in the Consultation Paper and our comments address those issues that are, in our view, the most important and are within our area of expertise. In making comments and recommendations, we are considering only those Canadian corporations that are publicly traded issuers, with shares listed on a stock exchange, not private companies.



We believe that some issues considered in the Consultation Paper require coordination with provincial securities regulators and some may be best implemented by way of securities law. However, we are interested in advancing many of the initiatives presented and how they are implemented is a secondary concern. We note also that some of the shareholder democracy initiatives considered in the Consultation Paper have been implemented by the Toronto Stock Exchange as part of their listing requirements. However, we believe that, where indicated, it is preferable to have these principles set out in the CBCA.

## RESPONSES TO SPECIFIC REQUESTS FOR COMMENT

### **Executive Compensation**

#### *Say on Pay*

Canada is falling behind other developed nations in not having a mandatory say on pay vote that allows shareholders to voice their views on the appropriateness of an issuer's executive compensation practices. In some countries, say on pay votes are advisory in nature, such as those mandated in the U.S. since 2011 under Dodd-Frank Wall Street Reform and Consumer Protection Act, and in other countries they are binding (such as the ones recently adopted in the U.K. and Switzerland). Hermes EOS believes that the CBCA should provide for an annual advisory say on pay vote for all public companies governed by the Act as we see considerable evidence in some jurisdictions that mandatory votes can lead to a variety of unfortunate consequences and we believe that ultimately holding directors accountable through engagement and voting is the best method of tackling problems with pay.

Say on Pay has already been adopted voluntarily by approximately 130 of Canada's largest issuers and those aspiring to best practices. Such a reform has typically led to better disclosure on compensation. On several occasions, we have entered into dialogue with compensation committees where a significant percentage of votes have been cast against a say on pay resolution, and have had very productive dialogues that led to improved pay practices. We believe that this vote on pay is a more useful initial tool than withholding votes from the members or chair of the compensation committee of the board. We believe that this latter option is more of a blunt instrument, and if too frequently used, may be more disruptive to a board that may be functioning well in areas other than overseeing compensation. Hermes EOS believes it is important that shareholders of all public companies have the option of a say on pay vote and further believes that all directors should develop a stronger understanding of the policies and preferences of the shareholders that elected them. Finally, we believe that, to reinforce accountability, the scope of an appropriate say on pay vote would include the remuneration of non-executive directors. We note that the model say on pay policy developed by the Canadian Coalition for Good Governance, which has been adopted by most of the 130 issuers noted above, does not address non-employee directors. We believe that this is a deficiency and suggest that the CBCA review include consideration of a binding vote on an aggregate annual pay ceiling for non-executive directors, as is required of Canadian banks under the Bank Act. In this context, we believe that a binding vote is not problematic.

## II. Shareholder Rights

### Voting

#### *Mandatory voting by ballot at shareholder meetings and disclosure of results by public companies*

Detailed voting results should be promptly disclosed for every matter on the form of proxy after final tabulation at a shareholder meeting. Detailed vote disclosure gives shareholders enough information to assess the level of shareholder support as well as to ascertain trends in changing levels of support. Further, disclosure of detailed vote results gives a measure of confidence to institutional investors that their votes have been tabulated, whereas a show of hands vote does not. Detailed disclosure has some value as a disinfectant that will do more help clean up the proxy voting system than reporting results of a show of hands.

#### *Individual election of directors and 'slate' voting*

Shareholders should be able to vote for directors on an individual basis rather than on the basis of 'slate' voting which requires that shareholders vote for all or none of the directors. Being able to hold individual directors accountable is fundamental to meaningful shareholder democracy. Although the Toronto Stock Exchange ("TSX") has addressed this as a listing requirement, we believe it is more properly set out in corporate law.

#### *Maximum one-year terms and annual elections for directors*

Even though the CBCA recognizes that a director may be removed by a majority vote of shareholders, the Act should be amended to require that all directors at CBCA public companies be elected annually. Staggered terms of up to three years are currently permitted under the CBCA but do not theoretically pose the same problems of entrenchment that they do in the U.S. However, in practice staggered boards reduce director accountability and can impede the ability of shareholder to make timely and needed changes to the board. Although a TSX listing requirement, the CBCA should be amended to include this best practice as a requirement.

