



March 29, 2016

Honourable Stephanie McLean
Minister of Service Alberta
Office of the Minister
Service Alberta
103 Legislature Building
10800 – 97 Avenue
Edmonton, AB
T5K 2B6

Dear Ms. McLean:

Re: Proposed amendment of the shareholder proposal provisions (“Shareholder Proposal Provisions”) of the Alberta Business Corporations Act (“ABCA” or the “Act”) and the associated Business Corporation Regulation (the “Regulation”)

I am writing in my role as Chair of the Canadian Coalition for Good Governance (“CCGG”) to encourage you in your new position as Minister of Service Alberta to take steps to amend the ABCA in order to provide shareholders with a meaningful ability to exercise their shareholder proposal rights under the Act.

CCGG is a non-profit organization with the mandate of promoting good governance practices in Canadian public companies and the improvement of the regulatory environment in order to best align the interests of boards and management with those of their shareholders, with a view to promoting the efficiency and effectiveness of the Canadian capital markets. CCGG’s members are institutional investors that together manage approximately \$3 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. A list of our members is attached to this submission.

Background

Shareholders of issuers incorporated under the ABCA have the right pursuant to sections 136(1) and (1.1)¹ of the Act to submit a shareholder proposal at an annual shareholders meeting on any matter related to the business or affairs of the corporation, subject to certain eligibility requirements that are found in section 18.1² of the Regulation. Pursuant to the Regulation, shareholders wishing to submit a shareholder proposal must meet the following qualifications:

1. Hold (i) at least 1% of all issued voting shares of the corporation OR (ii) shares with a fair market value of at least \$2,000 AND

¹ [Alberta Business Corporations Act, s. 136\(1\) and \(1.1\)](#)

² [Alberta Business Corporations Regulation, s. 18.1](#)

2. The proposal must be supported by other shareholders holding at least 5% of the issued voting shares

Our concern is that the second of these eligibility requirements is too onerous. It establishes a threshold that is unlikely to be satisfied in practice, rendering the right to submit a shareholder proposal in Alberta generally futile. There have not been any shareholder proposals at ABCA companies since the 5% support requirement was introduced in 2005. This contrasts with other Canadian jurisdictions that provide shareholder proposal rights but do not make them subject to this second onerous requirement: there have been over 1000 proposals submitted at companies incorporated in Canada elsewhere than Alberta since 2005.³ It is not plausible to explain the lack of shareholder proposals submitted to companies incorporated in Alberta as due to shareholders' satisfaction with those companies compared with shareholder concerns arising at companies incorporated elsewhere in Canada.

Rights that realistically cannot be exercised, such as Alberta's statutory shareholder proposal right, are rights in name only. Capital markets function because shareholders provide resources to companies that need those resources. In order for capital markets to operate fairly and efficiently, shareholders' rights must be respected and protected. Rendering a right ineffectual by attaching onerous conditions to its exercise ignores this principle.

There is also a problem with the second eligibility requirement in that it is unclear what "support" means: must the additional shareholders be co-filers with the shareholder proponent or is it sufficient that they express support in a private letter to the proponent?

CCGG recognizes that a reasonable balance must be maintained: issuers may have a concern that making the shareholder proposal process too easy will result in shareholders bringing frivolous proposals that will tie up issuer resources and time. It is important to remember, however, that some shareholder proposals that were considered to be improbable at first appearance have at a later date be taken to be promoting positive corporate governance developments. Say on pay comes to mind. Accordingly, it is important to have a regime that allows shareholders to bring forward ideas that are unconventional even though they may not initially be popular with management or directors.

When trying to establish what constitutes a reasonable balance, it makes sense to start by looking at standard practice. Here this is a straightforward matter: the norm of 1% or \$2,000 found elsewhere in Canada has resulted in a significant but not overwhelming number of shareholder proposals.⁴ Concerned and committed shareholders have been able to bring matters they consider to be important to issuers' attention for consideration by other shareholders while AGMs have not ground to a halt because issuers are inundated with shareholder proposals.

We have seen in Canada that the shareholder proposal process can be beneficial. For example, the widespread take-up of say on pay by issuers with high corporate governance standards was initiated by shareholders submitting say on pay proposals. Say on pay is widely viewed, including by CCGG, as having increased the level and quality of disclosure and encouraged dialogue between issuers and shareholders, as well as providing an additional communication tool through which shareholders can express their perspective on an issuer's approach to executive compensation. The shareholder proposal process has been recognized by the drafters of Canadian corporate statutes as a positive right. We believe that Alberta should remove the conditions that make this right so onerous in Alberta.

³ For a database of shareholder proposals filed in Canada see SHARE's website [here](#).

