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

Dear Mesdames/Sirs:

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

Thank you for the opportunity to comment on the *Consultation on the Canada Business Corporations Act* (the "**Discussion Paper**"). We are a full service law firm with offices in several provinces in Canada and as such have advised a wide range of clients with respect to the CBCA. In the course of representing our clients, we have had the opportunity to deal with several of the issues raised by Industry Canada in the Discussion Paper and provide our comments herein on such issues as well as on some additional practical and technical issues not specifically raised in the Discussion Paper.

Given the number and scope of issues to consider, we have set out below comments from certain members of our firm in three parts. Part I sets out our general thoughts and comments applicable to a group of topics in the Discussion Paper. Part II sets out some specific comments in addition to our general thoughts on certain topics in the Discussion Paper and in Part III we have suggested some practical amendments that would clarify certain provisions in the CBCA for your consideration. For ease of reference, we have used the same headings referenced in the Discussion Paper.

PART I. GENERAL COMMENTS

Three general themes run through our comments, as described below:

1. Distinguish between Distributing and Non-Distributing Corporations

Several of the issues raised in the Discussion Paper are relevant in the context of distributing corporations; however, they are less so with respect to non-distributing corporations, for which they might even be impractical. For example, the separation of the functions of Chair of the Board and Chief Executive Officer of a corporation would not be practical for a large number of small non-distributing corporations, which very often have a single shareholder who acts as the sole officer and director of the corporation. If the discussions regarding such issues result in amendments to the CBCA, we believe that it should be clear such provisions do not apply to non-distributing corporations.

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2. Maintain Flexibility for Non-Distributing Corporations

We further believe that non-distributing corporations, irrespective of size, should be afforded maximum flexibility to structure and manage their affairs (on the contrary, we note that certain proposals in the Discussion Paper would, for example, discourage the commonly used holding company structure). As we discuss below, a number of avenues are currently available to non-distributing corporations to set out any desirable or necessary rules and procedures to govern and manage themselves, including through the provisions of their constating documents or the use of contracts among shareholders. Several of the issues raised in the Discussion Paper, if applicable to non-distributing corporations, would severely restrict this flexibility to manage their own affairs.

3. Avoid Overlapping Regulations

Finally, where existing legislation appropriately governs a subject matter or provides the framework for its regulation (securities legislation is one such area), we are of the view that, absent any compelling reasons (including any jurisdictional concerns), the CBCA should not also regulate the same subject matter. We advance this argument for a number of reasons. To do so would be inefficient, could potentially result in differing interpretations of the same substantive regulation and would result in multiple regulatory frameworks that may ultimately create undue regulatory burden, uncertainty and inefficiency for the regulated entities.

Further, with respect to securities regulation in particular, we believe that, consistent with past Industry Canada practice,¹ efforts should be made to avoid regulatory duplication by ensuring that the CBCA does not regulate issues that are appropriately addressed under securities laws.

Lastly, it is our view that securities regulation is the preferable avenue for addressing a number of issues raised in the Discussion Paper. The broad range of tools and the flexibility available to securities regulators (including their ability to adopt rules and policies, and generally to respond in a more timely manner to market and regulatory developments as compared to the process of legislative review), and, arguably, a more accessible legislative review process, are additional reasons to support this view. This is particularly compelling given that a number of the corporate governance issues raised in the Discussion Paper, we believe, should not be addressed through prescriptive rules, but rather by “comply or explain” requirements. Such “comply or explain” requirements have been embraced in other G8 regulatory models (including with respect to issues such as board diversity and separation of the role of Chair of the Board and Chief Executive Officer). Securities regulators, in fact, have at their disposal the ability to issue policies that set out the relevant principles to be incorporated or “best practices” that are recommended but not necessarily mandatory. We note that a further benefit under securities regulation, with respect to disclosure requirements applicable to distributing corporations in this case, is that securities legislation imposes secondary market civil liability, among other things, for

¹ An example of this past practice is the repeal, effective December 12, 2008, of certain specific provisions of the *Canada Business Corporations Regulations* relating to the contents of proxy circulars given that the same matters were addressed in securities regulation.

prescribed types of public disclosure made by reporting issuers, and thereby provides a direct recourse by shareholders for misrepresentations (and for failure to make required timely disclosure). In addition to their ability to respond to relevant market developments and trends in a timely manner, stock exchanges have, for their part, the advantage of being able to tailor regulation to their listed entities.

Although Industry Canada's regulation of certain subject matters may be warranted when these are not adequately addressed by provincial regulators or self-regulatory organizations ("SROs"), we do not believe the issues raised in the Discussion Paper fall into this category of issues for which there is a regulatory gap or shortcoming.

Based on the above general considerations, we have outlined below some of the topics raised in the Discussion Paper that we believe are not required to be addressed in the CBCA, primarily because they are either adequately addressed by existing securities regulation or currently under review by securities regulators and/or SROs, and, where applicable, provided additional background information or rationales.

Executive Compensation

This topic, which includes issues such as "say-on-pay" and executive compensation disclosure, has attracted much attention from provincial securities regulators and institutional shareholder organizations such as the Canadian Coalition for Good Governance ("CCGG"). Such sustained focus, combined with the reasons cited in our general comments, support the continued regulation of these issues by provincial securities regulatory authorities.² Revisions made to Form 51-102F6 *Executive Compensation* over the last few years reflect the efforts of securities regulators to keep pace with market developments relating to executive compensation and to encourage robust disclosure (which effort is bolstered by issue-specific reviews on a periodic basis). To the extent further disclosure is required, we believe that it is an issue most appropriately addressed under securities regulation.

Similarly, while "say-on-pay" is not currently prescribed by either the securities regulators or the Canadian stock exchanges, the topic has received significant focus from market watchers and commentators, led by CCGG, Institutional Shareholder Services Inc. ("ISS"), Canadian pension funds and similar groups, and like other areas relating to disclosure (e.g. social, diversity or environmental issues), is more appropriately addressed under the existing securities regulatory framework. Ontario Securities Commission Staff Notice 51-716 - *Environmental Reporting* outlines the results of a targeted review by the staff of the Ontario Securities Commission ("OSC") to determine the degree to which reporting issuers were adequately disclosing information about "environmental matters" in their annual financial statements, related management's discussion and analysis and annual information forms. In addition, OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues* (published in January 2011) indicates that the OSC is considering the development of regulatory proposals relating to director elections, "say-on-

² Disclosure, in particular, is an area that is comprehensively regulated by securities regulators through various prescribed disclosure forms, and through prescribed information required to be included in management proxy circulars and annual information forms.

pay” and the effectiveness of the proxy voting system (which commitment has been reiterated in subsequent staff communications in 2014,³ including the OSC’s request for comments regarding its statement of priorities and the holding of a roundtable discussion by the OSC in January 2014 in connection with issues surrounding the reliability and integrity of proxy voting).

