



**Stéphanie Lachance**  
Vice President, Responsible Investment and  
Corporate Secretary  
Telephone: 514-925-5441  
Fax: 514-925-1430  
Email: [slachance@investpsp.ca](mailto:slachance@investpsp.ca)

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**VIA EMAIL**

Director General  
Marketplace Framework Policy Branch  
**INDUSTRY CANADA**  
235 Queen Street, 10th Floor  
Ottawa, Ontario  
K1A 0H5

Ladies and Gentlemen:

**Industry Canada Consultation Paper on the *Canada Business Corporation Act (the CBCA)***

This submission is made by the Public Sector Pension Investment Board (**PSP Investments**) in response to the consultation paper on the CBCA published on December 11, 2013, by Industry Canada (the **Consultation Paper**).

By way of background, PSP Investments is a Canadian Crown corporation established to invest the amounts transferred by the Government of Canada since April 1, 2000, for the pension plans of the Public Service, the Canadian Forces and the Royal Canadian Mounted Police, and since March 1, 2007, for the Reserve Force Pension Plan. To achieve its investment mandate, PSP Investments makes investments in public and private assets. As at September 30, 2013, PSP Investments' net assets under management were worth over \$ 82.3 billion.

**General**

- 1 While PSP Investments is generally supportive of initiatives that are intended to modernize corporate legislation, enhance shareholder transparency and democracy and encourage best practices in respect of corporate governance, PSP Investments, as an overarching principle, believes regulatory overlap could lead to undesirable confusion in the market. PSP Investments would not be in favour of amendments to the CBCA which could lead to duplication between initiatives undertaken in recent years by the Canadian Securities Administrators (the **CSA**). PSP Investments is, however, supportive of amendments to the CBCA which represent improvements while not encroaching on fields occupied by the CSA. PSP Investments notes that regulatory initiatives undertaken by the CSA benefit from the CSA's close interaction with market participants through the operation of the various provincial and territorial securities regulatory authorities.

- 2 In addition to urging Industry Canada to not adopt rules that may overlap with or duplicate securities legislation, we note that the Consultation Paper addresses several issues that are of concern to reporting issuers/distributing corporations but which would not apply to non-distributing corporations. We would encourage Industry Canada to carefully consider and clarify what rules apply to non-distributing corporations to minimize the regulatory burden imposed on such issuers.
- 3 Our specific comments on the areas covered by the Consultation Paper appear below.

### **Executive Compensation**

*Since the release of the report of the House of Commons Standing Committee in June 2010, the issue of executive compensation has continued to attract considerable interest from provincial regulators, investors and the public. Stakeholders and others are invited to provide input on whether the provisions of the CBCA reflect corporate best practices and the interests of shareholders in this area.*

- 4 Regulatory initiatives relating to executive compensation can be divided in several ways. Disclosure of executive compensation is an area where PSP Investments believes the requirements imposed by applicable Canadian securities laws appropriately serve the needs of investors. From a corporate policy perspective, CBCA provisions on shareholder rights to elect directors and to make proposals at shareholder meetings enhance shareholder involvement in the executive compensation process through shareholder ability to elect directors who, subject to their fiduciary duties, are charged with the management of business and affairs of a corporation. In addition to director elections and shareholder proposals, Industry Canada could consider whether it would be appropriate to mandate shareholder votes regarding compensation philosophy (*i.e.* codify current practice on “say on pay” voting). To the extent regulatory initiatives remain flexible enough to be able to adapt to market practice, PSP Investments would be supportive of such changes.
- 5 The disclosure requirements prescribed by Canadian securities legislation provides sufficient information to permit shareholders to assess the executive compensation practice of investee corporations and determine whether such shareholders wish to object, through an ability to influence a shareholder vote with respect to the election of directors or through a shareholder proposal. With respect to disclosure requirements, the CBCA should not attempt to develop a distinct set of rules which would only serve to complicate existing disclosure and dilute its impact. PSP Investments believes that market needs are better met through the current CSA disclosure requirements than through federal regulation of this area through the CBCA.

