

September 14, 2004

The Honorable Lucienne Robillard,
Minister of Industry and Minister
responsible for the Economic Development Agency
of Canada for the Regions of Quebec

Dear Minister:

We ask that you accept this comment letter on behalf of the Issues and Policy Advisory Committee (IPAC) of Financial Executives International Canada (FEIC). We have reviewed the proposals for amendments to The Canada Business Corporations Act and have set out our views with respect to these proposals.

FEI supports the broad principles upon which the proposals were developed. These are:

- Issues raised are those that are thought to be matters of corporate law
- CBCA changes should reflect the codification of best practices
- Some detailed elements should be left to regulation to provide flexibility going forward as the environment of corporate and securities practices evolve
- The CBCA should avoid conflicts with policy objectives of Provincial securities regulators

Issues

The paper identifies three broad issues to be dealt with above the individual proposals:

- Should company size influence requirements for adherence?
- Should the phase in period be different based upon company characteristics?
- Should exemptions exist for companies who meet the requirements of foreign jurisdictions?

In the broadest sense, IPAC supports a common approach for all distributing companies in Canada, regardless of size or other characteristics. Creating exceptions opens the door for interpretation by corporations, which may result in some selecting the route of less disclosure rather than adopting the highest standard. This is not in the public interest. We believe that if a corporation wishes to raise capital in public markets in Canada it should be willing to adhere to a high standard of reporting and governance. There are alternatives to distributing securities to the investing public and companies that do not want to bear the scrutiny of the market should not seek public funding. However, IPAC does believe that smaller companies should be given an additional 12 months to become fully compliant with amendments to the law. Larger companies who have more technical and financial resources should lead the way by establishing disclosure precedents that could then be more easily adopted by smaller firms at a lower cost. Where a company is required to meet requirements of foreign jurisdictions that are in line with or are higher standards of disclosure than required by the CBCA and its regulations, the company should be able to meet its CBCA requirements by filing a document that references the disclosures made in foreign jurisdictions with a mapping to such CBCA requirements.

Proposal 1 - Require that a majority of directors of distributing corporations be independent.

IPAC agrees with this proposal. It also supports the recommendation that closely held corporations should have a majority of directors who are independent to protect the rights of minority shareholders. Independent directors of parent companies who are also directors of subsidiary companies should be considered as being independent members of boards of subsidiary companies of that parent company.

Proposal 2 – Require that distributing corporations either separate the functions of Board Chair and Chief Executive Officer or where the positions remain integrated, that corporations provide for an independent lead director.

IPAC agrees with this proposal. Where one person holds the dual position of Chairman and CEO, an independent lead director must be appointed who takes over the Chair’s duties when the board must sit in the absence of management. IPAC believes that the board should be required to sit in the absence of management on a periodic basis.

Proposal 3 – Require that audit committees of distributing companies be composed only of independent directors

IPAC believes that this is a foundational requirement for good corporate governance and fully supports this requirement. Shareholders need to know that the independent auditor is reporting to an independent audit committee that has the institutional power to investigate issues raised by the auditor without interference from management. IPAC believes that CBCA should set the requirement for a minimum number of three independent members of the audit committee, and not include by reference the rules adopted or amended from time to time by the CSA or provincial securities regulators. Furthermore, all audit committee members should be required to be financially literate. This is a fundamental element of corporate governance that should be set in legislation. Additionally IPAC does not believe that legislation with respect to the minimum size or composition of audit committees for distributing corporations should vary by type or size of company.

Proposal 4 – Amend the CBCA to require the audit committee to recommend the appointment of the auditor to the board of directors prior to the board’s approval of the proxy circular

IPAC agrees with this proposal. The proposal with respect to appointment of auditors is the practice generally followed today by most distributing corporations and it is appropriate that the audit committee be charged with the responsibility for undertaking a due diligence review of auditor performance, practices and capability prior to recommending appointment to the board. We also agree with the proposed disclosure regarding the audit committee and its mandate in the proxy circular.

Proposal 5 – Require independent nominating and compensation committees for distributing corporations. These committees may be combined into one committee.

IPAC agrees with the proposal and supports disclosure in the proxy circular of the mandate of the committee(s), compensation policies and the details of any security based compensation plans. We do not believe that in this case there should be any mandated number of members on this committee other than to state that for the committee to be independent, a majority of the members of the committee need to be independent. The mandate of the committee should include a requirement that the independent members of the committee meet at least once per year without management present.

Proposal 6 – Adopt a definition in the CBCA regulations of “independent director” that provides a standard that is clear, strong and consistent with other legal instruments.

IPAC agrees with the proposal that the definition of independent director be in the regulations rather than the statute to facilitate changes to the definition as the need arises. The IPAC supports the definition of independent director outlined in the white paper and believes that a more stringent definition is appropriate. An issue will certainly arise with respect to what level of business is deemed to be significant for either the corporation or the director in determining whether a director is independent. Guidance in this area may be required to ensure consistent treatment in similar fact cases.

Proposal 7 – Amend the definition of “auditor” in the CBCA to require that auditors of distributing corporations be a participating firm in the Canadian Public Accountability Board (CPAB).

IPAC fully supports this position and supports the suggested proxy disclosures with respect to auditor activities and remuneration. We recommend that audit partner rotation match the term in US legislation to avoid a conflict for inter-listed CBCA distributing corporations.

Proposal 8 – Require certification of financial statements of distributing corporations by the Chief Executive Officer and Chief Financial Officer.

IPAC agrees with this proposal. We support the concept of including the wording of the certificate in regulations so that the wording of the required certificate would match that required in securities regulation to avoid duplicate certificates with slightly varied wording.

Proposal 9 – Amend the penalties in the specific CBCA offence provisions to match securities legislation penalties where corporate and securities legislation overlap.

IPAC believes that the most effective means to enforce the CBCA is through civil remedies. The concept aligning penalties with those in securities laws is supported by FEI.

Proposal 10 – Create an offence with respect to CEO/CFO certification of financial statements.

IPAC agrees that a specific offence for misrepresentation on a certificate should be created.

As is evidenced throughout our comments on the white paper, Financial Executives International (Canada), the organization representing the CFO's and senior financial managers of Canadian corporations, is fully supportive of legislative and securities regulatory action designed to enhance investor confidence in Canada's listed public companies. Our members are in fact the CFO's who will be certifying the financial statements of the corporations they serve.

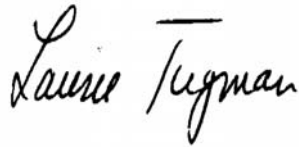
IPAC members welcome the move to more transparent and open corporate governance regimes that provide shareholders with relevant, timely information to judge the performance of the management team of the companies they invest in. Openness and independence will assist our members in carrying out their responsibilities to apply their knowledge, experience and talents to the benefit of the company and in the best interests of its shareholders.

IPAC Canada would be pleased to participate in further dialogue with respect to the proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Dietrich". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Rob Dietrich
Leader, Task force on Corporate Governance
Financial Executives International Canada

A handwritten signature in black ink, appearing to read "Laurie Tugman". The signature is cursive, with the first letters of the first and last names being capitalized and prominent.

Laurie Tugman,
Chairman, Issues and Policy Advisory Committee
Financial Executives International Canada