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Director General  
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Dear Sirs:

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

This submission is made by OMERS Administration Corporation ("OMERS") in response to the Consultation which was issued by Industry Canada on December 11, 2013. The Consultation invites comments on whether amendments to the *Canada Business Corporations Act* (the "CBCA") are required with respect to various topics.

With \$65.1 billion in net assets at December 31, 2013, OMERS (the administrator of the Ontario Municipal Employees Retirement System) is one of Canada's leading pension funds. We manage a diversified global portfolio of stocks and bonds as well as real estate, infrastructure and private equity investments.

OMERS was established in 1962 to serve local government employees across Ontario. Today, we represent 982 employers and almost 440,000 members, retirees and survivors, including:

- Municipal workers
- Children's Aid Society workers
- Firefighters
- Emergency Services staff
- Police
- School Board staff (non-teaching)
- Transit workers
- Hydro workers

We are pleased that Industry Canada is conducting public consultations on a variety of areas of the CBCA to assist in modernizing the statute. We provide the following comments in respect of the issues that are of the most concern to OMERS. In that regard, though, we are aware that you have received or will receive comments from other large institutional investors such as other pension plan administrators, and from industry associations of which we are members including, in particular, the Pension Investment Association of Canada. While we are generally consistent in our support of their views, we believe that it would be of assistance to Industry Canada to receive our specific comments as well.

A key consideration influencing our comments was not so much the substance of the issue, but whether legislative changes to the CBCA were the most effective mechanism in which to achieve the desired results. A corporate statute such as the CBCA forms the foundation for corporate structures. By its very

nature, it is less flexible in responding to developing issues. That is not a criticism – consistency and a long view are important principles that benefit the Canadian economy. The CBCA applies to both publicly traded and private corporations. A number of matters under consideration in this review are specific to public companies. For that reason, a number of our comments support the policy changes that Industry Canada has proposed for review, but suggest that securities regulators across Canada are perhaps a more effective means to achieve these desired results.

### **Executive Compensation – Shareholder Advisory Votes**

OMERS supports annual advisory votes on executive compensation to provide shareholders with the opportunity to express their views on the board’s approach to executive compensation but does not believe that the CBCA is the appropriate mechanism to achieve this desired result. This is best achieved by securities regulators, who have the expertise and experience to more effectively address this matter.

### **Shareholder Rights - Voting**

(a) Mandatory voting by ballot at shareholder meetings and disclosure of the voting results by public companies.

OMERS supports the position put forward by PIAC regarding mandatory voting by ballot on all matters at shareholder meetings as well as the public disclosure of detailed reporting of the voting of all matters listed on the ballot, including mandatory disclosure of vote results.

(b) Individual elections of directors and “slate voting.”

OMERS agrees with the view put forward by PIAC that the CBCA be amended to prohibit slate voting and require mandatory election of individual directors. This would bring the CBCA in line with the applicable Toronto Stock Exchange requirements (the “TSX Requirements”), which prohibit slate voting.

(c) Maximum one year terms and annual elections for directors.

The CBCA currently permits director terms of up to three years and permits a “staggered” board of directors. These practices prevent director accountability to shareholders and protect the board from shareholder intervention where intervention may be beneficial to the corporation.

Again, OMERS supports PIAC’s view that the CBCA should be amended to require maximum one year terms and annual elections for directors. This would bring the CBCA in line with the TSX Requirements, which currently require annual elections of directors.

(d) Director election by majority vote.

OMERS recommends amending the CBCA to require director election by a majority vote of all shareholders. Requiring majority voting for directors will bring the CBCA in line with the recent proposed amendments to the TSX Requirements, which are to be effective on June 30, 2014.

(e) “Overvoting” of voting rights and “empty voting” by shareholders without an economic interest in the corporation.



OMERS believes that the work that the Canadian Securities Administrators (the "CSA") are conducting through CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure*, published on August 15, 2013 in the appropriate mechanism to address this issue.

### Shareholder and Board Communication

- (a) Electronic meetings for public companies.

OMERS supports the PIAC recommendation that meetings not be limited to electronic-only formats, as shareholders must have the ability to communicate directly with corporate management, which would be detrimentally affected by any changes that diminish the requirement to have public shareholder meetings.

- (b) Facilitation of "notice and access" provisions under the CBCA.

OMERS adopts the PIAC submission, which would permit the use of "notice and access" for shareholders, as it facilitates convenience and speed in communications between reporting issuers and their shareholders.

- (c) Access to a proxy circular by "significant" shareholders (more than 5-percent share ownership).