#### *Director election by majority vote*

As evidenced by the February 13, 2014 announcement by the TSX, that it had amended listing requirements so that listed issuers must adopt a majority voting policy in uncontested elections, the plurality standard currently found in the CBCA is out of date. Institutional investors are becoming increasingly diligent in their evaluation of directors. Consequently, an effective director election system is fundamental to shareholder democracy. The ability to vote only 'for' or 'withhold' under the current plurality standard creates an election system with a bias towards the candidates backed by the board and management. This system does not reinforce director accountability to shareholders. Therefore, the CBCA needs to set out a true majority vote standard, one that allows for votes to be cast 'against' rather than simply 'withheld' and that requires that directors are not elected to the board if they receive a majority of votes cast 'against'.

Currently s. 54 of the CBCA Regulations requires that a form of proxy must be as required by s.9.4 of NI 51-102, an instrument of the CSA, effectively delegating the form of voting for director elections to the CSA.

Hermes EOS stresses that the majority voting provision should be drafted in such a way that directors are not elected to or are effectively removed from the board when a majority of shareholders vote against them and that discretion is not left to remaining directors to decide whether the director ultimately retains his or her position. Hermes EOS believes that such a voting system will reinforce the need for diligence and care on the part of shareholders in deciding how to vote for directors and lead to far greater accountability of boards and individual directors to shareholders.

The phenomenon of ‘zombie directors’ has been widely noted, that is, directors who stay on the board despite receiving a majority of votes ‘withheld’ even though the company has a policy in place that requires a director to tender his or her resignation in such circumstances and leaves discretion to the board to decide whether or not to accept that resignation.<sup>1</sup> This will require drafting a provision that allows for some limited flexibility, for example, allowing a period of time for alternative nominees to be found in cases where the number of directors as stipulated in the articles has not been elected,<sup>2</sup> but the principle of shareholder authority in this area should be clear.

#### *“Over voting” of voting rights attached to corporate shares*

“Over voting” is inherent in our current complicated and opaque proxy voting system. Layers of intermediaries in multiple jurisdictions may separate a registered shareholder from the beneficial owner and make a regulatory fix difficult. Poorly governed securities lending practices have resulted in an inability to ensure that votes received and tabulated can be reconciled with votes cast or to confirm that votes cast have in fact been received. We also believe that administration of share lending operations are inconsistent with respect to handling of voting rights and standardized share lending agreements which clearly set out voting rights need to be enforced. Mishandling of voting rights by an intermediary should be subject to punitive fines.

The OSC and the Canadian securities administrators (“CSA”) are currently expending much time and resources on fixing this system<sup>3</sup> and Hermes EOS encourages Industry Canada to work with the OSC and CSA in this area to ensure that CBCA’s provisions do not present obstacles to a securities regulatory solution. Any amendments to the CBCA related to this area must be developed in concert with securities regulators to ensure consistency and the smooth working of the proxy system. Fixing this system is of the utmost importance for all public companies, their owners and for shareholder democracy. We would therefore encourage the Canadian authorities to work with international regulators to find a solution.

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<sup>1</sup> Corporate governance: The curse of zombies in the boardroom, by David Milstead, the Globe and Mail, July 24, 2013; Zombie Directors Should Exit U.S. Boardrooms, by Nell Minow, Bloomberg.com, July 18, 2012

<sup>2</sup> The CBCA currently has provisions that allow for a work around e.g. section 106(7)

<sup>3</sup> The OSC held a roundtable on Canada’s Proxy Voting Infrastructure on January 29, 2014 and the CSA released a consultation paper on the topic in August 2013

### *“Empty voting” by shareholders without an economic interest in the corporation*

“Empty voting”, that is, the separation of voting interests from the economic interests of shareholders, can occur when, for example, shares are subject to short selling or derivatives transactions. The British Columbia Court of Appeal in *TELUS v Mason Capital*<sup>4</sup>, in commenting on the issue of “empty voting”, stated that “[t]o the extent that cases of “empty voting “are subverting the goals of shareholder democracy, the remedy must lie in legislative and regulatory change.” Hermes EOS believes that Industry Canada must proactively work with the CSA to find a solution to this problem.