⁴ Some may disagree with this statement, especially those that see shareholder proposals by nature as a nuisance and an illegitimate exercise of shareholder power. However, legislators that saw fit to grant this right to shareholders undoubtedly contemplated that it would be used.

We would also like to suggest that Alberta use the Canadian Business Corporations Act (“CBCA”) as the model on which to base amendments to the ABCA and the Regulation. The CBCA shares the 1% or \$2000 eligibility requirements with other jurisdictions in Canada but it also has more reasonable thresholds than some other statutes for resubmission of a shareholder proposal that fails to gain a majority of votes in favour at its first or second submission. Experience has shown that it can take some time for a shareholder proposal to gain traction. Initial uptake by shareholders can be slow as shareholders show a bias towards voting in favour of management (management typically recommends that shareholders vote against proposals brought by shareholders⁵). But as shareholders become more familiar with the idea proposed and comfortable with its implications if it is adopted, votes in favour increase. We saw this clearly in the history of say on pay shareholder proposals. The same pattern can be seen with the US experience of shareholder proposals on proxy access: initially low votes in favour but by 2015 a majority of proxy access shareholder proposals received majority shareholder approval.

In conclusion, we encourage you to consider amending the ABCA and the Regulation to bring them into alignment with the rights held by shareholders of issuers incorporated in other Canadian jurisdictions and to give realization to the clear intention of legislators to provide shareholders with a meaningful right to submit shareholder proposals.

If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Erlichman, at 416-847-0524 or serlichman@ccgg.ca or our Director of Policy Development, Catherine McCall, at 416-868-3582 or cmccall@ccgg.ca.

Yours truly,

Daniel E. Chornous, CFA
Chair of the Board
Canadian Coalition for Good Governance

⁵ This is not the case when the position supported by the proposal has gained enough acceptance generally among shareholders that it is considered a ‘done deal’ in that experience has shown that a majority of shareholders are likely to vote in favour of a proposal espousing that position.

CCGG MEMBERS

- 1 Alberta Investment Management Corporation (AIMCo)
- 2 Alberta Teachers' Retirement Fund (ATRF)
- 3 Archdiocese of Toronto
- 4 BlackRock Asset Management Canada Limited
- 5 BMO Asset Management Inc.
- 6 BNY Mellon Asset Management Canada Ltd.
- 7 British Columbia Investment Management Corporation (bcIMC)
- 8 Burgundy Asset Management Ltd.
- 9 Canada Pension Plan Investment Board (CPPIB)
- 10 Canada Post Corporation Registered Pension Plan
- 11 CIBC Asset Management Inc.
- 12 Colleges of Applied Arts and Technology Pension Plan (CAAT)
- 13 Connor, Clark & Lunn Investment Management Ltd.
- 14 Desjardins Global Asset Management
- 15 Electrical Safety Authority (ESA)
- 16 Fiera Capital Corporation
- 17 Franklin Templeton Investments Corp.
- 18 Greystone Managed Investments Inc.
- 19 Healthcare of Ontario Pension Plan (HOOPP)
- 20 Industrial Alliance Investment Management Inc.
- 21 Jarislowsky Fraser Limited
- 22 Leith Wheeler Investment Counsel
- 23 Lincluden Investment Management Limited
- 24 Mackenzie Financial Corporation
- 25 Manulife Asset Management Limited
- 26 NAV Canada
- 27 New Brunswick Investment Management Corporation (NBIMC)
- 28 Northwest & Ethical Investments L.P. (NEI Investments)
- 29 OceanRock Investments Inc.
- 30 Ontario Municipal Employee Retirement System (OMERS)
- 31 Ontario Pension Board
- 32 Ontario Teachers' Pension Plan Board (OTPP)
- 33 OPSEU Pension Trust
- 34 PCJ Investment Counsel Ltd.
- 35 Pension Plan of the United Church of Canada
- 36 Public Sector Pension Investment Board (PSP Investments)
- 37 RBC Global Asset Management Inc.
- 38 Régimes de retraite de la Société de transport de Montréal (STM)
- 39 Russell Investments Canada Limited
- 40 Scotia Global Asset Management
- 41 Sionna Investment Managers Inc.
- 42 State Street Global Advisors, Ltd. (SSgA)
- 43 Sun Life Investment Management Inc. (SLIM)
- 44 TD Asset Management Inc.
- 45 Teachers' Retirement Allowances Fund
- 46 UBC Investment Management Trust Inc.
- 47 University of Toronto Asset Management Corporation

48 Workers' Compensation Board - Alberta

49 York University

Collaboration Partner - Caisse de dépôt et placement du Québec