OMERS supports amendments to the CBCA which would allow access to proxy circulars by significant shareholders. However, OMERS believes that the suggested 5% ownership threshold is too high and urges Industry Canada to consider a lower share ownership level, such as 3%. However, OMERS believes that Industry Canada should conduct a benchmarking study to determine how other jurisdictions have addressed this threshold. One matter Industry Canada may wish to consider is whether to exempt venture issuers.

- (d) Equal treatment of shareholders in the proxy process, irrespective of shareholder privacy concerns.

OMERS adopts the PIAC position regarding the protection of shareholder information and anonymity which supports the obligation of public corporations to send proxy related material to all of their shareholders under the condition that the OBO-NOBO distinction pursuant to National Instrument 54-101 is strictly respected.

- (e) Shareholder proposal provisions, including the filing deadline and reasonable time to speak to a proposal at an annual meeting.

Currently, the CBCA requires qualifying shareholders to notify the corporation of a matter proposed for consideration at the annual meeting at least *ninety* days before the anniversary date of the *notice date* for the previous annual meeting. This deadline is difficult to meet and negatively affects the ability of shareholders to make proposals. The *Ontario Business Corporations Act* (the "OBCA") deadline for shareholder proposals is more reasonable than that of the CBCA. It requires shareholders to notify the corporation of a matter proposed for consideration at the annual meeting at least *sixty* days before the anniversary date of the *last annual meeting*.

OMERS supports the PIAC recommendations as follows:

- harmonizing the deadline for filing shareholder proposals in the CBCA with the provincial approach, such as the OBCA,
- increasing the 500-word limit of a shareholder's supporting statement for his or her proposal in the management proxy circular, which would also benefit from a review to be conducted by Industry Canada of other jurisdictions to determine a reasonable word limit
- amending the CBCA so that shareholders are specifically provided with a reasonable amount of time at the shareholder meeting to speak to their proposal.

#### **Shareholder Rights - Board Accountability**

- (a) Roles of the Chief Executive Officer (the "CEO") and the Chair of the Board (the "Chair").

The CBCA is currently silent with respect to whether the CEO can be the same individual as the Chair. OMERS recommends that amendments be made to the CBCA to ensure that at publicly listed companies the CEO and the Chair are not the same individual, and also to ensure that the Chair be an independent director.

- (b) Shareholder approval of significantly dilutive acquisitions.

OMERS supports the concept of requiring shareholder approval of significantly dilutive acquisitions, but, as suggested in the PIAC submission, regulation of this area should remain with the TSX and accordingly does not recommend changes to the CBCA.

- (c) Disclosure of the board's understanding of social and environmental matters on corporate operations.

OMERS believes that this is a matter best left to securities regulators of publicly listed companies. OMERS agrees with the analysis in the PIAC submission that, with their decision-making and oversight responsibilities, the board of directors should have thorough knowledge and understanding of all material matters that impact or potentially impact their company's operations including matters related to environmental or social issues to the extent that they are material. Disclosure of reporting made at the board level on all material risks and potential operational impacts to the company, such as those required by National Instrument 51-102, as well as any policies describing the board's accountability in this regard would benefit shareholders by helping them to better understand how the board is monitoring and managing these issues.

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

- (a) Adequacy of existing CBCA provisions on corporate records, accounting standards and audits to combat bribery in international transactions.

While OMERS strongly endorses regulatory efforts to combat bribery and corruption on a uniform basis, both domestically and internationally, we do not believe that amendments to the CBCA are the most effective approach to accomplish this.

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

- (a) Promotion of diversity within corporate boards.

OMERS believes that recent proposals made by the Ontario Securities Commission on this issue requiring greater transparency with respect to the representation of women on boards and in senior management of all TSX-listed and other non-venture issuers reporting in Ontario, is the more effective approach and that amendments to the CBCA should not be used to achieve these policy objectives unless the securities regulators are unable to achieve meaningful change.

### **Corporate Social Responsibility**

- (a) Whether the existing provisions of the CBCA adequately support corporate social responsibility objectives and whether additional measures are warranted.

OMERS agrees that the promotion of corporate social responsibility (“CSR”) principles and practices would have benefits for Canadian businesses and investors. Section 122(a) requires every director and officer of a company incorporated under the CBCA to “act honestly and in good faith with a view to the best interests of the corporation.” OMERS agrees with PIAC that this does not generally preclude directors from considering the interests of outside stakeholders including employees, creditors, suppliers, consumers, community members, governments and the environment, consistent with the conclusion of the Supreme Court of Canada in the BCE case.

Thank you for providing us with the opportunity to participate in the review of the CBCA. If you have any questions, please do not hesitate to contact the writer at the address above.

Yours truly,



James A. Roks  
Vice President Legal & Corporate Secretary

JAR

- c. B. Cowper-Smith, Executive Vice President and Chief Legal Officer