### **Shareholder Communications**

#### *Electronic meetings for public companies*

Hermes EOS supports an amendment to the CBCA to provide for electronic participation in shareholder meetings but shares the view that the CBCA should not permit public companies to limit shareholder meetings to electronic-only format so as to preserve this important forum for shareholders to communicate face to face with their directors and corporate management.

#### *Facilitation of ‘Notice and Access’ provisions under the CBCA*

The CBCA should be amended to provide for ‘Notice and Access’ in a manner consistent with that which has been implemented under provincial securities regulation so that issuers do not have to rely on the exemption to section 150(1) provided in section 151 as a work around.

#### *Access to proxy circular by “significant” shareholders*

Hermes EOS believes that the CBCA should be amended to make it easier for significant shareholders to nominate alternate directors so that they are included in the company’s proxy circular and form of proxy and to communicate with other shareholders about the desirability of those candidates. In Hermes EOS’s view the ability of shareholders to nominate directors where they see a need should be an accepted right and not viewed as a necessarily hostile attempt at change of control or overthrow the existing board.

Other countries have examined or offer variations on this right, requiring minimum shareholdings or fulfilling a minimum term as a shareholder. In Germany, a shareholder holding any number of shares can nominate a director and provide a supporting statement not longer than 5000 words. The SEC (US), in its 2010 Final Rule: Facilitating Shareholder Director Nominations, which was later struck down by the U.S. Court of Appeals<sup>5</sup>, recommended that shareholders holding three

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<sup>4</sup> *TELUS Corporation v Mason Capital Management LLC*, 2012 BCCA, 403

<sup>5</sup> In 2011 the Court of Appeal found that the SEC did not do an appropriate cost benefit analysis or back up the claim that the rule would improve shareholder value and board performance. In response Mary L. Schapiro issued the following statement: “I firmly believe that providing a meaningful opportunity for shareholders to exercise their right to nominate directors at their companies is in the best interests of investors and our markets. It is a process that helps make boards more accountable for the risks undertaken by the companies they manage. I remain committed to finding a way to make it easier for shareholders to nominate candidates to corporate boards.”

percent of the outstanding shares for a three year period be able to include director nominees in company proxy materials. An additional requirement is a certification that the sponsoring shareholder(s) are not holding the stock for purposes of changing control of the company or to gain more than minority representation on the board.<sup>6</sup>

We recommend that the CBCA be amended to permit a significant shareholder to have the same opportunity to present nominee(s) to shareholders in proxy materials on an equal footing with management nominees. Any reasonable solicitation costs on the part of the shareholder should be reimbursed by the company, unless the majority of shareholders resolve otherwise. In order to distinguish this access to the proxy from situations where a change of control or board overthrow is, in fact, the goal the number of shareholder nominees should be restricted to 25% of the board.

While the Consultation Paper explicitly assumes that a five per cent share ownership constitutes a 'significant' shareholder, it is Hermes EOS' view that this threshold should be closer to the three percent threshold proposed by the SEC. We believe that in conjunction with this threshold, the limits imposed on shareholder communications by proxy solicitation rules need to be relaxed to permit a group of shareholders to achieve the threshold percentage without being deemed to be acting jointly or in concert. (We discuss proxy solicitation below.)

#### *Equal treatment of shareholders in proxy process, irrespective of shareholder privacy concerns*

Hermes EOS believes that issuers should be required, at a minimum, to send notice of meeting and make proxy materials available to all shareholders at the issuer's expense. Current securities regulations allow beneficial owners whose securities are held through intermediaries to maintain their privacy ('objecting beneficial owners' or 'OBOs'). However, under securities regulation, issuers do not have to pay to send proxy materials to OBOs. Shareholders who do not object to sharing information about their holdings with issuers ('non-objecting beneficial owners' or NOBOs) are entitled to have proxy materials sent to them at the issuer's expense. The CBCA should be amended to include a provision requiring issuers to pay the cost of sending, timely notice of meeting and proxy materials (or method of access for proxy materials) to those share owners that wish to remain private while still respecting the NOBO/OBO distinction.

