

December 19, 2005

BY E-MAIL

Mr. Tom Allen
Chair, IDA Task Force on Modernizing the CBCA
Suite 1600, 121 King Street West,
Toronto, Ontario M5H 3T9

Re: Follow-up to November 17 Meeting with the IDA Task Force

Dear Mr. Allen:

British Columbia Investment Management Corporation (bcIMC) appreciated the recent opportunity to personally express our views on how Canada's legislative and regulatory environment might be improved. I would very much have liked to participate in bcIMC's November 17, 2005 presentation to the IDA Task Force, but I had already committed to an investor tour in Asia when the date of the Vancouver meeting was announced. This letter is intended to follow-up on the comments and questions raised by Task Force members during the presentation.

I. Should directors be prohibited from owning shares in the company, because ownership conflicts with a duty to disclose bad news that might depress the value of the stock?

There is of course a risk that directors may, if they own shares, have an incentive to suppress bad news so as not to reduce the price of their stock. We believe this risk is small, especially compared to the risk that management will suppress bad news.

First, management always has an incentive to suppress bad news, especially if (as is usually the case) they are entitled to (a) bonuses related to performance and (b) stock awards related to performance.

Second, a director takes great risk in suppressing bad news since (a) all other directors will know about the bad news and its suppression, and (b) board processes usually ensure that there is some record that they were in possession of the bad news and chose not to disclose.

Third, as we noted during our presentation, bcIMC is specifically opposed to performance-based compensation for directors precisely because of the significant potential for misalignment of directors' interests with those of the long-term owners of the corporation.

II. Doesn't bcIMC's proposed prohibition on issuing shares with limited voting rights deny investors the right to buy into a company where the share structure ensures it will continue to be controlled by an individual with "a magic touch"

First, this would be a sensible question if investors could know for a certainty that the controlling individual had a magic touch and would always be honest. But of course in January 2000, investors thought Ken Lay was an honest man with a magic touch. And if it ever turns out that the individual with the magic touch is not competent or honest, a two-tier voting structure takes away the most logical means of removing him/her.

Second, as the Task Force suggests, the dual class share model allows companies to raise money without losing any control. In bcIMC's view, this provides insufficient justification for this practice. The original owners of a company can retain control by simply owning a majority of shares in the corporation, rather than creating a separate class of shares with multiple voting rights.

III. Why don't investors like bcIMC who are opposed to dual class share and voting structures simply choose not to invest in corporations with such structures?

Until recently, bcIMC had little choice whether or not to invest in a particular Canadian company. With the elimination of the foreign property rule, we now have a much broader investment universe, and can show our disapproval for subordinated voting structures by choosing not to invest in corporations with such mechanisms. We agree that the market has some role to play in directing the practices of corporations, however, the law should also be reformed to address this fundamental barrier to meaningful and equal shareholder rights.

IV. Since bcIMC supports imposing joint and several liability on those responsible for the preparation of corporate financial statements, would it be logical then to require directors to have a level of financial independence?

We are not suggesting that only rich persons will be able to be directors if they are made jointly and severally liable. For directors who act honestly and in good faith with a view to the best interests of the corporation, an enhanced personal liability regime poses no additional financial risk. For directors who act in bad faith or are negligent in their oversight of financial disclosures, joint and several liability places the proper burden of restitution and accountability upon them.

V. The Ontario Securities Act is being amended to provide for a "due diligence" defence that would apply to the deemed reliance in actions for misrepresentation for losses arising from the purchase of shares on the secondary market. Does bcIMC think that such a defence should also apply to the deemed reliance prescribed for prospectus purchases?

In our view the current defenses provided by s.130 (2) to (7) of the *Ontario Securities Act* reflect the appropriate balance of interests between investors and participants in the issuing of a prospectus. bcIMC does not believe that a due diligence defense should be available to a prospectus issuer.

VI. In bcIMC's view, would a transaction fee be an appropriate way to fund or increase funding for securities law enforcement?

We support the view that an efficient (and therefore honest) securities market benefits the economy as a whole, and that the costs for regulatory oversight and enforcement to achieve this efficiency should be spread over the economy as a whole.

bcIMC is adverse to the imposition of transaction fees for trades in securities in order to fund the resources necessary for securities regulators to improve oversight and enhance enforcement.

First, regulators are not reliably enforcing as it is. What assurance do we have that they would use more money for better enforcement?

Second, now that the foreign property rule has been abolished, Canadian investors like bcIMC have the flexibility to search out and participate in markets which are both well-regulated *and* have low transaction costs. We can invest where we like, and we will invest where the regulators act to ensure a fair market.

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Again, thank you for the opportunity to comment on Canadian securities and corporate law reform.

Sincerely,



Doug Pearce
Chief Executive Officer/Chief Investment Officer