Shareholder Rights

A. Voting – Mandatory Voting by Ballot, Slate Voting, Majority Voting and Maximum Terms for Directors

Subsection 152(3) of the CBCA provides that, if the Chair of the meeting declares that in the event a ballot is conducted and to his knowledge, the votes that would be cast against what would be the decision of the meeting, amount to less than 5% of all votes that might be cast by shareholders in person or by proxy, then, unless otherwise demanded by a shareholder or proxyholder, the Chair may conduct the vote by a show of hands instead of by way of a ballot. This would imply that in cases where the Chair is aware that at least 5% or more of the votes would be cast against what would be the decision at the meeting (for example, where a shareholder has requisitioned a meeting under section 143 of the CBCA potentially to put forward a matter to be considered, such shareholder must hold at least 5% of the shares outstanding to requisition such a meeting), voting by ballot would be mandatory. Thus, the CBCA already provides for mandatory ballot voting where at least 5% of the vote would be a dissent vote, in specified (and likely contentious) circumstances, where the concerns surrounding a shareholder’s ability to assess the level of shareholder support and the accuracy of voting results are most relevant. Amending the CBCA to require ballot voting in all circumstances including for ‘housekeeping’ type matters (such as the appointment of an auditor) would result in an onerous process that would carry additional financial costs for corporations.

Distributing corporations, pursuant to National Instrument 51-102 *Continuous Disclosure Obligations* (“NI-51-102”),⁴ are already required to disclose the outcomes of matters voted upon and if such a vote were conducted by ballot, particulars with respect to votes cast for, against or withheld. We do not recommend amending the CBCA to require mandatory ballot voting in all circumstances as the CBCA already provides for mandatory ballot voting in circumstances that are most likely to benefit from such a voting process.

The Toronto Stock Exchange (“TSX”) currently prohibits slate voting⁵ of directors for listed issuers and, further to recently approved amendments to the TSX Company Manual, now requires non-majority controlled listed issuers to adopt a majority voting policy and directors, to be elected at non-contested meetings, to be elected by a majority of votes cast.⁶ These amendments to the TSX Company Manual are applicable to listed issuers whose fiscal

³ OSC Notice 11-769 – *Request for Comments Regarding the Statement of Priorities for Financial Year to End March 31, 2015* published on April 3, 2014.

⁴ Section 11.3 of NI 51-102.

⁵ Section 461.2 of the TSX Company Manual.

⁶ See also the TSX Request for Comments – Amendments to Part IV of the TSX Company Manual dated October 4, 2012 (2012) 35 OSCB 9168.

year ends are on or after June 30, 2014 and such issuers must comply with this new regulation for their first annual meeting after such date.

With respect to director terms, the imposition of maximum terms would not be desirable or practical for non-distributing corporations (e.g., where the sole shareholder is also a director), and the TSX has existing policies to discourage or prevent entrenchment of directors for distributing corporations.⁷ As these topics are much more relevant for distributing corporations, we believe they are appropriately left to regulation through the TSX and provincial securities regulators.

We urge Industry Canada to give additional consideration to whether the plurality voting standard (which, in situations where there are not more nominees than directors to be elected, only requires a single vote in favour to pass that matter, due to the “vote for” or “withhold” scenario) is the appropriate standard for matters such as director elections. In addition, we suggest that further thought be given to the interplay between the plurality voting standard and other provisions in the CBCA to provide federal corporations with greater clarity with respect to the voting standard. To illustrate the current lack of clarity on this point, subsection 106(3) of the CBCA provides that shareholders shall elect directors by way of an ordinary resolution. The definition of an “ordinary resolution” incorporates the concept of “a majority of the votes cast”. The options available on a proxy for electing directors, however, are “vote for” or “withhold”. This appears to be inconsistent with the concept of a “majority of votes cast” since “votes for” are the only “votes cast” and votes “withheld” are not considered “votes cast”. As a result, no “majority of votes cast” could actually apply given that all “votes cast” would be “votes for”. Additional consideration and clarification of such issues in the CBCA would thus be beneficial. We note that this issue was avoided in the *Business Corporations Act (Quebec)* (“QBCA”). Rather than requiring that directors be elected by ordinary resolution, the relevant provision⁸ of the QBCA provides that they be elected “in the manner ... set out in the bylaws”, and, as such allows for plurality voting (if such method is provided for in the bylaws).

A. Voting – “Over-voting”

“Over-voting” is an issue that is relevant for distributing corporations and is linked to the proxy solicitation processes which are currently regulated by provincial securities regulation. The issue relates in particular to the technical processes by which proxies are cast and tabulated, which are currently regulated by the securities regulators under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (“NI 54-101”) which also regulates securities intermediaries that play a role in these processes. As noted above, securities regulators are currently exploring various ways of addressing issues with the proxy voting process.⁹ Please also see our additional thoughts on proxy solicitation below in Part II – Administrative and Technical Matters.

⁷ See for example section 461 of the TSX Company Manual, which requires issuers to, among other things: (i) elect all directors annually; (ii) elect directors individually; and (iii) disclose by press release the voting results for the election of directors.

⁸ Section 110 of the QBCA.

⁹ A roundtable discussion, led by the OSC took place in late January 2014 in connection with these issues and other related issues surrounding the reliability and integrity of proxy voting. The discussion was based on

B. *Shareholder and Board Communication*

As mentioned above, the proxy process is already currently regulated in NI 54-101 for distributing corporations. If amendments are to be made to existing proxy solicitation and disclosure regulations, for example to enable significant shareholders of distributing corporations to include alternate board nominees in the management's proxy circular, these should be carried out within the securities regulatory framework. Given the review process underway on proxy solicitation and proxy voting, we believe it is preferable to await and consider the results of such review process prior to weighing related amendments, if any, to the CBCA. Again, this topic is of much greater relevance to distributing corporations. See also our comments in Part II – Administrative and Technical Matters.

