

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

May 8, 2014

Re: Consultation on the Canada Business Corporations Act

Dear madam, dear sir,

We welcome the opportunity to comment on the governance framework for the CBCA with a view to its effectiveness for the future.

Please, find our submission below.

Kind regards,



Michael Jantzi,  
President & CEO



**Submission to Industry Canada:  
Consultation on the Canada Business Corporations Act ("CBCA")  
April 2014**

Industry Canada has invited stakeholders to comment on a range of corporate governance matters in order to ensure corporate social responsibility ("CSR") is adequately promoted and furthered through the Canada Business Corporations Act ("CBCA"). In response to this request, Sustainalytics has exchanged thoughts and views with other stakeholders and has developed the following suggestions to strengthen the CBCA by integrating various aspects of CSR going forward. Sustainalytics has been mindful to consider the disclosure requirements the OSC states in its *Primer for Environmental and Social Disclosure* released in March 2014, particularly Staff Notice 51-333.

Sustainalytics is an award-winning global research firm in the area of corporate environmental, social and governance (ESG) performance. Our team of 150 professionals globally works with more than 300 clients to integrate ESG research and insights into their investment decisions across investment strategies and asset classes. For more than twenty years Sustainalytics has gained insights into the workings of major global markets. We have experienced first-hand how CSR can be leveraged to generate good business decisions, innovation and shareholder value.

Sustainalytics provides comments specifically on those points with which we are thoroughly familiar and believe our expertise can benefit the evolution of Canadian corporate law and the Canada Business Corporations Act specifically.

## SUMMARY OF SUSTAINALYTICS' RECOMMENDATIONS

### I. Executive Compensation

Sustainalytics recommends that the CBCA should contain a “say-on-pay” requirement for publicly traded corporations. The current compensation disclosure requirements in National Instrument 51-102 provide a possible framework for the addition of such a say on pay requirement.

Moreover, Sustainalytics suggests a public company’s board – or the appropriate committee – should hold an annual advisory vote on executive compensation.

We encourage Industry Canada to consult with provincial securities regulators to determine the best legislative regime for this issue.

### II. Shareholder Rights

#### A. Voting

Sustainalytics recommends the following amendments to the CBCA regarding shareholder voting:

- Mandate voting by ballot
- Prohibit slate voting
- Mandate annual elections for directors
- Require majority to elect directors
- Prohibit empty voting and over-voting

#### B. Shareholder and Board Communication

Sustainalytics encourages the use of technology (i.e., webcast) to facilitate access to corporate annual meetings for a larger percentage of shareholders. However, publicly listed companies should NOT be allowed to limit participation to an electronic-only or virtual format.

#### C. Board Accountability

- Roles of the Chief Executive Officer (CEO) and the Chair of the Board  
The roles of CEO and Chair of the Board should be independent of one another and always held by different people.
- Disclosure of the board’s understanding of the (potential) impact of social and environmental matters on corporate operations  
The CBCA should require publicly traded corporations to disclose the board’s understanding of the impact and potential impact of social and environmental matters on the corporations operations in a designated section of the Management Discussion and Analysis (“MD&A”) of the annual financial statements. This disclosure should be signed by the Chair and the CEO and audited by a certified independent third party.

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

No recommendations.

### **IV. Incorporation Structure for Socially Responsible Enterprises (“SRE”)**

Sustainalytics supports the development of provisions and structures to facilitate the creation of SREs, so long as this does not let companies incorporated under “mainstream legislation” off the hook with regard to corporate social responsibility.

### **V. Corporate Transparency**

No recommendations.

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

Sustainalytics recommends that Industry Canada ensure that Canada is fulfilling the OECD’s 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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

Sustainalytics recommends the introduction of a 30% quota for the proportion of female directors, incorporating a deadline and penalties for noncompliance, to effectively advance gender diversity.

### **VIII. Arrangements under the CBCA**

No recommendations.