#### *Shareholder proposal provisions*

##### *filing deadline*

Hermes EOS supports changing the filing deadline for a shareholder notifying the corporation of a matter proposed for consideration at the annual meeting to a date referencing the last annual meeting itself rather than linking the deadline to the notice date of the previous meeting. Alternatively, it could be linked to the company's fiscal year end. In either case, it is important that a reasonable time window be open for filing proposals. If there is insufficient time, it may be difficult to get access to the form of proxy and proxy circular.

##### *reasonable time to speak to a proposal at an annual meeting*

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<sup>6</sup> <https://www.sec.gov/rules/final/2010/33-9136.pdf>

Hermes EOS supports the proposal that the CBCA should be amended to provide proponents of a shareholder proposal a reasonable period of time to speak to their proposals at the annual meeting.

## **Board accountability**

### *Roles of the Chief Executive Officer (CEO) and the Chair of the Board*

There is an inherent conflict of interest when the chair of a company's board also serves as the CEO of that company. The oversight of management, in particular the CEO, is one of the board's key responsibilities and a combined chair is thus responsible for leading the body that oversees him or herself. When the roles of CEO and Chair are combined, there is an inherent conflict.

Other important responsibilities of the chair are compromised when the role is shared: setting the agenda for board meetings, ensuring directors receive the necessary information and that board meetings are conducted with open discussion and an independent assessment of management views. Similar challenges are presented when the Chair is not wholly independent of management. We strongly support separation of roles as best practice, but we do not believe that this should be set out in company law, as there may be circumstances where an exception is reasonable, for example, where a chair assumes interim duties as CEO should the position suddenly have a vacancy.

### *Shareholder approval of significantly dilutive acquisitions*

Under the CBCA, shareholders have the right to approve certain fundamental changes to the corporation including the sale, lease or exchange of substantially all of the assets of the corporation, the issuance of a new class of shares, changes to the rights associated with certain shares, an amalgamation with another corporation and a going private transaction.

Shareholders should similarly have the right to approve a significant corporate acquisition that is paid for in shares if it will dilute the value of the shares held by existing shareholders by more than 25%. The TSX requires that all TSX listed companies obtain shareholder approval in those circumstances. A similar requirement is found in the listing standards of most major exchanges and /or in the corporate law of the jurisdictions in which the exchanges operate. We would prefer an approach that is similar to that set out in UK listing rules, which considers all substantial transactions worthy of shareholder approval, not just those involving the issuance of shares as consideration. The UK listing rules set out a variety of tests, not only concerning consideration but also profits, assets and capital – and any transaction that meets any one or more of the tests requires shareholder approval. Whilst such rules may not be appropriate for small, high risk companies, we believe that the rules provide greater certainty for investors in larger companies and require boards to seek shareholder approval for transactions that substantially change the nature of a company.

We note that in the case of dual class capital companies, transactions involving the unwinding of dual class share structures have resulted in shareholder dilution and significant gains for controlling shareholders. We believe that there should be a requirement, whether in securities law or the CBCA, for shareholder approval of any capital restructuring that is effected to remove a dual class capital structure and that includes any special consideration paid to the controlling shareholder. We consider special consideration to be compensation exceeding a share for share exchange of superior voting shares for subordinate voting shares.

In 1990, the TSX added as a requirement that all companies with dual class capital that obtained a listing after that date would adopt a “coattail” provision, which protects holders of subordinate voting shares who might be excluded or unfairly treated in the event that a takeover is made exclusively, or on superior terms, to the control group. However, we believe that the TSX coattail should be strengthened to require separate approval of disinterested holders of common shares with subordinate voting rights as a condition of any change of control by way of transfer of shares with multiple voting rights. We believe that such protection should be enforced in securities law or as a CBCA requirement within the description of share capital.

#### *Access to oppression remedy by shareholders*

This remedy is well intended, but in practice is so costly and time consuming that it is rarely used. The Committee should consider ways to reduce the costs and delays involved in resolving claims, perhaps by establishing a process pursuant to which claims could be arbitrated.

#### *Disclosure of the board’s understanding of social and environment matters on corporate operation*

Disclosure of the board’s understanding of social and environment matters on corporate operation is highly relevant to and increasingly valued by shareholders. It is necessary to provide shareholders with a better understanding of quality of risk oversight by the board. While Hermes EOS strongly supports such disclosure, it believes that regulation of this disclosure lies more appropriately within the provincial securities laws that currently prescribe the majority of rules related to disclosure rather than under the CBCA.

