

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

11th March 2014

Dear Director General:

Re: Consultation on the Canada Business Corporations Act

Universities Superannuation Scheme Ltd (USS) operates one of the largest pension funds in the UK, with approximately CA\$ 74 billion of assets under management¹. As a defined benefit scheme, with an in house fund manager, USS's long-term and universal investor perspective distinguishes us from many other institutional investors. We take seriously our role as a long-term owner of companies and other assets, and devote substantial resources to oversee and monitor their management. We believe shareholder engagement and active oversight of our assets is vital for ensuring we deliver long-term and sustainable value for our beneficiaries.

USS supports many of the proposed amendments to the *Canada Business Corporations Act* (CBCA), particularly the adoption of say-on-pay, mandatory voting by ballot, the prohibition of "slate" voting, the adoption of the majority vote standard, proxy access, the separation of the roles of Chair and CEO, shareholder approval of dilutive transactions, increased disclosure of environmental and social matters and increased diversity reporting, as described further below.

I. **Executive Compensation.**

USS supports the adoption of a shareholder advisory vote on executive compensation (say-on-pay). From our experience in the UK, we believe an annual say-on-pay vote has had a number of benefits, including increased dialogue between compensation committees and major investors, a greater use of longer-term performance targets and an increased focus on alignment of performance targets with the strategy of the company. Say-on-pay is already an established practice in the UK, US, France, Germany, the Netherlands, Norway, Spain, Sweden, Switzerland, and also among Canada's largest corporations. However, for say-on-pay proposals to add value for shareholders and issuers there needs to be openness, transparency and better communication on a company's executive compensation policy and practices.

¹ *Universities Superannuation Scheme Limited (USS) is the corporate trustee of the Universities Superannuation Scheme. USS Investment Management Ltd is a wholly owned subsidiary of USS. USS Investment Management is authorised and regulated by the FCA, and is the principal investment manager for USS.*

II. Shareholder Rights.

II. A. Voting

Mandatory Voting by Ballot. USS supports mandatory voting by ballot instead of show-of-hands voting, as currently provided in the CBCA. Voting by ballot is already legally mandated in many jurisdictions. Although there are minor costs associated by moving to voting by ballot, we believe these are not significant obstacles and are offset by greater vote integrity. For example, votes counted by ballot are easier to audit than votes passed on a show-of-hands. Improved transparency of the voting system ensures all participants in the voting chain are confident in the voting process. Additionally, the final vote disclosures to the market will reflect the true support of shareholders, and will not be distorted by shareholders voting on a show-of-hands at the annual shareholder meeting.

One share, one vote. USS strongly supports the principle of 'one-share, one-vote'. We believe the existence of differential rights and benefits, such as exist in Canada, create perverse incentives and can lead to an undesirable concentration of power. Each share should be treated equally, irrespective of the share class, investment style adopted by the asset manager or asset owners or their holding period. We would encourage the CBCA to review the prevalence of different share types in Canada with similar financial benefits but different voting rights.

Director Elections. As shareholders we consider the election of directors to be one of our most important responsibilities. In this regard, USS supports the recent ruling prohibiting the election of directors by a single slate ballot and the proposed CBCA amendments requiring that directors be elected by a majority vote of all shareholders. The plurality vote standard is widely viewed by overseas investors as an undemocratic electoral processes and a move to full majority voting will improve director accountability to shareholders.

However, we have concerns that the "resignation" standard put forward by the Toronto Stock Exchange will still allow boards to override a shareholder vote and keep the rejected director in place. A full majority vote standard requires a board candidate who does not receive a majority support from shareholders to step down from the board immediately.

In practice, we find that directors are rarely voted off corporate boards. Our experience in other developed markets that use a full majority vote standard for the election of corporate directors, including Britain, the Netherlands, Australia, New Zealand, Germany and France, has been positive.

As shareholders, we seek to have a long-term, constructive relationship with the directors of companies in which we invest. The majority vote standard encourages better communications between shareholders and directors and strengthens accountability and alignment of interests between the board and company owners as directors are no longer "protected" from the views of shareholders. We consider that a resignation policy undermines the positive impact of a full majority vote standard.

