May 7, 2014

Director General
Marketplace Framework Policy Branch
Industry Canada
235 Queen St. 10th Floor
Ottawa ON K1A 0H5

Re: Public consultations on the Canadian Business Corporations Act (CBCA),

Dear Sir:

This submission is provided in response to the Industry Canada public consultations on the Canadian Business Corporations Act (CBCA), due May 15, 2014.

In consultation with Certified General Accountants of Canada (CGA Canada), the Chartered Professional Accountants of Canada (CPA Canada) value the opportunity to respond to this Industry Canada proposal and applaud Industry Canada for taking on this important consultation. CPA Canada is the national organization established to support unification of the Canadian accounting profession under the Chartered Professional Accountant (CPA) designation. It was created by the Canadian Institute of Chartered Accountants (CICA) and The Society of Management Accountants of Canada (CMA Canada) to provide services to members of CPA, CA, CMA and CGA accounting bodies that have unified or are committed to unification.

CPA Canada demonstrates evidence of our support of this initiative through active involvement in supporting boards of directors by way of activities of the Risk Oversight and Governance Board.

We endorse the research presented in your “Consultation on the Canada Business Corporations Act” and the June 2010 background piece, “Statutory Review of the Canada Business Corporations Act, Report of the Standing Committee on Industry, Science and Technology,” which highlights the evolution of governance and a need to keep up with the current and future governance environment. Although we recognize that Canada's corporate governance framework is acknowledged internationally as an effective and productive standard, advancement and responsiveness to emerging issues is necessary in an evolving and global business environment. The issues Industry Canada has identified for review align well with those CPA Canada has identified as relating to enhanced governance. The Industry Canada proposal will encourage more effective governance by clarifying shareholder rights.
We recognize that most CBCA corporations are small or medium-sized privately held companies. However, as they characterize 235,000 federally incorporated corporations they have momentous impact on the Canadian business environment. As well, the fact that almost half of Canada's largest publicly traded companies are included amongst those incorporated under the CBCA enhances its significance to capital markets. In our response to the proposal we are cognizant of the significance of the impact of those 235,000 corporations, regardless of company size or their status as private or public. We believe the recommendations we support are best practice and attainable by organizations of all types and sizes.

In theory we support the securities regulators ‘comply or explain’ approach to disclosure about governance practices in Canada, however agree that some of the areas you identify need to be addressed as statutory rules. We recognize that Industry Canada presents this proposal based upon feedback from stakeholders and also understand the imperative to establish rules regarding changes in the governance environment. However, we caution Industry Canada to be cognizant of creating rules that duplicate those of provincial securities regulators and that may cause unnecessary confusion and rigidity where flexibility is more efficient.

CPA Canada has considered the following proposed amendments to the CBCA. We have limited our comments to areas in which we believe we offer the most value to continue to advance and enhance good corporate governance.

I. Executive Compensation

We recommend that section 125 of the CBCA be left as is, to allow corporations to set their own compensation levels. They are in the best position to assess appropriate compensation and the board's fiduciary duties are in place to cause appropriate due diligence on the setting of executive pay.

We strongly support the concept of giving shareholders an advisory vote, with the caveat that plain language disclosure by issuing corporations is required. We recognize that executive pay is a complex technical matter and for shareholders to effectively vote, compensation disclosure must be clear. We encourage Industry Canada to support guidance developed by the CCGG on clear disclosure. As well, we recommend that provincial regulators provide guidelines on clear disclosure requirements and format.
II. Shareholder Rights

A. Voting

Mandatory voting by ballot at shareholder meetings and disclosure of results by public companies

We support this proposed amendment in the interests of transparency. Shareholders should be entitled to know the details of a recorded vote by ballot (number for and against the resolution) rather than merely whether the resolution passed or was defeated, which is typically the case when corporations conduct votes by show-of-hands. In addition, show-of-hands voting does not indicate the number of shares represented by each vote. Mandatory voting by ballot at the meeting and disclosure of the detailed combined results of a vote (ballot plus votes by proxy) will allow shareholders to assess the level of support regarding a particular issue and monitor changes in support. Other countries such as the United Kingdom and United States already require detailed disclosure of votes. Corporations are not obligated to confirm the receipt or recording of votes by proxy, therefore, shareholders currently have no mechanism for independent confirmation that all votes have been counted.

We also recognize, however, that a requirement for mandatory voting by ballot and disclosure of results will not address some of the concerns surrounding this issue, as most shareholders vote by proxy. Practices such as “empty” or “over” voting can skew results and we strongly encourage Industry Canada to work collaboratively with provincial securities regulators to continue to address issues associated with the transparency and effectiveness of Canada's share voting system.