### **IX. Corporate Social Responsibility**

The CBCA should contain explicit and clear mandatory requirements to promote CSR objectives for all publicly traded companies, as well as companies with more than 500 employees and all companies operating in industries that are highly exposed to environmental and social issues and risks.

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

No recommendations.

## RATIONALE FOR SUSTAINALYTICS' RECOMMENDATIONS

### I. Executive Compensation

#### Recommendation

Sustainalytics recommends that the CBCA should contain a say-on-pay requirement for publicly traded corporations. The current compensation disclosure requirements in National Instrument 51-102 provides a possible framework for the addition of such a say on pay requirement.

Moreover, Sustainalytics suggests a public company's board – or the appropriate committee – should hold an annual advisory vote on executive compensation.

We encourage Industry Canada to consult with provincial securities regulators to determine the best legislative regime for this issue.

#### Rationale

Executive compensation is a tool to help ensure that management's focus is aligned with strategic corporate goals and shareholder interests. Financial incentives exert significant influence on executives' priorities as they manage the affairs of the business, thereby determining its long-term success and impacting the creation of shareholder value. Accordingly, shareholders require a say on this matter.

The European Union (EU) recognized the importance of shareholder input on executive compensation in its Revised Shareholder Rights Directive of April 9, 2014, which proposes "binding say on pay," which could become effective as soon as Q1 2015.<sup>1</sup>

### II. Shareholder Rights

#### A. Voting

#### Recommendation

Sustainalytics recommends the following amendments to the CBCA regarding shareholder voting:

- **MANDATE** voting by ballot
- Prohibit slate voting
- **MANDATE** Annual elections for directors
- **REQUIRE** Majority to elect directors
- Prohibit empty voting and over-voting

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<sup>1</sup> DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement - Implementation Plan – Brussels April 9<sup>th</sup>, 2014.

## Rationale

Through voting their shares, owners of a corporation make decisions about the direction and management of the company. The voting process allows ownership oversight of corporate management by the directors.

- **Ballot:** Currently at shareholder meetings votes **ARE** commonly counted by a show of hands. This method gives no consideration to the number of shares held by each voter; and therefore, does not reflect the opinion of the majority of shares. The ballot system, **HOWEVER**, accurately reflects the percentage of total shares voted on each issue.
- **Slate voting:** In a slate election, shareholders cannot vote for or against individual nominees for the board of directors. They have the choice to either accept all proposed directors or to withhold support for the entire board. Using this approach makes it more likely for a director, who does not seem suitable, to receive approval than he or she would if shareholders had the **OPPORTUNITY** to withhold support from individual directors.
- **Annual elections:** Currently, directors' terms can be up to three years without needing to be validated by re-election, and terms can overlap ("staggered board"), thereby making a change of control at the board level difficult and lengthy.
- **Majority:** Currently, shareholders have two options during director elections – "for" or "withhold." A director is elected if he or she receives at least one vote "for," which could be their own vote if he/she is also a shareholder. Although a "withhold" clearly indicates a lack of support, it will have no effect on the outcome of the election (i.e., the director not being elected, unless the number of "withhold" votes is greater than the number of "for" votes). Shareholders should have the opportunity to provide feedback on the performance of the board as a whole, and of individual directors specifically, through their vote.
- **Empty voting and over-voting:** Both add to the uncertainty of the proxy voting process and cloud its transparency and integrity.

The importance of voting is reflected in the EU's recently proposed revisions to the Shareholder Rights Directive aimed at rectifying "suboptimal" corporate governance. It includes the requirement for asset owners and asset managers to develop and publicly disclose [...] voting policies.<sup>2</sup>

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<sup>2</sup> DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement - Implementation Plan – Brussels April 9<sup>th</sup>, 2014.