## **Shareholder Rights**

### Voting

*Shareholder voting rights are the foundation of corporate democracy, and a transparent, accurate, efficient and accountable shareholder voting process is fundamental to good corporate governance and the maintenance of market confidence. Stakeholders and others are invited to provide input on whether the shareholder voting provisions of the CBCA adequately facilitate shareholder democracy.*

- 6 PSP Investments strongly supports initiatives intended to enhance the reliability of any shareholder voting system. We have already extensively commented on the CSA's consultation paper dated August 15, 2013, related to the CSA's review of the proxy voting infrastructure. Given that the CSA is working on addressing voting right concerns, we believe that any initiatives in this regard should be co-ordinated with the CSA's work before introducing amendments to the CBCA regarding this matter.
- 7 PSP Investments is supportive of mandatory voting by ballot, individual election of directors (as opposed to slate voting), maximum one year terms and annual elections for directors and director election by majority vote. To enhance regulatory uniformity, we believe it would be appropriate to codify these matters in the CBCA as opposed to leaving regulation of such matters to bodies such as stock exchanges or other markets.
- 8 Mandatory voting by ballot would permit the investing public and the market generally to better assess the level of support of shareholders for issues put to a vote by allowing a detailed record of votes on a per share basis as opposed to a per hand basis. Voting on a show of hands basis distorts voting results by treating each "hand" separately without weighting based on the number of shares held. While there are systems in place to prevent any abuse of this method of voting, the time has arrived for the legislative framework to mandate ballot voting. For reporting issuers, for which this issue would be relevant, the slight incremental additional organizational burden that would result by mandating voting by ballot would be outweighed, in our view, by the benefits derived from having a more detailed and robust record of voting results. We note, anecdotally, that we are aware of a number of reporting issuers that have adopted the vote by ballot approach without, it appears, significant additional time or energy spent at shareholders meetings. We would also be supportive, however, of permitting voting by show of hands for certain limited subject matters of a "housekeeping" nature, e.g. adjournments of uncontested meetings.
- 9 PSP Investments is in favour of individual elections of directors, as opposed to slate voting as such elections provide enhanced transparency and would permit the market to know the level of support for directors on an individual basis allowing market participants to better evaluate the role and contribution of individual directors.
- 10 As a general matter with respect to voting, we note that PSP Investments continues to be

very concerned regarding the proxy voting process including with respect to the “over voting” problem that we understand regularly occurs. We are also concerned with so-called “empty voting” problems where shareholders exercise voting rights which are disconnected from economic interest. PSP Investments is committed to addressing concerns regarding the integrity and reliability of the proxy voting process and would be supportive of regulatory amendments which would effect this outcome. However, with a view to minimizing regulatory overlap, we believe the CSA would be the more appropriate body to assess and address issues relating to the integrity of the proxy voting system.

### **Shareholder and Board Communication**

*The ability of shareholders to communicate effectively and efficiently with both corporate management and other shareholders is integral to maintaining investor confidence and facilitating good corporate governance. Stakeholders and others are invited to provide input on whether the provisions of the CBCA could further enhance communication between shareholders and corporate management, and among shareholders themselves, and whether the provisions are consistent with technological advances.*

- 11 PSP Investments understands that a number of Canadian reporting issuers have had difficulty implementing the “notice and access” provisions that have been adopted by the CSA in 2012. PSP Investments believes that allowing issuers to communicate with shareholders through electronic means may improve effectiveness and reduce costs. As such, PSP Investments would encourage initiatives to the effect that the CBCA be amended to facilitate full implementation of “notice and access”.
- 12 PSP Investments would also be supportive of amendments to the CBCA that would provide a clearer framework to shareholder driven initiatives. Subject to the discretion of the Chair of a shareholder’s meeting to exceed prescribed minimums, we believe it would be desirable to propose amendments to the CBCA that would establish a period of time during which a shareholder would be permitted to explain and defend a shareholder proposal. In addition, we would support amendments to section 137(3) of the CBCA to provide for a greater word limit in shareholder proposals to permit shareholders to explain in a more meaningful manner the nature of the proposal.
- 13 We understand certain shareholders have expressed support for amendments to the CBCA which would provide access to management proxy circulars by significant shareholders given the cost of preparing and distributing alternative shareholder proxy circulars. PSP Investments would, conceptually, be supportive of such amendments and would propose that Industry Canada investigate the appropriate ownership threshold before access to management’s proxy circular would be available in order to balance the competing interests of providing significant shareholders the ability to have a meaningful voice in shareholder communications with the interest of management to communicate with shareholders based on its agenda and priorities.