### **III. Securities Transfers and Other Corporate Governance Issues**

#### *The potential removal of the CBCA provisions relating to securities transfers*

Noting our recommendation above on transfer of ownership of multiple voting shares, Hermes EOS agrees with the view that there is no longer a need to regulate such matters under federal corporate law statutes such as the CBCA given that the transfer of securities is concurrently regulated under more up to date provincial statutes.

#### *Insider trading provisions in the CBCA*

Hermes EOS is of the view that insider trading is more appropriately regulated under provincial securities laws.



### *Canadian residency requirements for CBCA directors*

Director residency requirements vary from country to country but few jurisdictions impose them<sup>7</sup>. Hermes EOS is of the view that the Canadian residency requirements under the CBCA should be reduced so that at least one director on a public company board must be a resident Canadian. This would serve the competitive purpose of bringing provisions more in line with the majority of countries, including most of those with a similar 'Anglo Saxon' corporate governance framework, and allowing for stronger international representation at the same time as protecting some of the presumed benefits that come with residency, for example, familiarity with Canadian laws and economic, political and social environment and representation of a Canadian perspective at the board level as well as helping to ensure board accountability by having a person with assets in the jurisdiction.

### *Regulation of trust indentures under the CBCA*

No comment

### *The CBCA's modified proportionate liability regime*

No comment

## **IV. Incorporation Structure for Socially Responsible Enterprises**

### *Incorporation of hybrid enterprises (entities with both profit-making and non-profit goals) under the CBCA*

No comment

## **V. Corporate Transparency**

Hermes EOS supports the position that information concerning beneficial ownership should be available to competent law enforcement and tax authorities, as well as ownership information regarding bearer shares and warrants and information by nominee shareholders on the individuals for whom they are acting, provided, however, that such information should not be made available to issuers. The ability of shareholders to keep information on their shareholdings private should not be compromised.

## **VI. Corporate Governance and Combating Bribery and Corruption**

Hermes EOS is aware of the amendments to the Corruption or Foreign Public Officials Act tabled by the Conservative government in 2013. As these broaden the scope of the Act, make it easier for Canada to prosecute Canadians or Canadian companies for bribery in other countries, eliminate

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<sup>7</sup> Very few jurisdictions in Europe, Asia, Australasia and South America (other than Nordic countries and Argentina) impose residency requirements. None of the U.S. states (with the exception of Hawaii), the U.K., New Zealand, France or Germany, for example, have director residency requirements while Australian law requires that at least two directors of a public company be Australian resident directors. *Canada Business Corporations Act: Discussion Paper: Directors' and Other Corporate Residency Issues (August 1995)*; *Canada Business Corporations Act: Directors' Residency Requirements and Other Residency Issues (December 1999)*

facilitation payments and increase the maximum penalties, we do not have further comments with respect to amendments to the CBCA.

## **VII. Diversity of Corporate Boards and Management**

Hermes EOS emphasizes the importance of diversity on boards and in senior management given that research shows that diversity enhances the quality of decision making and group performance.<sup>8</sup> The Canadian Coalition for Good Governance's 2013 *Building High Performance Boards* states, boards should reflect a wide variety of experiences, views and backgrounds, which to the extent practicable reflect the gender, ethnic, cultural and other personal characteristics of the communities in which the cooperation operates and sells its goods or services.<sup>9</sup> The same principle applies to senior management. Because women comprise half the population, the lack of gender diversity on boards and in senior management is the most obvious form of lack of representation that needs to be addressed but not the only one. We encourage Industry Canada to work with the OSC and look towards the OSC's initiatives in the area of diversity to ensure that its actions are complementary to those of the OSC. At this time Hermes EOS supports the 'comply and explain' model currently being proposed by the OSC.

## **VIII. Arrangements Under the CBCA**

No comment

## **IX. Corporate Social Responsibility**

Hermes EOS believes that the current provincial regulatory model of looking to disclosure of a company's environment and social risks, and board and management oversight of those risks, as a means of enhancing corporate social responsibility is appropriate at this time and amendments to the CBCA are not necessary to promote corporate social responsibility objectives.