## *B. Shareholder and Board Communication*

### **Recommendation**

Sustainalytics encourages the use of technology (i.e., webcast) to facilitate access to corporate annual meetings for a larger percentage of shareholders. However, publicly listed companies should NOT be allowed to limit participation to an electronic-only or virtual format.

### **Rationale**

If all shareholder meetings were virtual, this could create a distance between the company representatives and its shareholders. Face-to-face meetings make for a more meaningful and effective level of discussion and interaction, which cannot be replaced by technology.

## *C. Board Accountability*

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

### **Recommendation**

The roles of CEO and Chair of the Board should be independent of one another and always held by different people.

### **Rationale**

By definition, the primary role of the CEO is to manage the day-to-day operations of the corporation, which includes advising the board of directors, motivating employees and driving change within the organization. [...] He or she typically reports to the board of directors. [...] The primary role of the board of directors is that of independent supervision of the management of the company, [...] and the directors are selected by the shareholders of the corporation.<sup>3</sup>

Critics of the combined CEO/Chair role include institutional investors, policymakers and regulators, financial reporters, academics and a preponderance of corporate governance experts and advisors.<sup>4,5</sup> They argue that the split between the CEO and the Chair not only reduces conflicts of interest leading to independent and therefore better oversight and governance of the corporation, but they also hold that separating the titles will reduce agency costs and improve performance, thereby increasing shareholder value.<sup>6</sup>

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<sup>3</sup> "Chief Executive Definition from Financial Times Lexicon," Lexicon.ft.com. Retrieved 2012-11-28.

<sup>4</sup> Matthew Semadeni and Ryan Krause, "Splitting the CEO and Chairman Roles – It's Complicated...," *The Management Blog – Bloomberg Business Week* November 1, 2012, <http://www.businessweek.com/articles/2012-11-01/splitting-the-ceo-and-chairman-roles-it-s-complicated>.

<sup>5</sup> James A. Brickley, Jeffrey L. Coles, and Gregg Jarrell, "Leadership Structure – Separating the CEO and Chairman of the Board," *Journal of Corporate Finance* 3 (1997): 189-220.

<sup>6</sup> Ibid.

Several international jurisdictions, such as the United Kingdom and South Africa, encourage separating the roles in their best practice codes and guidelines.<sup>7</sup> In many European Union countries there are two separate boards, one executive board for the day-to-day business, presided over by the CEO, and one supervisory board of directors for control purposes, with the Chair of the Board presiding. The two roles of Chair of the Board and CEO will always be held by different people under these statutes. This ensures distinction between management by the executive board under the leadership of the CEO and governance by the board of directors under the leadership of the Chair. The separation of the chair and CEO roles defines clear lines of authority, prevents a conflict of interest and too much power being concentrated in the hands of one person.<sup>8</sup>

Over the past decade we have seen increasing problems deriving from a lack of independence of corporate directors and management, from outright conflicts of interest to limited perspectives leading to suboptimal decisions. “Prior to the financial crisis, several failed banks such as Lehman Brothers and Bear Stearns employed unified Chairman and CEO, a fact which has led to criticism of the unified role.”<sup>9</sup>

Given the above, Sustainalytics agrees with the witnesses’ submission to the committee, cited in the Industry Canada document, that the two roles should be independent. If the CEO and the Chair of the Board is the same person, the board will be precluded from fulfilling its supervisory duty over corporate management.

- **Disclosure of the board’s understanding of social and environmental matters on corporate operations**

### **Recommendation**

The CBCA should require publicly traded corporations to disclose the board of directors’ understanding of the impact and potential impact of social and environmental matters on the corporations operations in a designated section of the Management Discussion and Analysis (“MD&A”) of the annual financial statements. This document should be signed by the Chair and the CEO and audited by a certified independent third party.

### **Rationale**

There are several reasons underpinning Sustainalytics’ recommendation.