## **Board Accountability**

*The accountability of boards of directors is fundamental to good corporate governance. Directors are elected by shareholders to manage and supervise the business of the corporation in its best interest. Shareholders must have the ability to ensure board accountability and meaningfully evaluate board performance. Stakeholders and others are invited to provide input on whether the provisions of the CBCA adequately balance the respective roles of boards and shareholders and enable shareholders to require appropriate levels of accountability from boards.*

- 14 PSP Investments believes that the current provisions of the CBCA, when viewed in conjunction with provincial securities legislation and rules of regulatory bodies such as the Toronto Stock Exchange (TSX), adequately balances the respective roles of boards and shareholders and enables shareholders to require appropriate levels of accountability from boards. In particular, PSP Investments would not be in favour of (i) amendments which would prescribe arbitration for oppression remedy claims given the extensive nature of the remedial measures already contemplated by the oppression remedy regime or (ii) prescribing shareholder approval thresholds for dilutive acquisitions as these are prescribed already by TSX rules. On the specific issue of mandating the separation of the Chair function and the Chief Executive Officer role, PSP Investments believes that it would be appropriate for distributing corporations to have different people in these roles and would encourage the CSA to assess the desirability of mandating such separation.

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

*Submissions are invited as to the continued relevance of CBCA provisions related to securities transfers and insider trading, given the overlapping regulatory jurisdictions between the CBCA and provincial laws in these areas. Comments are also sought on the operation of CBCA provisions related to director residency, trust indentures and proportionate liability.*

- 15 PSP Investments believes that proposed amendments intended to eliminate duplication between the CBCA and provincial legislation are desirable.
- 16 Regarding insider trading, PSP Investments agrees that provincial legislation already offers an efficient civil remedies framework and that, the *Criminal Code of Canada* provides sanctions against such unacceptable behavior.

## **Corporate Transparency**

*Stakeholders and others are invited to make submissions regarding whether, and how, the availability of beneficial ownership information to competent authorities, the existence of bearer shares and the disclosure of nominee shareholder information should, and could, be addressed in the CBCA.*

- 17 PSP Investments is supportive of current distinctions between so-called “OBO’s” and “NOBO’s” contained in National Instrument 54-101 regarding communication with beneficial owners of securities and would discourage legislative attempts to eliminate or limit the scope of such distinctions. Permitting shareholders such as PSP Investments to keep confidential information regarding shareholdings encourages investments by such investors who, for their own strategic or policy reasons, may prefer to not share such information with issuers or the market. We believe that current insider reporting and early warning requirements appropriately satisfy an issuer’s and the markets information requirements regarding the identity of shareholders.

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

*Stakeholders and others are invited to provide input as to the adequacy of existing CBCA provisions on corporate records, accounting standards and audits to combat bribery in international transactions.*

- 18 PSP Investments is generally supportive of initiatives to combat bribery and corruption. However, we question whether the CBCA is the appropriate instrument to do so as opposed to specific legislation relating to such matters.

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

*Stakeholders and others are invited to comment as to whether new measures to promote diversity within corporate boards should be included in the CBCA and what such measures might entail.*

- 19 PSP Investments is generally supportive of initiatives that relate to encouraging diversity of corporate boards and management. We believe, however, that this subject matter is more appropriately addressed as part of CSA initiatives relating to corporate governance disclosure and are supportive of the “comply or explain” type approach proposed by the CSA, as indicated in our submission to the Ontario Securities Commission in connection with their recent request for comments on the question of board diversity. We do not believe amendments to the CBCA are necessary or appropriate to address the legitimate concerns which have arisen with respect to diversity.

### **Corporate Social Responsibility**

- 20 *Stakeholders and others are invited to submit comments as to whether the existing provisions of the CBCA adequately promote corporate social responsibility (CSR) objectives and whether additional measures to promote CSR objectives are warranted in the CBCA.*
- 21 PSP Investments believes that the current provincial regulatory model of requiring disclosure of an issuer’s environmental, social and governance risks and board management oversight of those risks, as a means of enhancing corporate social responsibility, is appropriate at this

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time and amendments to the CBCA are not necessary. These disclosure requirements, in conjunction with provisions of the CBCA requiring directors and officers to “act honestly and in good faith with a view to the best interests of the corporation”, which, as confirmed by case law, permit directors to consider the interests of stakeholders including employees, creditors, suppliers, consumers, community members, governments and the environment, provide an appropriate framework for the promotion of CSR objectives.

We appreciate this opportunity to comment on the CSA Proposal. Please do not hesitate to contact the undersigned if you wish to discuss any aspect of this letter in further details.

Sincerely,

A handwritten signature in cursive script that reads "Stéphanie Lachance".

Stéphanie Lachance  
Vice President, Responsible Investment and  
Corporate Secretary