Individual election of directors and “slate” voting

We support this proposed amendment to require the individual election of directors and prohibit the election of a slate of directors on an “all-or-none” basis. A group of directors elected under slate voting can exercise undue influence of corporate decisions and policies without having given shareholders the opportunity to separately elect individual directors who can bring to the board table many different backgrounds, experiences and opinions.

Maximum one-year terms and annual elections for directors

We support this proposed amendment to change the current maximum three-year term limit in the CBCA to a requirement whereby directors would be elected annually for all CBCA public companies. This would give shareholders with concerns about a director(s) the opportunity to elect a different director(s) within a reasonable length of time before the corporation’s reputation and/or operations are damaged.
Large Canadian corporations have voluntarily adopted annual elections for directors. The view that annual elections for directors can lead to a lack of continuity at the board level, lack of corporate direction and difficulties in long-term planning has not been confirmed. It is our view that annual election does not equate to annual change of directors but an opportunity for shareholders to replace ineffective board members.

The CBCA also currently permits “staggered” boards (different terms for directors) which means it can take several years (up to four) for shareholders to replace a board. This is too long should there be issues with the board or individual directors. We support the elimination of the CBCA's provision that permits staggered terms for directors.

**Director election by majority vote**

We support a majority voting policy and note that many large Canadian corporations and most countries, with the exception of Canada and the United States, already require director election by majority vote. We are pleased to see the new TSX rule requiring majority voting policies in uncontested director elections and recommend CBCA follow suit. In the interests of fairness, directors should be elected by majority vote. Some fear that this may lead to a quorum not being elected. Shareholders will, however, want to elect competent directors and the quorum required for the board, therefore, it is likely that other candidates would be proposed.

In addition to enhancing transparency and improved dialogue between issuers and shareholders, mandating majority voting for director's will offer shareholders greater influence in electing directors.

**B. Shareholder and Board Communication**

**Electronic meetings for public companies**

We support this proposal to continue to allow corporations to hold electronic or virtual shareholder meetings under the CBCA in order to reduce costs and improve shareholder participation. We are concerned, however, that electronic or virtual shareholder meetings could lead to management interference. The CBCA should ensure there are controls in place to prevent management filtering a shareholder’s comments before they reach the board.

Additionally there may be occasions where a shareholder would prefer to communicate directly with the board. We, therefore, also support the proposal that the CBCA not be amended to allow public companies to limit shareholder meetings to electronic means. Opportunity for shareholders to meet the board face to face is vital to shareholder participation in the governance process. In addition, the ability of small companies to hold electronic meetings may be limited by resources and available technology so it is important that the CBCA not limit meetings to electronic means.
Facilitation of “notice and access” provisions under the CBCA

We support this proposed amendment to permit corporations to allow shareholders to access and download documents from company websites. This amendment would improve shareholder engagement in the governance process, as well as reduce costs and improve the efficiency of the proxy voting system. We recognize that in order to do this various provisions of the CBCA may have to be amended as they require the delivery of various paper documents to shareholders.

Access to proxy circular by “significant” shareholders (more than 5 percent ownership)

We support the proposed amendment to allow “significant” shareholders (owning more than 5 percent) to have access to the management proxy circular in order to include their alternate nominees for directors. It can be very costly and time prohibitive for shareholders to prepare, identify a distribution list and circulate an alternative dissident circular on their own.

Significant shareholders should be able to propose their alternatives in the management proxy circular at no cost or be eligible for reimbursement by the corporation. This will allow shareholders to freely put forth alternative nominees without excessive legal and other costs.

Equal treatment of shareholders in proxy process, irrespective of shareholder privacy concerns

Equal treatment of shareholders in the proxy process is a difficult issue because of various federal and provincial privacy legislations preventing corporations from sending proxy information to shareholders whose shares are held through intermediaries. Many shareholders are very conscious of their right to privacy and want their names to remain private.

We submit that controls are needed in the proxy process to ensure that only the names of shareholders are known. In addition, other alternatives to the voting process ought to be considered.

Shareholder proposal provisions including:

Filing Deadline

We support the proposed amendment to establish the reference date for determining the filing deadline for a shareholder proposal as the anniversary date of the previous annual meeting of shareholders.

