

September 20, 2013

Corporate Registry
Service Alberta
Mezzanine North, 10365 – 97 Street
Edmonton, Alberta T5J 3W7

Attn: Laurie Shannon, Policy Analyst

Re: Proposed Business Corporations Act Amendments

Thank you for the opportunity to comment on proposed amendments to Alberta's *Business Corporations Act* (ABCA). Aligning the ABCA with other Canadian jurisdictions in pursuit of public and investor protection is an important task. We applaud Service Alberta for undertaking these consultations and for its commitment to modernize Alberta's business laws.

SHARE is a national, not-for-profit organization working with institutional investors to promote responsible investment practices through research and education. Our clients have assets under management of more than \$12 billion. SHARE has been involved with consultations on various legislative reforms to the British Columbia *Business Corporations Act* and the *Canada Business Corporations Act* (CBCA), as well as similar legislation in other jurisdictions.

We would like to take this opportunity to address two issues with regard to the right of shareholders to submit proposals for voting on annual meetings: the minimum shareholding requirements for shareholder proposals under the ABCA, and the word limit for shareholder proposals.

i) Thresholds for Shareholder Proposals

The right to file a shareholder proposal has significant value to the holders of voting shares in Canadian public companies. Increasingly, investment managers consider engagement with the companies in which they are invested to be part of their fiduciary responsibility. The right to file a shareholder resolution is an important part of this process – approximately 100 shareholder proposals are filed annually in Canada.

In circumstances where shareholder engagement with a company reaches an impasse, filing a shareholder proposal is an important option that allows the shareholder to find out what percentage of the company's shareholders who vote their shares support it. Significant support for a shareholder proposal over time may ultimately persuade company management to adopt the substance of the proposal.

Under the ABCA and the associated Regulations (specifically section 18.1), in order to file a shareholder proposal an investor must hold 1% of the issued voting shares or voting shares with a market value of at least \$2000 **and have a prescribed level of support from holders of 5% or more of voting shares**. This threshold is far more onerous than that which applies under any other statute that establishes such a right in Canada. These include the corporation acts of other

Canadian provinces and the CBCA. This requirement effectively prevents the overwhelming majority of shareholders from ever filing a proposal. The trend in corporate law reform in Canada has been to make the shareholder proposal mechanism more accessible to shareholders, notably amendments to the CBCA in 2001 and the Quebec *Business Corporations Act* in 2011.

The existing high threshold for submission of shareholder proposals makes participating in corporate affairs difficult for most investors. Precluding investors with less than the prescribed number of shares and prescribed level of support from submitting shareholder resolutions unnecessarily limits participation from individuals who may have something interesting and useful to contribute. In modern capital markets, with many widely held companies, a 5% threshold is excessive. As experience shows, even small shareholders can have thoughtful and worthwhile proposals.

Given the many institutional, administrative and legal barriers for shareholders to submit shareholder proposals, and given that there is little evidence of Canadian equity holders abusing the shareholder proposal provision under the CBCA, we see no reason to continue with the current restrictive regulations under the ABCA. **We recommend the ABCA establish a shareholder proposal filing threshold that is substantively the same as that set out in the CBCA and associated Regulations, which require a filer to hold i) voting shares equal to 1% of all such shares, or ii) voting shares with a market value of \$2,000, without the additional requirement of support from shareholders owning 5% of issued voting shares.**

ii) Word limits for shareholder proposals

At present, the ABCA imposes a 200-word limit on the supporting statement and no limits on the proposal itself. Proposals tend to be relatively succinct by their nature. Rationales for the proposal and supporting statements are necessarily more detailed. In order to promote well-informed voting decisions on complex issues while avoiding excessively wordy documents, **SHARE recommends increasing the word limit for shareholder proposals under section 136(3) from 200 words to 500 words, inclusive of the proposal and supporting statement.**

The current review of the ABCA offers a timely opportunity to incorporate important corporate governance reforms into the legislation. SHARE would be pleased to elaborate on any of the arguments outlined above. Thank you for the opportunity to provide comments and we look forward to contributing to any subsequent phases of this consultation.

Sincerely,



Peter Chapman
Executive Director
Shareholder Association for Research and Education