First, increasingly the understanding of business risk has expanded to encompass environmental, social and governance (ESG) issues. Experience has demonstrated that ESG-related incidents cannot only have devastating impacts on society at large, but they can destroy shareholder value and stand in the way of

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<sup>7</sup> Michael Stockham, “Split Decision - The Pros and Cons of Separating CEO and Chairman Roles,” *Corporate Compliance Insights*, July 9, 2013, <http://www.corporatecomplianceinsights.com/split-decisions-the-pros-and-cons-of-separating-ceo-and-chairman-roles/>.

<sup>8</sup> Bertrand, Mariann, *Annual Review of Economics* 4 (2012): 121-150.

<sup>9</sup> Stockham, Split Decision.



innovation and value creation over the longer term. “There is a need to instil a broader view of risk (and of the board’s role).”<sup>10</sup>

Second, the board of directors has both a supervisory governance function over the management of the corporation toward the shareholder who selected its members, as well as fiduciary duties toward all corporate stakeholders. These duties include information duties. Based on the OSC requirement that all material information be disclosed, and the definition of *material* being “information that would likely influence a reasonable investor’s decision...,” disclosure of the board’s understanding of social and environmental matters is required.<sup>11</sup>

Third, the decision in the 2008 BCE case<sup>12</sup> set a new ethical standard for the decision-making process of directors and managers. “Directors have a primary mandate to ensure a corporation is profitable, [... beyond which there has been] an institutionalization of corporate ethics that legitimizes directors and managers acting in the interests of all affected corporate members by reaching decisions through an informed, fair and participatory process[...]. Therefore modern Canadian corporations may be wise to stay ahead of the curve and begin their transformation into a new era of corporate ethics [...]”<sup>13</sup>

Finally, globally we are seeing governments and stock exchanges increasing requirements related to CSR disclosure and related directors’ duties. Bearing in mind that annual reports require the signature of the Chair of the Board, including ESG reporting requirements for annual reports puts an obligation to disclose their understanding of these matters squarely on the board of directors. Some examples include:

- While the EU has had CSR disclosure regulations in place for several years, the European Parliament voted on April 15, 2014 to require the disclosure of non-financial and diversity information by certain large European companies. It’s the first time information related to environmental, social, employee, human rights, corruption and bribery matters will be explicitly required to be disclosed in companies’ management reports.<sup>14</sup> With a mandatory “comply or explain” approach, and expanded areas to be covered in the disclosure, this legislation will set the bar for corporate transparency and for the board’s obligation to disclose its understanding of these matters, once it is approved by Council and passed into law.

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<sup>10</sup> James Hawley, Keith Johnson, and Ed Waitzer, “Reclaiming Fiduciary Duty Balance,” *Rotman International Journal of Pension Management* 4, no. 2 (Fall 2011).

<sup>11</sup> Toronto Stock Exchange and Chartered Professional Accountants Canada, “A Primer for Environmental and Social Disclosure,” March 2014.

<sup>12</sup> BCE INC v 1976 Debentureholders, 2008 SCC 69, [2008].

<sup>13</sup> Jeffrey Bone, “The Supreme Court Revisiting Corporate Accountability: BCE Inc. in search of a legal construct known as the ‘Good Corporate Citizen’”, *Alberta Law Review*, 2010.

<sup>14</sup> European Parliament Session Tuesday, April 15, 2014, Report on the proposal for a directive of the European Parliament and of the Council amending Council Directives regarding “Disclosure of non-financial and diversity information by certain large companies and groups” 78/660/EEC and 83/349/EEC [2013/0110(COD)] Report: Raffaele Baldassarre (A7-0006/2014) Committee on Legal Affairs.