Reasonable Time to Speak to a Proposal at an Annual Meeting

We support the amendment to require that shareholders presenting proposals are given a reasonable period of time to speak. Shareholders who are rushed through their presentations are not being given the opportunity to engage properly in the process. We believe that if left to the meeting chair there will
be little consistency and shareholders who are perceived to be "challenging", or single shareholders with multiple proposals may be short-changed. However, we recognize that it may be difficult to define and “specify the length of time a shareholder is to be given at a shareholders’ meeting to explain and defend the proposal.” As such, we urge Industry Canada to collaborate with provincial regulators to propose a policy that allows for necessary flexibility.

**Board Accountability**

*Roles of the CEO and the Chair of the Board*

CPA Canada strongly recommends a separate board chair from the CEO role. We propose that corporations should strive for a chair that is independent of management, and believe intuitively that a board would most suitably carry out its supervisory function with this separation of duties. Some companies may consider a combined Chair/CEO with an effective lead director to be effective practice, however an effective lead director should be equally as effective acting as an independent chair. We recognize there may be challenges and a lag time for sections of the business environment to implement a separation of duties. To this end, we recommend a transition mechanism to allow all corporations time to prepare for this.

*Shareholder approval of significantly dilutive acquisitions*

We support the proposal that the CBCA be amended to require shareholder approval of acquisitions that would result in dilution of shareholders’ interest in the corporation in excess of 25 percent, consistent with the TSX listing requirements.

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

*CBCA provisions related to proportionate liability*

CPA Canada continues to support the modified proportionate liability regime introduced in 2001 and strongly advocate the CBCA to not consider returning to a joint and several regime. Instead the government should continue to urge the provinces to adopt modified proportionate liability.

We wish to note that a separate CPA Canada response is being submitted specific to the modified proportionate liability issue.

**V. Corporate Transparency**

CPA Canada recognizes the importance of enhanced transparency, and particularly supports the following: more detailed and timely disclosure of relevant information to competent authorities such as law enforcement and tax authorities, such as the beneficial ownership of corporations. Consideration
should be given to the establishment of a central repository of corporations incorporated under the CBCA. Industry Canada should be cognizant of possible future developments in the anti-money laundering area that may have an effect on, for example, the sharing of information between anti-money laundering and tax authorities.

VI. Corporate Governance and Combating Bribery and Corruption

The consultation paper sets out the goals of the Organisation for Economic Co-operation and Development to combat bribery and corruption to produce a level playing field in international business. CPA Canada supports the changes introduced by the Corruption of Foreign Public Officials Act. The introduction of a criminal offence for failure to have adequate records will increase the scrutiny of accounting records. In addition to CBCA provisions on corporate records, accounting standards and audits and Canada’s Anti-Money Laundering legislation, we recognize that illegal tax evasion and aggressive tax avoidance/planning is one of most significant issues in this area. These areas converge on many fronts and CPA Canada understands that Canada will continue to align its anti-money laundering legislation with international requirements.

VII. Diversity of Corporate Boards and Management

We support measures to promote diversity within corporate boards and encourage Industry Canada to take a broad view of diversity. In light of the Ontario Securities Regulation focus on gender diversity in their Proposed Amendments to Form 58-101F1 we suggest that any direction taken in the CBCA be coordinated, to support and encourage changes being made to Form 58-101F1. In a response to the OSC Staff Consultation Paper 58-401 CPA Canada supported a comply or explain approach to gender diversity, but further recommended that the OSC evaluate the effectiveness of this approach within three years, assessing whether gender statistics improve and whether further action should be considered. We believe it would be appropriate at that stage to determine whether the CBCA should play a greater role in diversity.

IX. Corporate Social Responsibility

While we are generally supportive of the proposal that publicly traded corporations be required to disclose the board’s understanding of the impact and potential impact of social and environmental matters on the corporation’s operations, we recommend that the disclosure be tightened and clarified. In any case, we maintain that CSR disclosure is more fittingly governed through securities regulators rather than the CBCA. CSA has published guidelines on disclosure requirements relating to environmental matters in *CSA Staff Notice 51-333 – Environmental Reporting Guidance*. Therefore we recommend this disclosure should be broadened beyond 51-333 and mandated through securities regulation.
X. Administrative and Technical Matters

A technical change to standard setting function in the CBCA is required in which the function, assigned to Canadian Institute of Chartered Accountants is now CPA Canada.

Thank you for considering these comments. If you would like to discuss our comments in more detail, please contact Gigi Dawe at gdawe@cpacanada.ca or Marial Stirling CPA, CA, LL.B at mstirling@cpacanada.ca.

Yours truly,

Kevin Dancey FCPA, FCA
President and CEO
CPA Canada