## **X. Administrative and Technical Matters**

### **A. Should property of dissolved corporations that has vested in the Crown under the CBCA automatically be returned to revived CBCA corporations?**

No comment

### **B. Should there be a time limit on the money held by the Receiver General for unknown claimants of dissolved corporations?**

No comment

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<sup>8</sup>Different if Better: Why Diversity Matters in the Boardroom <http://www.russellreynolds.com/content/different-better>; (2010, October). [Better Decisions through Diversity: Heterogeneity Can Boost Group Performance](https://www.credit-suisse.com/newsletter/doc/gender_diversity.pdf). Kellogg Insight. Kellogg School of Management at Northwestern University; [https://www.credit-suisse.com/newsletter/doc/gender\\_diversity.pdf](https://www.credit-suisse.com/newsletter/doc/gender_diversity.pdf)

<sup>9</sup>[http://www.ccg.ca/site/ccgg/assets/pdf/building\\_high\\_performance\\_boards\\_august\\_2013\\_v12\\_formatted\\_sept\\_19\\_2013\\_last\\_update.pdf](http://www.ccg.ca/site/ccgg/assets/pdf/building_high_performance_boards_august_2013_v12_formatted_sept_19_2013_last_update.pdf) page 9

**C. Should there be a time limit on the revival of a corporation that has been dissolved? Further, before returning property to a revived corporation, should the Crown be able to recover money spent on that property?**

No comment

**Should there be a time limit on how long shareholders must hold shares before they can exercise the right of dissent?**

Hermes EOS believes that it is inappropriate to distinguish among shareholders and that there should not be a holding requirement before a shareholder can exercise a right of dissent.

**E. Should the definition of “squeeze-out transaction” in section 2 of the CBCA be amended to remove the reference to amendments of articles?**

No comment

**F. 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 comment

**G. Should the CBCA more fully recognize beneficial owners of shares by giving them more of the rights of registered shareholders (e.g. the right to vote, the right of dissent)?**

Currently, provincial securities regulations give beneficial owners many of the same rights accorded to registered shareholders under corporate law. Hermes EOS is in favour of providing beneficial owners with rights equal to registered holders but is very cognizant of the complexity and challenges of our current proxy voting system and the many layers of intermediaries there can be between a registered owner and a beneficial owner. Provincial securities regulators are currently spending a great deal of time and resources on trying to ameliorate the problems with the system or perhaps overhaul the system entirely. Given this context, Hermes EOS suggests that Industry Canada should be acting in coordination with the provincial securities regulators in this area.

**H. Should the requirement for non-distributing corporations to solicit proxies have a higher shareholder threshold or be removed altogether?**

No comment

**I. 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?**

Hermes EOS believes that shareholders should be free to discuss company matters openly and freely amongst themselves as they see fit without penalty or regulation as long as a proxy is not being sought. Hermes EOS believes that the CBCA should facilitate discussion among shareholders.

If shareholders are given the ability to nominate a limited number of directors to the proxy that would not affect board control and without intention to influence corporate strategy, as suggested above, they should be able to discuss those nominees with other shareholders without constraint. Currently, pursuant to CBCA Regulation section 68(2)(b) a shareholder who is a nominee or who proposes a nominee for election as a director, if the communication relates to the election of directors, may not communicate with other shareholders without triggering the proxy solicitation rules. Due attention would have to be paid, in drafting provisions that would safeguard such communications, to preclude the communications from triggering solicitation rules as well as 'acting jointly or in concert' rules in order to avoid the potentially serious consequences that can follow.

## Conclusion

The Consultation Paper has addressed key issues facing shareholders and we expect regulators will seize this opportunity to incorporate strong principles of shareholder democracy in Canadian corporate law. Hermes EOS is pleased to be able to provide its comments on the Consultation Paper and believes Canada, through its commitment to strong and fair regulation, will demonstrate its thought leadership through the CBCA.

In the event you have any questions or would like to discuss any aspect of our submission, contact the undersigned at 416.417.0173 or [w.mackenzie@hermes.co.uk](mailto:w.mackenzie@hermes.co.uk)

Yours very truly,

William Mackenzie  
Senior Advisor, Canada