- Imminent revisions to the Shareholder Rights Directive are another piece of the European Commission’s sweeping set of reforms aimed at promoting long-term investment and rectifying “suboptimal” corporate governance of EU companies. “Under the proposals, institutional investors in the European Union will be obliged – by law – to engage the companies in their portfolios. [...] They will have to show how they integrate shareholder engagement in their investment strategies, monitor companies (including on their non-financial performance), conduct dialogue, exercise voting rights, use proxy advisors and cooperate with other shareholders.”<sup>15</sup> This clearly requires the board to step-up its commitment and communication with respect to ESG matters. The EU has chosen not to impose rigid and detailed disclosure rules on investment policies and mandates for the sake of maintaining an attractive environment for investors – something to be kept in mind in the Canadian context. The new rules could be in place by early 2015, although the text has to be approved by the member state-level Council of Ministers and the European Parliament before becoming law.
  
- Several EU member states have had national CSR reporting requirements in place for several years:
  - France Article 225 includes a CSR reporting and social and environmental information obligation for listed companies and other large companies (2010);
  - Germany requires companies to report on key financial and non-financial indicators that materially affect the company (2004);
  - the Netherlands has required listed companies to publish annual environmental reports since 1999; and
  - the UK’s Financial Reporting Council (“FRC”) is finalizing guidance on companies’ disclosures on environmental, social, and diversity issues. The new Strategic Report is intended to replace the existing “business review” section of annual reports and requires companies to provide a complete picture of their business activity, including social effects, calling into question what is material in business reporting (2013).<sup>16</sup> This report is part of the Operating and Financial Review (“OFR”), the UK equivalent to the Canadian Management Discussion and Analysis (“MD&A”).

Sustainalytics continues to assess the effectiveness and adaptability of these various approaches. Our recommendation is based on directors’ fiduciary duties to share information and to act in the best interest of all corporate stakeholders, together with the recognition that social and environmental

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<sup>15</sup> DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement - Implementation Plan – Brussels April 9th, 2014.

<sup>16</sup> Impact Investing Policy Collaborative (“IIPC”), “Global CSR Disclosure Requirements,” February 2014.

matters on corporate operations can pose a significant risk to the viability, value and impact of the corporation.

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

### **Recommendation**

Sustainalytics supports the development of provisions and structures to facilitate the creation of SREs, so long as this does not let companies incorporated under “mainstream legislation” off the hook with regard to corporate social responsibility.

### **Rationale**

Increasingly, socially responsible enterprises (“SRE”) are paving the way for the incorporation of hybrid enterprises, entities with profit as well as non-profit goals. Specific legislation for SREs has sprung up in several jurisdictions and in many forms.

An example is the B-Corp (a benefit corporation or B corporation), which provides a framework and certification for companies wishing to benefit society as well as their shareholders. A B-Corp is a for-profit entity that considers society and the environment in addition to profit in its decision making processes. Today there are more than 935 Certified B Corporations in 32 countries across 60 different industries. Canada now boasts more than 105 B-Corps in seven provinces and one territory.<sup>17</sup>

While the use of commercial business models to encourage social change is commendable, the risk with separate incorporation structures for SREs lies in the opportunity for companies to choose to incorporate under “mainstream” provincial or federal legislation in order to avoid CSR (i.e., their argument being that they did not choose an SRE, so they do not underlie the obligations imposed by SRE legislation).

This loophole, the opportunity for corporations to avoid CSR by incorporating under a “mainstream” legislation, must be decisively addressed by the CBCA, so that ALL corporations have clear corporate social responsibilities.

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

### **Recommendation**

Industry Canada should ensure that Canada is fulfilling the OECD’s 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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<sup>17</sup> [www.bcorporation.net](http://www.bcorporation.net); [impactinvesting.marsdd.com/strategic/benefit-corporation](http://impactinvesting.marsdd.com/strategic/benefit-corporation).

## Rationale

Bribery and corruption defeat the basic premise of good governance and fair competition, and make room for unacceptable social and environmental practices. The reputational damage to companies involved and the erosion of shareholder value can be significant and lasting.