C. *Board Accountability*

The separation of the roles of Chair of the Board and Chief Executive Officer, and disclosure of the board's understanding of social and environmental matters are of concern principally to shareholders of distributing corporations. The current securities regulatory framework can address these concerns by means of either recommendations or specifications in respect of board composition. This is already the case, for example, when it requires audit committee members to be independent¹⁰ and recommends that a majority of directors be independent.¹¹ National Policy 58-201 *Effective Corporate Governance* also recommends as a best practice that the Chair of the Board be an independent director, and, where this is impractical, that an independent lead director be appointed. See also Part II below for additional comments in connection with shareholder approval for significantly dilutive transactions.

Corporate Social Responsibility and Diversity of Corporate Boards

In keeping with the discussion above, the concerns regarding diversity of corporate boards (raised in Part VII of the Discussion Paper) and promotion of corporate social responsibility are relevant for distributing corporations and can be addressed through pressure by shareholder organizations and within the existing securities regulatory framework, including through any "comply or explain" requirements. We note in this respect that the OSC released proposed amendments to Form 58-101F1 in January 2014 which are intended to enhance disclosure of, among other things, a board's gender diversity. Similarly, it is our view that disclosure of a distributing corporation's business and affairs has been comprehensively regulated under the securities regulatory framework through requirements of disclosure in the wide range of documents that are prescribed for distributing corporations, including management's discussion and analysis ("MD&A"), proxy circulars, and annual information forms (as discussed above). Certain elements of these forms encompass corporate social responsibility matters, and, in our view, are the most appropriate avenues for enhanced disclosure to the extent additional disclosure is desirable or necessary.

CSA Consultation Paper 54-401. Review of the Proxy Voting Infrastructure issued by the Canadian Securities Administrators in August 2013.

¹⁰ National Instrument 52-110 *Audit Committees*.

¹¹ National Policy 58-201 *Effective Corporate Governance*.

PART II. SPECIFIC COMMENTS ON CERTAIN DISCUSSION PAPER TOPICS

Shareholder Rights

A. Shareholder and Board Communication – Electronic Meetings for Public Companies

Current CBCA provisions permit, but do not require, shareholder meetings to be held by electronic means. We understand that few if any CBCA corporations have held virtual shareholder meetings. As technology continues to play an integral role in facilitating communications between shareholders and management, we believe that the current approach taken in the CBCA is appropriate and that corporations should continue to have the option to hold meetings by electronic means and not be required to hold shareholder meetings only in person.

B. Shareholder and Board Communication – Facilitation of Notice-and-Access Provisions under the CBCA

Current notice-and-access provisions of Canadian securities laws permit a distributing corporation to, among other things, send proxy-related materials (including its financial statements and MD&A, should it so choose) to its registered holders and beneficial owners electronically, provided that consent has been obtained, and to post certain documents on a website other than the System for Electronic Disclosure and Reporting (“SEDAR”).¹²

The net effect of the CBCA’s existing provisions is that it is doubtful whether notice-and-access can be used by a CBCA corporation without a shareholder’s express consent or instructions which, in the circumstances of a corporation with a broad shareholder base, is both logistically challenging and impractical to obtain, and in certain circumstances arguably impossible. In summary, CBCA distributing corporations that intend to use notice-and-access provisions must ensure that in doing so they also comply with their constating documents, by-laws and the CBCA, which requires:

- express written consent for the electronic delivery of proxy-related materials (notice, form of proxy, information circular) to shareholders; and
- that copies of the financial statements and related auditors’ report for the most recently completed financial year be sent to shareholders, other than those who have informed the corporation in writing that they do not wish to receive them.

In contrast, through the combination of the notice-and-access provisions contained in securities regulation, provincial corporate law and laws relating to electronic communications, provincially regulated corporations can rely on an implied consent concept, which, in our view, facilitates the use of notice-and-access by such corporations (which do not have the same challenges as express consent) while at the same time

¹² See Part 9 of NI 51-102, which applies to registered holders, and NI 54-101, which permits the use of notice-and-access with respect to beneficial holders.

adequately ensuring that shareholders who wish to receive paper copies have the ability to do so.

Certain provisions in the CBCA pertaining to the duties of intermediaries also create concerns about the viability of utilizing notice-and-access in relation to beneficial owners. In particular, such provisions prohibit the voting of any shares that are registered in the name of an intermediary and not beneficially owned by it, unless the intermediary sends to the beneficial owner copies of all proxy-related materials that it receives. Notice-and-access, however, provides that the intermediary would only receive a "Notice-and-Access Notice" (and paper copies of the financial statements and MD&A, if applicable) and it is not clear whether the forwarding of this Notice-and-Access Notice alone would satisfy such requirement and permit those shares to be voted. In contrast, see for example similar provisions in section 49 of the *Securities Act* (Ontario ("OSA")) and sections 164 and 165 of the *Securities Act* (Quebec) which apply to "registrants" and "custodians" (to "dealers" or "any other persons holding the securities of a distributing corporation on behalf of clients" in Quebec) but do not condition the ability to vote shares on the documents having been forwarded.

Although Corporations Canada stated in an announcement made in early 2013 that notice-and-access "provides shareholders with sufficient disclosure to support an application for an exemption from the requirement set out in subsection 150(1) of the CBCA to send the prescribed management proxy circular to each shareholder whose proxy is solicited", it indicated in the same announcement that the authority to grant an exemption does not extend to the requirement under section 159 of the CBCA to send financial statements to shareholders nor to the requirements applicable to intermediaries under section 153 of the CBCA, and that Corporations Canada takes "no position as to the effect of the exemption on the duties of an intermediary as detailed under section 153 of the CBCA." Thus, the extent to which notice-and-access can be relied on given the current CBCA provisions regulating the delivery of various documents to shareholders remains unclear.

When examining potential amendments that would facilitate the use of notice and access for CBCA distributing corporations, provisions such as paragraph 134(3)(a) of the CBCA (which requires an advertisement to be published in a newspaper, where a record date has been set by directors to determine shareholders) should also be reviewed for their continued utility and purpose given the prevalence of additional and more modern (and arguably faster and more broadly accessible) means of communication with stakeholders, and the increasingly global nature of capital markets. In this example, a requirement for a news release setting out the record date fixed by the directors could serve the same purpose.

