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May 15, 2014

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Mr. Paul Halucha
Director General
Marketplace Framework Policy Branch
Industry Canada
10th Floor, 235 Queen Street
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Dear Mr. Halucha:

Consultation on the *Canada Business Corporations Act*

We are pleased to have the opportunity to comment on the *Consultation on the Canada Business Corporations Act* issued by Industry Canada in December 2013 (the "Consultation Paper").

Hansell LLP provides expert, independent legal and governance counsel to corporations, boards of directors, management teams, investors and other stakeholders. We advise many companies, both public and private, that are governed by the *Canada Business Corporations Act* (the "CBCA"). We note the importance of the CBCA in Canadian corporate life and encourage Industry Canada to continue its consultation process as it narrows the focus of possible amendments to the CBCA. We will be pleased to participate in the ongoing consultation process. In the meantime, we note the following themes that we would encourage Industry Canada to consider:

- The CBCA must remain the basic corporate framework for both public and private corporations. One of the strengths of the CBCA is its flexibility. Shareholders and boards are able to rely on the governance framework set out in the statute, but are able to design an approach to governance that is most effective for the corporation. Changes to the CBCA that mandate governance practices that are not appropriate for private corporations, such as mandatory voting by ballot and majority voting, are not desirable. In our view, the CBCA should not constrain the flexibility it currently offers by incorporating practices that are relevant only to public companies.
- In Canada, shareholders have played an important role in the development of governance practices for public companies (including executive compensation and the separation of the positions of chair and CEO), as have securities regulatory authorities. In our view, the CBCA should facilitate shareholder engagement but should not prescribe corporate governance matters which are otherwise being addressed in the Canadian marketplace.

- The CBCA must be updated to reflect changes in the way in which shares are held. The vast majority of shares of public companies are held through the book-based system. The ultimate investor should have all of the rights of the shareholder, many of which are still only available to the registered holders of the shares under the CBCA.
- We encourage Industry Canada to facilitate communications by electronic means as a way to improve shareholder participation.
- Industry Canada should work with the Canadian Securities Administrators to identify changes to the CBCA that are necessary in order to promote a more reliable proxy voting system.
- Consideration must be given to whether the existing governance model is sustainable. That model vests with shareholders the right to make certain corporate decisions, based on the presumption that shareholders will vote in a manner that enhances the value of their investment in the corporation. It is now possible to separate the vote from the economic interest in the corporation associated with that vote through the use of certain financial instruments (among other things). Votes can therefore be cast by persons with no economic interest in the corporation. It is important for Industry Canada to discuss with stakeholders in the CBCA, the implications of this development for the existing governance model.
- The CBCA should not duplicate matters that are already addressed in other comprehensive legislative instruments, such as provincial securities transfer legislation and legislation combatting bribery and corruption.
- Socially responsible business is an important theme. Other jurisdictions have explored a variety of legal structures that respond to this theme. There is an important leadership opportunity for Industry Canada in this area and we encourage Industry Canada to engage extensively with other jurisdictions and with stakeholders in the Canadian community on this issue.

Thank you again for the opportunity to provide comments on the important topics raised in the Consultation Paper and we look forward to reviewing the more detailed proposals which result from it. If you would like to discuss in more detail, please contact me, Carol Hansell or Brian Calalang of our office.

Yours very truly,



Frédéric Duguay
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