The move to individual director elections and the adoption of majority voting will only lead to an engaged board if shareholders have the information available to hold a board to account. In this respect

we strongly encourage full and timely disclosure of the voting results from shareholder meetings. For the director elections, this must include the disclosure of the individual voting results for each director.

II. B. Shareholder and Board Communication.

Improved Disclosure of Director Candidates. As discussed above, electing the board is one of the most important responsibilities of shareholders. As long-term shareholders, our focus is on fostering a culture of better performing boards, populated with directors with the correct skills and competencies. In moving to a majority vote standard, we would welcome additional information in the proxy statement to allow shareholders to judge the appointment and re-appointment of directors on the basis of their individual attributes and performance rather than an arbitrary judgment of "independence."

Enhanced information on each individual director and for the board as a whole will provide shareholders with greater insight and the opportunity for more effective oversight. We would advocate the disclosure of directors' key skills and competencies, planned contribution to the board and an understanding of director's perspectives on key issues of relevance to the company. We would also welcome a discussion of how the individual board nominees will add (or have added) value to the board.

Proxy Access. USS supports an amendment of the CBCA to permit significant shareholders to include their alternate nominees for directors in the management proxy circular, at no cost to the shareholders. Currently, the only practical way for shareholders to put forth alternate director candidates when a board has become ineffective is through an expensive proxy fight. This is both inefficient and serves to insulate boards and management from accountability.

Our experience in the UK as well as other markets such as Australia and the Netherlands shows us that the right to nominate a director to the board is rarely used. Instead, because of greater director accountability to the shareholders which they represent, the boards tend to be more responsive to shareholder interests. We have found that the quality and quantity of dialogue around the nominations process is better where directors can be held directly accountable by shareholders. More attention is devoted to candidate selection process and there are more detailed explanations about how the process to nominate directors fits with the company's strategic goals. This strengthens board independence, reduces market surprises and improves corporate governance. We expect to see similar positive effects in Canada following the rule change.

II. C. Board Accountability

Roles of CEO and the Chair. USS believes that the roles of CEO and Chairman of the Board should be held by separate individuals. Moreover, the Chairman position should be held by an independent non-executive member of the board. USS believes that the combined CEO/Chairman and the Executive Chairman structures present increased, unnecessary risks to the long-term interests of its shareholders. It merely institutionalizes structural impediments to effective oversight of management and undermines investor confidence. We would strongly encourage the CBCA to take this opportunity and consider guidance on this important issue of corporate governance.

Shareholder Approval of Significantly Dilutive Acquisitions. USS supports amendments to the CBCA that would require shareholder approval of acquisitions that would result in a dilution of existing shareholders' interests in the corporation in excess of 10%. We believe this strikes an appropriate balance between the company being able to finance smaller acquisitions without seeking shareholder approval and the protection of share value when issuing shares without pre-emption rights.

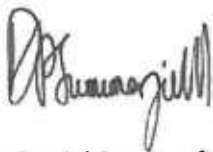
Disclosure of the Board's Understanding of Social and Environmental Matters on Corporate Operations. USS supports amendments to the CBCA that would require publicly traded companies to disclose the board's understanding of the impact and potential impact of social and environmental matters on the company's operations. We would support disclosure to understand the assessment of materiality of any environmental and social risks that may impact the company's operations, including an explanation of how the board manages these risks. The publication of a corporate social responsibility report, whether incorporated in the annual accounts or as a standalone document is encouraged; however material risks should be covered in the main annual report.

V. Corporate Transparency.

USS believes the identification of shareholders will facilitate a greater dialogue between issuers and shareholders, increase the effectiveness of engagement and encourage greater collaboration between institutional investors. In order to facilitate a constructive relationship between investors and the board of directors, it should be a simple process for shareholders to evidence their shareholdings in the company, and for the company to verify this shareholding. Some shareholders may not wish to be disclosed, however, we believe such concerns should not prevent broader transparency on the shareholder register.

Please feel free to contact me if you have any questions or need additional information.

Kind Regards,



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