We support amendments to the CBCA that would facilitate the use of notice-and-access provisions by clarifying that CBCA distributing corporations can rely on an informed and implied consent concept to avail themselves of methods other than physical mailing to send prescribed documents to their shareholders and by clearly eliminating any requirement to forward physical copies of proxy or other materials to beneficial holders when a corporation has elected to use another means of delivery.

C. Board Accountability – Shareholder Approval of Significantly Dilutive Acquisitions

Many major stock exchanges already provide shareholders of distributing corporations with a mechanism to express their approval or disapproval of transactions that can materially affect control of the corporation by diluting their existing shareholdings. For example, for acquisitions where the number of securities issued or issuable in payment of the purchase price exceeds 25% of the number of outstanding securities of the corporation, on a non-diluted basis, the TSX currently requires distributing corporations to obtain the majority approval of their shareholders.¹³

Similarly, for private placements by TSX-listed companies that will result in the issuance of an aggregate number of listed shares that is greater than 25% of the number of outstanding shares on a non-diluted basis where the issue price per share is less than the market price per share, the TSX requires shareholder approval to be obtained to address similar concerns regarding shareholder dilution.¹⁴

Proposed amendments to the CBCA to address this particular issue would therefore duplicate the existing regulation for distributing corporations and potentially lead to inconsistent interpretations between the different legislative frameworks. In addition, we note that TSX rules permit the waiver or modification of such shareholder approval requirement to address public policy concerns in a time-sensitive manner while balancing the need for flexibility for corporations undertaking such transactions.

If such a requirement is codified in the CBCA, it could adversely impact this flexibility currently in the regulatory framework for corporations that legitimately require a time-sensitive and flexible approach.

Most CBCA non-distributing corporations tend to be closely held by shareholders who are owner-operators or otherwise knowledgeable in the affairs of the corporation. Other mechanisms are available to provide shareholders of CBCA non-distributing corporations with an ability to express their approval or disapproval of significantly dilutive acquisitions. For example, such a corporation with multiple shareholders could be governed by a shareholders' agreement that would require shareholder approvals for certain matters such as additional issuances of shares, significant transactions or transfers of issued shares. Shareholders could also restrict the transfer of shares through the articles of the corporation (which could provide, for example, that transfers will be permitted only if shareholder or board approval is obtained) or other means. Moreover, because an acquisition that is significantly dilutive would require board approval, shareholders of non-distributing corporations are likely to have a say in the matter given that they are often also board members or have some level of board representation through a shareholders' agreement. Finally, the oppression remedy remains available to shareholders.

Given that (i) shareholders of non-distributing corporations have mechanisms in place (e.g. shareholders' agreements) to regulate among themselves transactions that can materially affect control of the corporation through a dilution of their shareholdings and (ii)

¹³ Subsection 611(c) of the TSX Company Manual.

¹⁴ Subsection 607(g)(i) of the TSX Company Manual.

shareholders of distributing corporations are already protected by existing TSX rules, we do not believe that amendments to the CBCA are required in this regard.

Securities Transfers and Other Corporate Governance Issues

Potential Removal of the CBCA Provisions Relating to Securities Transfers

Securities transfer legislation has been adopted in a largely uniform manner by all provinces and territories in Canada with the exception of Prince Edward Island. The legislation is based on the Uniform Securities Transfer Act developed by the Canadian Securities Administrators and reflects the modern environment for securities transfers in Canada. In particular, current securities transfer legislation provides a framework that contemplates, amongst other things, the transfer, acquisition and control, and priority of securities and interests in securities that are indirectly held by securities intermediaries, and clarifies the relationships among the various parties that are involved in the holding and transfer of securities.

The current CBCA provisions on the issuance, evidence of, transfer and acquisition of shares are less comprehensive than those provided under the provincial or territorial securities transfer legislation and do not adequately contemplate the issuance of uncertificated securities, which have become much more common, or the holding of such securities by securities intermediaries. We therefore support the removal of CBCA provisions relating to securities transfers so as to ensure that, by default, the transfer of securities of CBCA corporations be governed by applicable provincial or territorial securities transfer legislation.

In addition, we believe that certain amendments should be considered to provide for the issuance of uncertificated securities and to promote certainty in qualifying securities as certificated or uncertificated, in order to harmonize the CBCA with the application of provincial and territorial securities transfer legislation. With the introduction of securities transfer legislation in various Canadian jurisdictions, a number of corporate statutes have been specifically amended to provide for the issuance of uncertificated shares. For example, certain provisions of the QBCA, which came into force in early 2011, were meant to implement the reform previously anticipated by the *Act respecting the transfer of securities and the establishment of security entitlements* (Quebec). The QBCA avoids uncertainty as to the qualification of shares as certificated or uncertificated by making clear that, unless a resolution of the directors is passed establishing that the shares in question are to be issued as uncertificated shares, the shares will be considered certificated¹⁵. We submit that any amendment to the CBCA should similarly require that specific action be taken to render shares uncertificated and specify that, unless such action has been taken, shares will be deemed certificated for the purpose of securities transfer legislation. While allowing for the issuance of uncertificated shares, other corporate statutes have not entirely eliminated the indeterminate status of shares for which no certificate has been issued but which have not been identified as “uncertificated” in a directors’ resolution. Under the *Business Corporations Act* (Ontario) (“OBCA”) and the *Business Corporations Act* (British Columbia) (“BCBCA”),

¹⁵ See section 61 of the QBCA. This is also the approach taken in the Delaware Code, Title 8, Corporations at §158.

for example, it remains unclear whether a share would qualify as an “uncertificated security” if no such resolution was passed.

The CBCA currently also provides security holders the right to a security certificate or a non-transferable written acknowledgement of such right (“NOTWRACK”).¹⁶ Eliminating the current right of security holders to a certificate or a NOTWRACK may help to resolve the uncertainty noted above. Where provincial corporate statutes still provide this right,¹⁷ certain inconsistencies with applicable securities transfer legislation or interpretation issues have been identified. For example, under the BCBCA, the right to a NOTWRACK is preserved only for those shares that are not uncertificated shares under that statute, which raises the question whether shares of a BCBCA corporation for which NOTWRACKs have been issued could ever be considered “uncertificated” under the British Columbia securities transfer legislation.

A clarification that a CBCA corporation can issue uncertificated securities would thus be required.¹⁸ Also, the uncertainty regarding whether NOTWRACKs (if this concept is maintained), or securities for which no certificates have been issued, fall within the definition of “uncertificated securities” under applicable securities transfer legislation should also be addressed in amendments to the CBCA.