While legislation is becoming tougher and enforcement more effective, with Germany, Switzerland, the UK and the United States leading the way, 20 countries with 26.9% of world exports still have “little or no enforcement” according to Transparency International’s 2013 report.<sup>18</sup>

Canada signed the UN convention against Corruption (“UNCAC”) in May 2004 and ratified it in October 2007.<sup>19</sup> But a 2011 report by the OECD states that Canada’s regime for enforcement of the Corruption of Foreign Public Officials Act (“CFPOA”) “remains problematic in important areas,”<sup>20</sup> and Transparency International classifies Canada as having “limited enforcement,” the second lowest classification.<sup>21</sup> In fact, 119 of the 608 companies and individuals blacklisted by the World Bank for fraudulent or corrupt conduct are Canadian companies.<sup>22</sup> SNC Lavalin and its subsidiaries, many of which are registered outside of Canada, comprise 16% of the total.

A stronger stance on ensuring the fulfilment of the OECD Recommendations is required.

## VII. Diversity of Corporate Boards and Management

### Recommendation

Sustainalytics recommends that a 30% quota for the proportion of female directors should be introduced, incorporating a deadline and penalties for noncompliance, to effectively advance gender diversity.

### Rationale

A 2011 UK study summarized the business case for diversity when it stated: “Corporate boards perform better when they include the best people who come from a range of perspectives and backgrounds. The boardroom is where strategic decisions are made, governance applied and risk overseen. It is therefore imperative that boards are made up of competent high calibre individuals who together offer a mix of skills, experiences and backgrounds.”<sup>23</sup>

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<sup>18</sup> Transparency International 2013 Country Report.

<sup>19</sup> UNCAC Signature and Ratification Status as of May 29, 2013.

<sup>20</sup> OECD- Bribery and corruption – Canada, 28-03-2011: <http://www.oecd.org/canada/Canadaphase3reportEN.pdf>

<sup>21</sup> Transparency International 2013 Country Report – Conclusions: [www.transparency.org/country](http://www.transparency.org/country)

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<sup>22</sup> World Bank Listing of Ineligible Firms and Individuals - [www.worldbank.org](http://www.worldbank.org).

<sup>23</sup> Lord Davies of Abersoch, CBE: Women on Boards, February 2011, Government of UK study.

Research has shown that diverse corporate boards and management generally lead to improved corporate performance. For example, Credit Suisse analyzed the performance of close to 2,400 companies with and without women board members from 2005 to 2011. The results demonstrate superior performance for companies with one or more women on the board compared with no female board representation:

- Return on equity 4% higher;
- Net income growth averaged 4% higher;
- Share price increase: for large-cap stocks (market cap >USD 10 billion) 26% higher; for small-to-mid cap stocks 17% higher; and
- Gearing: although net debt-to-equity was similar, companies with women on the board were much faster to reduce gearing as the financial crisis and global slowdown unfolded.<sup>24</sup>

Ultimately, these results support the hypothesis that companies with a greater degree of gender diversity at board level are more resilient. Despite this empirical evidence, board diversity – and specifically increasing percentages of women directors – is very slow to develop.

In 2009, the United States adopted a “comply or explain” approach to gender diversity policies, and the Ontario Securities Commission (“OSC”) has proposed comparable disclosure requirements. But disclosure alone has not resulted in real progress.<sup>25</sup>

A case in point – Norway in 2002 set a 40% target with a three-year deadline but, by 2005, the proportion of women on boards had only reached 24%. In 2006, Norway set a 40% quota, a two-year deadline and serious penalties of fines or closure of the business for noncompliance. By 2009 the quota was achieved.

Other countries have learned from this experience. France passed a national law in 2011 stating that the proportion of women directors should not be below 40% in any company with annual revenues over €50 million.<sup>26</sup> The Securities and Exchange Board of India recently amended the Listing Agreement with respect to corporate governance norms for listed companies, applicable to all listed companies, independent of size, which includes as point (xii) “At least one woman director on the Board of the company.”<sup>27</sup>

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<sup>24</sup> *Credit-Suisse: Gender Diversity and Corporate Performance, August 2012.*

<sup>25</sup> Ontario Securities Commission Staff Consultation Paper 58-101F1 corporate governance disclosure of National Instrument 58-101, “Disclosure of Corporate Governance Practices - proposed disclosure requirements regarding the representation of women on boards and in senior management.”

<sup>26</sup> Impact Investing Policy Collaborative (“IIPC”), “Global CSR Disclosure Requirements,” February 2014.

<sup>27</sup> Securities and Exchange Board Of India, Mumbai India, Press Release 12/2014.

In its submission to the Canadian Senate in January 2011, BC Investment Management Corporation stated “that government intervention on board gender parity should only occur when market-based efforts at improving gender balance have been exhausted.”<sup>28</sup> Sustainalytics concurs and believes we have reached that time in Canada. Sustainalytics generally is not in favour of quotas, because they can interfere with free market mechanisms, lower board quality and can lead to “token directors” to fulfil quotas. However, given the empirical evidence that disclosure requirements and targets alone will not bring about real progress on gender diversity, Sustainalytics recommends a 30% quota with a deadline and penalties for noncompliance.

## IX. Corporate Social Responsibility

### Recommendation

The CBCA should contain explicit and clear mandatory requirements to promote CSR objectives for all publicly traded companies, as well as companies with more than 500 employees and all companies operating in industries that are highly exposed to environmental and social issues and risks.

### Rationale

During the past decade, the frequency and quality of corporate CSR reporting has increased. Credible global standards have emerged, or are emerging, including the Global Reporting Initiative (“GRI”),<sup>29</sup> the International Integrated Reporting Council (“IIRC”)<sup>30</sup> and the Sustainability Accounting Standards Board (“SASB”).<sup>31</sup> Among other things, these standards provide guidance for CSR reporting, which an increasing number of publicly traded corporations follow, thereby providing a basis for analytical comparison. Mandatory CSR disclosure is being legislated in an increasing number of jurisdictions – some examples of which are highlighted in a previous section of this document. Moreover, third-party verification of CSR reports as well as guidelines for third-party CSR reporting (i.e., ISAE 3000) are a response to shareholders’ demand for improved CSR reporting quality and credibility as a basis for their decision-making.

At the same time, there is now a general understanding that ESG issues can constitute material risks to shareholder value, and to the society at large, and that stakeholders have a right to know about them.

In its 2008 decision, *BCE Inc. vs. 1976 Debentureholders*,<sup>32</sup> the Supreme Court of Canada stated that directors must resolve to balance stakeholder interests “in accordance with their fiduciary duty to act in the best interests of the corporation, viewed as a good corporate citizen.”<sup>33</sup> Sustainalytics believes this

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<sup>28</sup> Doug Pearce, Chief Executive Officer and Chief Investment Officer, B.C. Investment Management Corporation in his letter to John Stevenson, Secretary of the Ontario Securities Commission of October 4, 2013.

<sup>29</sup> Global Reporting Initiative, [www.globalreporting.org](http://www.globalreporting.org).

<sup>30</sup> The International Integrated Reporting Council, [www.theiirc.org](http://www.theiirc.org)

<sup>31</sup> Sustainability Accounting Standards Board, [www.sasb.org](http://www.sasb.org).

<sup>32</sup> *BCE Inc. vs. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560 at para 81.

<sup>33</sup> *Ibid.*

broadened responsibility, which the Court outlined in this landmark decision, has to be enshrined in legislation as part of the ongoing evolution of statutory law based on leading case law.

The provisions of the CBCA regarding CSR are currently voluntary and vague. It is not so much a matter of the extent to which the CBCA accommodates the pursuit of CSR objectives, but rather a need for explicit and specific requirements and standards. Therefore, Sustainalytics recommends that the CBCA should contain explicit and clear mandatory requirements to promote CSR objectives.