As well, the conflict of laws rules under provincial or territorial securities transfer legislation would, in most cases,¹⁹ allow a CBCA corporation to determine the applicable provincial or territorial law governing the transfer of its securities in addition to other related matters. In considering amendments to the CBCA in respect of securities transfers, any amendments should be consistent with existing provincial securities transfer legislation including guidance, if any, for ascertaining the applicable governing statute.

The changes noted above (removing securities transfer provisions, addressing and clarifying various issues in respect of uncertificated securities and NOTWRACKs and clarifying the method for ascertaining the applicable statute governing federal corporations for securities transfers) would constitute an effective and efficient way to modernize and update regulation of securities transfers as such changes would provide a level of certainty for stakeholders who could look primarily to a single framework to govern securities transfers. They would also eliminate the need to update and harmonize federal legislation with existing provincial securities transfer legislation.

Insider Trading Provisions

We submit that the Part XI Insider Trading provisions of the CBCA should be repealed in respect of distributing corporations. In our view, concerns addressed by these provisions in respect of distributing corporations are adequately addressed through the Criminal Code, provincial securities regulation as well as stock exchange rules and other

¹⁶ Subsection 49(1) of the CBCA.

¹⁷ For example, the BCBCA and the *Business Corporations Act* (Alberta) also continue to provide for this right.

¹⁸ For example, section 54 of the OBCA provides specifically that corporations may issue uncertificated securities.

¹⁹ We note that the absence of securities transfer legislation in Prince Edward Island creates an unfortunate gap that would need to be addressed without delay.

SRO rules.²⁰ Further, the insider trading provisions of the CBCA in respect of distributing corporations are outdated and do not reflect current market practices with respect to securities trading and as a result, have caused interpretational issues, inconsistencies and unnecessary constraints on otherwise unproblematic activities, such as engaging in hedging activities for legitimate risk management purposes (including hedging activities entered into, by or for the benefit of the corporation and not the insider through, among other things, application to indirect activities by insiders). Finally, the provisions are inconsistent with analogous restrictions under securities laws and SRO rules, which arguably provide a more complete code for the regulation of these matters (such as the insider trading prohibitions under the OSA and the short sale restrictions under the Universal Market Integrity Rules).²¹

Canadian Residency Requirements for CBCA Directors

We submit that there is no longer a need to preserve board residency requirements in the CBCA. A modern corporate legislative framework should promote the composition of a board with the appropriate expertise and skills for the management of the corporation. To the extent the policy objective is to promote Canadian viewpoints and enhance the effectiveness of Canadian director liability laws, these are not, in our view (discussed in detail below), effectively achieved through such a requirement. Removing the residency requirement for directors from the CBCA would facilitate the selection of board members based solely on their expertise, skills, industry-specific knowledge and any other potential requirements, including independence for distributing corporations, to promote good governance. It should be up to the shareholders to determine if a director with a Canadian viewpoint, background or residency would be appropriate for the corporation's board. Furthermore, requiring a minimum number of directors to be Canadian residents by no means guarantees the promotion of Canadian viewpoints, and the *Investment Canada Act* already serves as a safeguard that foreign-owned Canadian subsidiaries will act in the best interest of Canada at the commencement of investments.

The need for, as well as the ability and the fairness of, a Canadian residency requirement to enhance the effectiveness of director liability laws or Canadian national interests is in fact questionable:

- When shareholders decide to incorporate under the CBCA and are forced to find and elect Canadian resident directors, they may often choose to restrict such directors' powers to manage or supervise the management of the business and affairs of a corporation through a unanimous shareholders' agreement and, in such case, directors are relieved of their liabilities to the same extent. In other words, corporations may have Canadian resident directors but such individuals

²⁰ See for example the Universal Market Integrity Rules ("UMIR") promulgated by the Investment Industry Regulatory Organization of Canada, which impose specific requirements on short sales and trades made by insiders, and in this respect provide a much more nuanced and market-appropriate framework for the regulation of short sales. Short selling is also regulated by some of the provincial securities acts.

²¹ See for example the exception under subsection 130(3) of the CBCA from prohibition on short sales, which requires the exercise of a conversion or exchange privilege, option or right within 10 days, in contrast to similar provisions under UMIR, which are more reflective of market practice.

may have no powers to manage or supervise the management of the business and affairs of the corporation.

- The existing rules can lead to the election of “token” Canadian resident directors who may have no or very little practical management powers, but are still fully exposed to the vast array of director liabilities (unless such powers are restricted by a unanimous shareholders’ agreement). For example, Canadian tax judgments against non-resident directors are not enforceable in the United States. If the board of a CBCA corporation only consists of Canadian and US resident directors, only those resident Canadian directors would be exposed to enforcement of such judgments, which is patently unfair.
- From a practical perspective, corporations which do not have a ready group of Canadian residents to select from as candidates for directorship frequently elect to incorporate in, or continue to, other Canadian provincial or territorial jurisdictions where there is no Canadian residency requirement. Jurisdictions such as British Columbia, New Brunswick, Quebec, Nova Scotia and Prince Edward Island, as well as the territories, do not have residency requirements for directors of corporations governed by their corporate statutes.²² Each year we are asked to assist numerous clients to incorporate in, or continue to, these other Canadian jurisdictions to address this specific residency issue. This erodes the base of federally incorporated corporations.

If establishing director liability or promoting Canadian national interests are the policy objectives of the residency requirement, the efficacy of these provisions is questionable at best and the requirement itself makes doing business in Canada more difficult and costly. As stated in the Dickerson Report:²³

“Canadian industry being what it is, it seems a futile gesture to impose a general requirement that directors of federally incorporated corporations should be citizens or residents of Canada. If, in a particular industry, it is thought desirable as a matter of government policy to insist upon such a qualification, this should be the subject of specific legislation.”

Regulation of Trust Indentures under the CBCA

Part VIII of the CBCA relating to trust indentures is a section of the CBCA that we believe is outdated and of limited use. Firstly, it is unclear why it is necessary for the CBCA to mandate requirements relating to trust indentures, given that these are all protections or rights that are arguably best addressed through contractual rights obtained through negotiations between relevant parties. As this part of the CBCA applies only to distributing corporations, investors would generally be protected through additional measures such as prospectus disclosure and involvement by sophisticated parties such as agents or

²² Currently, only five provinces (Alberta, Saskatchewan, Manitoba, Ontario and Newfoundland and Labrador) have residency requirements for directors of corporations incorporated or continued in those provinces.

²³ R.V.W. Dickerson et al, *Proposals for a New Business Corporations Law for Canada* (1971).

underwriters. In our experience, the involvement of trustees is largely a function of whether it is useful to have certain rights (e.g., security interests) vest in a single bondholder representative. The parties are best suited to choose whether this is necessary or useful in their circumstances. Moreover, the representative function of trustees in our experience is rarely a factor in determining the outcome of any specific issue that may arise, not least because individual bondholders in Canada have oppression remedies available to them which their counterparts in the US, for example, (where the *Trust Indenture Act* originated in the 1930s), do not. Aside from such representative function (the utility of which is questionable), trustees perform few other practical functions. Further, the application of the trust indenture requirements where a debt obligation is part of a “distribution to the public” has resulted in interpretational issues, including issues with determining whether it applies only to prospectus distributions or also to prospectus exempt distributions completed under some form of offering document. Finally, it creates difficulties for corporations involved in cross-border offerings where, among other things, the requirement to have a Canadian trustee can be impractical and unnecessary. Given the reasons cited above, we recommend the removal of Part VIII of the CBCA.

Arrangements Under the CBCA

There is a well-developed body of jurisprudence dealing with the use of arrangements under section 192 of the CBCA to restructure insolvent corporations. As mentioned in the Discussion Paper, courts have already in certain cases interpreted the provision to permit its use where only one of the corporations is solvent in response to the restructuring needs of corporations. The use of CBCA arrangements for restructuring insolvent corporations provides an efficient, cost-effective alternative to insolvency proceedings under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*. In particular, section 192 of the CBCA provides courts with the flexibility needed to continue developing a time-sensitive and cost efficient framework for balance sheet restructuring while ensuring that the interests of security holders (whether debt or equity) and other interested persons are protected. We support clarifying the legislation to provide the courts with full flexibility in exercising their discretion in regards to the use of CBCA arrangements by corporations to address their restructuring needs (including removing the solvency requirement in subsection 192(3) of the CBCA).

Administrative and Technical Matters

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 and the right to dissent)?

In various places throughout the Discussion Paper, Industry Canada has raised the issue of the treatment of beneficial owners of securities, including in respect of the ability to send proxy-related materials to beneficial owners and to giving them more rights, such as the right to vote and dissent to promote shareholder democracy. We agree that, given the overwhelming practice of shareholders of distributing corporations holding their shares through intermediaries, the rights and obligations of beneficial owners and related issues like “empty-voting” are important and pressing issues that need to be addressed. However, we also recognize that promoting shareholder democracy through various shareholder rights is complex. Issues such as “empty-voting” and appropriate disclosure by nominee

shareholders of the identity of the beneficial holders for whom they are acting, among other issues, must be considered together in crafting appropriate mechanisms to promote shareholder democracy.

We urge Industry Canada to undertake a thorough review of all of the issues involved, including consideration of greater transparency through enhanced disclosure and the different ways in which interests in securities may be held and the appropriate rights and obligations of those holding their interests in anything other than directly registered form.

We further urge Industry Canada to harmonize the treatment of beneficial owners under the CBCA. For example, while beneficial owners do not directly have the right to dissent (only a registered holder may dissent on its own behalf or on behalf of a beneficial shareholder) or the right to requisition the directors of a corporation to call a meeting, they do have the direct right to requisition a shareholders' meeting (by way of a shareholder proposal) – the last recognizes a shareholder's right to bring forward issues for discussion at a shareholders' meeting, and yet, beneficial shareholders are only able to exercise such a right by way of a shareholder proposal and cannot directly requisition the directors of a corporation to call a shareholders' meeting. The rationale in the CBCA for granting certain rights directly to beneficial shareholders while withholding others which may only be exercised by a registered shareholder (whether or not on behalf of a beneficial shareholder), is unclear.

A consistent policy rationale, taking into account how the rights and interests of each group are to be reflected, should determine what shareholder rights under the CBCA should apply to or be exercised by registered shareholders only or by both registered and beneficial shareholders. We recognize that such an approach would require a balance of potentially competing policy objectives (e.g., the right to privacy of a shareholder and true shareholder democracy) and would involve a comprehensive review of the shareholder voting system which would also need to take into account the interplay between the CBCA and securities transfer legislation. For example, current provincial securities transfer legislation already provides significant elements of the infrastructure necessary to protect the interests of beneficial holders by, among other things, imposing duties on intermediaries and others involved in the indirect holding system. Such existing regulation must also be considered in any review of the shareholder voting system.

Finally, we note that this is an area where the rules applicable to distributing corporations could differ from those applicable to non-distributing corporations, in particular because of the continuous disclosure obligations such as the requirement to disclose all beneficial shareholders who hold more than 10% of any equity or voting shares of a reporting issuer.

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

Currently the CBCA requires non-distributing corporations to solicit proxies if there are more than 50 shareholders. Most non-distributing corporations are small or medium-sized corporations and the costs of soliciting proxies (e.g., costs for drafting and

mailing of the proxy circular) are not insignificant. Typically, shareholders of such corporations are employees, consultants, directors or other persons who are actively involved in, are aware of, or otherwise have knowledge of, the operations of the corporation. A large number (if not all) of these shareholders may also be bound by agreements regulating the exercise of their rights as shareholders, such as the rights of attending meetings, voting or consenting to an action of the corporation. The requirement to solicit proxies, consequently, places a high cost on these corporations and does not necessarily provide any additional material benefit to shareholders. With respect to distributing corporations, we note that similar rules and requirements relating to proxy solicitation are also replicated in securities laws.²⁴

Given that (i) the proxy solicitation and meeting matters are well regulated by applicable securities legislation for distributing corporations, and (ii) most CBCA corporations are small or medium-sized non-distributing corporations²⁵ for which a requirement to solicit proxies typically comes at a high cost and does not necessarily provide any additional material benefit to shareholders, we support the removal of proxy-related provisions in the CBCA in respect of non-distributing corporations so as to allow non-distributing corporations to manage their own proxy solicitation and related processes through shareholders' agreements, their by-laws, or as they otherwise see fit.

Alternatively, consideration should be given to whether this provision of the CBCA should be amended to exclude current and former employees from the determination of the number of shareholders, to be consistent with the existing exemption from formal take-over bid requirements²⁶ and the "private issuer" exemption under securities legislation for the issuance of securities without a prospectus²⁷ (on the same principle that, generally, current and former employees, to the extent that they are shareholders, do not require the same protections (in the form of rights to information) as other shareholders given their close involvement with the corporation).

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 threshold exception to providing a dissident's proxy circular is an example of where regulators should distinguish between distributing and non-distributing corporations. Consistent with our comments above, distributing corporations are already regulated by applicable securities legislation in the solicitation of proxies and various matters in connection with communication with shareholders, and in particular, NI 51-102 provides for an equivalent exception for distributing corporations. Regulation of this subject matter should continue to rest with securities regulators and the CBCA should not

²⁴ See Part 9 of NI 51-102.

²⁵ Discussion Paper, Introduction, p. 1.

²⁶ Section 4.9 Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and section 6.1 of OSC Rule 64-504 *Take-Over Bids and Issuer Bids*.

²⁷ See paragraph 2.4(b)(ii) of National Instrument 45-106 *Prospectus and Registration Exemptions* which excludes from the determination of the number of securityholders current and past employees of the issuer or its affiliates.

also duplicate regulation on this topic for distributing corporations for the reasons cited in Part I – General Comments.

As well, most CBCA corporations are small or medium-sized non-distributing corporations whose shareholders would not gain any additional material benefit from such an exception that would outweigh the costs associated with preparing a dissident's proxy circular. Consequently, consistent with our comments above regarding the ability non-distributing corporations should have to govern themselves as they see fit, and because (i) many of the shareholder protection concerns giving rise to the proxy solicitation provisions are not applicable to non-distributing corporations, which tend to be closely held by one or a few shareholders who are actively involved in the corporation, and (ii) other mechanisms are available to facilitate shareholder participation (e.g., a shareholders' agreement), we do not believe a threshold requirement to permit the solicitation of proxies without a dissident's circular is relevant or useful. We therefore support removal of proxy-related provisions in the CBCA in respect of non-distributing corporations and allowing non-distributing corporations to manage their own proxy solicitation and related processes through their by-laws or as they otherwise see fit.

PART III. CERTAIN TECHNICAL MATTERS FOR CONSIDERATION

We have set out below in bullet point other suggested housekeeping amendments to the CBCA (references below are to sections or subsections of the CBCA):

- Subsection 20(5.1) (exception to maintaining certain records in Canada) is expressed to prevail over subsections 20(1) and (5) (requirement to maintain certain records in Canada) but not subsection 50(3) (requirement to keep a central securities register in Canada).
- We believe that the failure to expressly include a reference to subsection 50(3) in subsection 20(5.1) as an exception to the requirements set out in subsections 20(1) and (5) may have been an oversight since the requirement in subsection 50(3) is essentially identical to that in subsection 20(1).²⁸
- Subsection 210(3) provides that a corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders where, among other requirements, the corporation has discharged any liabilities. Other jurisdictions, such as Quebec and British Columbia, will allow a corporation to be dissolved as long as provisions are made for such liabilities. We propose that similar language be added to the CBCA given that it may not always be practical to discharge all liabilities (e.g., taxes may be reassessed for up to seven years) and creditor protection would be maintained if the liabilities are otherwise provided for, including by an assumption of liabilities to the extent of property received by shareholders, which is what is often done in practice.

²⁸ The operative wording "at its registered office or at any other place in Canada designated by the directors" is identical in subsections 20(1), 20(5) and 50(3) of the CBCA.

- Similarly, in the context of the acquisition by a corporation of its own shares (subsection 34(1)) and the declaration of dividends (section 42), consideration should be given to the propriety of the solvency requirements under subsection 34(2) and section 42 and in particular whether it is necessary that the realizable value of the corporation's assets be not less than the aggregate liabilities and the stated capital of all classes. As the corporation is required to determine that it would, after the share buyback or payment of dividend, have sufficient funds to be able to pay its liabilities as they become due, it is not clear to us the rationale for also requiring that such remaining funds include the stated capital amount, which generally is not an accurate reflection of the realizable commercial value of a corporation.
- Subsection 30(1) prohibits a corporation (i) from holding shares in itself or of its parent corporation, and (ii) permitting any of its subsidiaries to acquire shares of the corporation. There are some statutory exceptions to these prohibitions which apply in a narrow set of circumstances (subsection 30(2) and sections 31 to 36). In the context of a complex tax or corporate reorganization, we submit that the limited statutory exceptions do not provide the necessary flexibility and, as a result, additional steps often have to be structured into the reorganization solely for the purpose of complying with the prohibitions. These additional steps result in significant delays and costs. In contrast, the corporate statutes of certain other jurisdictions (i) allow a corporation to hold its own shares (Alberta and British Columbia) or the shares in its parent corporation (Alberta, British Columbia and Quebec), and (ii) permit subsidiaries of a corporation to hold shares of the corporation (Alberta, British Columbia and Quebec).²⁹ In certain jurisdictions, these inter-corporate shareholdings are permitted for a maximum of 30 days (Alberta and Quebec) so as to facilitate corporate reorganizations. We propose that subsection 30(1) be modified so as to facilitate corporate reorganizations in a similar manner.
- The possibility of creating separate classes of shares, or series of shares of the same class, with identical characteristics but each having a separate stated capital account would also be a welcome change as this would allow different attributes to be applied to the separate classes of shares (or series of shares of the same class) while maintaining standardized shareholders' rights. We note this possibility has already been made available for QBCA and OBCA-governed corporations,³⁰ and recommend it be considered for CBCA corporations.
- The CBCA currently provides, under subsection 26(6), that a corporation may, subject to certain conditions, add to a stated capital account "an amount it previously credited to a surplus account". We recommend that this provision be amended to specify that the reference to a "surplus account" includes a "contributed surplus account". This would ensure greater harmonization with the *Income Tax Act* (Canada) in which the concept of "contributed surplus" is the

²⁹ See section 32 ABCA, section 85 BCBCA, and section 86 QBCA.

³⁰ See third paragraph of section 49 of the QBCA and subsection 22(3) of the OBCA.

basis of certain calculations. Also, we note that subsection 26(6), which is currently drafted as a single sentence, is misleading with respect to its scope of application. For the sake of clarity, we recommend moving the part of the provision that applies only to bodies corporate continued under the CBCA (first part of subsection 26(6)) to a separate subsection (e.g., to the current subsection 26(7)) such that there be a clear distinction between the rules pertaining to stated capital in the specific and limited context of a continuation and those applying more broadly to CBCA corporations.

- A stock dividend includes any dividend paid by a corporation through the issuance of shares of any class of its capital stock. A corporation may increase its stated capital by issuing stock dividends, which are taxable as regular dividends in the shareholders' hands. Subsection 43(2) provides that a corporation is to add to stated capital the amount of the dividend declared (as opposed to fair market value) in respect of shares issued on a stock dividend. The use of the phrase "declared amount of the dividend" in subsection 43(2) makes it unclear whether a CBCA corporation can issue "high-low" stock dividends (i.e., shares that have a high market value and a low stated capital and which are issued as dividends). The same issue has been identified and clarified in the context of the review of certain provincial corporate statutes, such as the QBCA, the OBCA and the *Business Corporations Act* (Alberta) ("ABCA"). These statutes now all provide that if shares are issued in payment of a dividend, the corporation may add all or part of the value of those shares to the appropriate stated capital account.³¹ We suggest eliminating this uncertainty from the CBCA in a similar manner.
- Section 176 provides that, whether or not their shares carry voting rights, the holders of a class of shares or, under certain circumstances, of a series of shares, are entitled to vote separately as a class or a series on a proposal to amend the articles of the corporation so as to effect certain fundamental changes specified in subsection 176(1). The rationale for the provision is that an injustice may arise if voting shareholders of another class of shares are permitted to make fundamental changes to the share capital of the corporation that would unfairly affect the rights, privileges, restrictions or conditions attached to another class of shares. In Quebec, under the QBCA, an exception is made to the class vote requirement where the proposed amendment prejudicially affects the rights attaching to all the shares issued by the corporation in the same manner.³² The rationale for the exception is that, in such a case, all the shareholders are being treated equally. We recommend that a similar exception be added to the class vote provisions of the CBCA so as to avoid an additional and unnecessary step of obtaining separate class votes for each class of shares in the context of a corporate reorganization when the proposed fundamental changes are equally prejudicial to holders of all classes of shares.

³¹ Second paragraph of section 103 of the QBCA, subsection 38(2) of the OBCA and subsection 44(2) of the ABCA.

³² Section 191 of the QBCA.

- Subsection 183(4) provides that the holders of a class or series of shares of an amalgamating corporation are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would trigger a class vote under subsection 176(1). Paragraph 176(1)(c) requires a class vote where there is an exchange, reclassification or cancellation of all or part of the shares of that class. It is not clear whether (i) an “exchange” of shares is solely intended to capture a conversion of shares into other securities and (ii) a cancellation of shares is solely meant to capture a cancellation of shares for no consideration. As a result of this ambiguity, there is a risk that amalgamating corporations are needlessly incurring costs and expenses to conduct class votes when their shares are not converted into securities of the amalgamated corporation and, instead, their shareholders receive cash consideration. We submit that the precise meaning of the terms “exchange” and “cancellation” in paragraph 176(1)(c) be clarified so as to consequently clarify the scope of subsection 183(4).
- Section 9 provides that a corporation comes into existence on the date shown in the certificate of incorporation. In the context of a complex reorganization, for tax purposes, it is practical to have evidence of certain steps having occurred on the same date and in a specified sequence. We submit that section 9 should be amended to allow the inclusion of the time of incorporation in the articles of incorporation. We note that, under the QBCA, this has been facilitated by providing that a corporation comes into existence on the date, and if applicable, the time shown in the certificate of incorporation.³³
- The doctrine of corporate opportunities provides that a director cannot profit from an opportunity presented to him/her in his/her capacity as a board member of a corporation, and if such an opportunity was improperly taken that rightly belonged to the corporation, the director would be required to disgorge any profit received from such opportunity. This doctrine is problematic for principals and employees of private equity investors, who typically are members of several of the boards of companies in which the private equity investor holds an interest. By virtue of his or her role as a board member of one or more portfolio companies of such private equity investor, such person may be placed in a position where he or she would need to disclose, as a result of the application of this doctrine, the same opportunity to one or more of the portfolio companies of which he or she is a board member. Delaware has addressed this problem by permitting a corporation (through its articles or by way of action by its board of directors) to affirm that it does not have any interest in, and waives the expectation that any of its directors, shareholders or officers present it with, specified classes of opportunities.³⁴ In considering amendments to the CBCA,

³³ Section 10 of the OBCA.

³⁴ Section 122(17) of the Delaware General Corporation Law provides that corporation can renounce its interest in certain types of corporate opportunities by providing so in its certificate of incorporation: “Every corporation created under this chapter shall have power to...renounce, in its certificate of incorporation or by action of its board of directors, any interest or expectancy of the corporation in, or in being offered an

we urge that potential amendments be considered to clarify the application of this doctrine in such scenarios where it would be impractical and could potentially result in unintended attachment of liability for directors under such specified circumstances.

This letter represents the general comments of certain individual members of our corporate and tax practice groups, (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

We very much appreciate the opportunity to provide our input on the request for comments and would be pleased to work further with Industry Canada in considering any potential amendments to the CBCA. In particular, we believe that, while the topics raised in the Discussion Paper are a useful starting point, there needs to be a comprehensive review of the CBCA as several topics (some examples of which are set out in Part III) would benefit from a thorough review. In light of the potential amendments that are being considered for the CBCA as well as by securities regulators on several related topics, a comprehensive review would ensure that the CBCA, as a whole, is updated to avoid certain parts of the legislation falling out of date while other parts are amended to reflect current practices and concerns. Please feel free to contact Alethea Au at your convenience as we would welcome the opportunity to discuss any of the matters raised in our submission and are eager to contribute to the amendment process.

Yours truly,



Alethea Au, on behalf of:

Marc B. Barbeau	Luc Bernier
Robert Carelli	Sterling Dietze
Tania Djerrahian	Michel Gélinas
Lynn Grassby	Ramandeep Grewal
Samantha Horn	Catherine Jenner
Kevin Kyte	Frank Mathieu
Maité Murray	Brian Pukier
Simon Romano	William Scott
Mihkel Voore	Claire Zikovsky

opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or one or more of its officers, directors or stockholders.”