



August 22, 2017

The Honourable Rachel Notley, M.L.A.  
Premier of Alberta  
Office of the Premier  
Executive Branch  
307 Legislature Building  
10800 - 97 Avenue  
Edmonton, AB T5K 2B6

Page | 1

Dear Premier:

**Re: Alberta Business Corporations Act – Shareholder Proposals**

We are writing to request that Alberta amend the shareholder proposal provisions under its *Business Corporations Act* (ABCA),<sup>1</sup> so that investors will have a meaningful ability to use this important corporate engagement tool at companies incorporated under the Act. We believe this could be achieved by a change to the *Business Corporations Regulation*.<sup>2</sup>

With approximately C\$6 billion in assets under management, NEI's approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best Environmental, Social and Governance (ESG) practices into their strategies and operations. In practice, this means that our investment process involves the analysis of key ESG information to inform our actions as a fiduciary, from the decision to invest (or not) in corporate securities, to our proxy voting and corporate dialogue activities once we are invested. It is in this light that we provide the following comments.

**Barriers to filing shareholder proposals under the ABCA**

Under the ABCA, shareholders of issuer companies have the right to submit a shareholder proposal to be voted on at the annual general meeting, subject to certain eligibility criteria outlined in section 136(1.1) of the Act and to criteria thresholds set out in section 18.1 of the associated Regulation. There is a requirement that the proponent should hold at least 1% of all issued voting shares of the corporation or shares with a fair market value of at least \$2,000, and that the proposal should be supported by other shareholders holding at least 5% of all issued voting shares. In contrast, under the *Canada Business Corporations Act* (CBCA) and legislation in other Canadian provinces, the proponent is only required to hold 1% of shares or shares worth \$2,000 – without the secondary requirement for 5% support.

In practice, the secondary requirement for 5% support renders useless the theoretical right to file a shareholder proposal, even for large institutional investors.

---

<sup>1</sup> [http://www.gp.alberta.ca/1266.cfm?page=B09.cfm&leg\\_type=Acts&isbncln=9780779797523](http://www.gp.alberta.ca/1266.cfm?page=B09.cfm&leg_type=Acts&isbncln=9780779797523)

<sup>2</sup> [http://www.gp.alberta.ca/1266.cfm?page=2000\\_118.cfm&leg\\_type=Regs&isbncln=9780779797653](http://www.gp.alberta.ca/1266.cfm?page=2000_118.cfm&leg_type=Regs&isbncln=9780779797653)

**Head Office**

151 Yonge Street, Suite 1200  
Toronto, ON  
Canada M5C 2W7  
Tel: 416 594-6633 | Fax: 416-594-3370  
Toll-Free Tel: 1 888 809-3333

**Western Region**

505-1111 West Georgia Street  
Vancouver, BC  
Canada V6E 4M3  
Tel: 604 633-0615 | Fax: 604 633-0619  
Toll-Free Tel: 1 866 888-0615

**Quebec & Eastern Region**

2410-1800 McGill College Avenue  
Montreal, QC  
Canada H3A 3J6  
Tel: 514 286-3292 | Fax: 514-286-3489  
Toll-Free Tel: 1 877 906-3332



## ***The value of shareholder proposals***

At NEI, we have a long-established program under which we undertake corporate engagement with companies held within our funds on ESG issues that we consider to be material to the long-term sustainable value of those companies. We have a strong preference for advancing these issues through constructive dialogue, but at times we may determine that it is necessary to file a shareholder proposal because the company is not willing to engage, or we have a difference of opinion with the company that cannot be resolved, and we seek to establish the views of other investors. In general, we will withdraw a proposal before it goes to a vote if the company agrees to adopt the action we have outlined, partially agrees to the action and commits to follow-up dialogue, or demonstrates that the proposal is moot because it is already addressing the issue.

Page | 2

We do not believe the shareholder proposal tool should be used lightly. Nevertheless, it can be a valuable way to create a moderate level of engagement escalation where dialogue with a company is not progressing. Without the ability to file proposals, investors may resort immediately to more extreme measures: they may decide to withhold votes from board members at the annual general meeting, which under majority voting rules may lead to the unseating of directors; or they may decide to reduce or sell their holding in the company.

More positively, shareholder proposal vote results allow companies to gauge the opinion of the wider shareholder base on topics that have been raised in dialogue with individual investors. It is important to have a process that allows shareholders to bring forward new ideas, even if management and directors may not see the value of those ideas in the first instance. A number of corporate governance practices that are now widely adopted or have become requirements were initially advanced through shareholder proposals, including majority voting and the advisory vote on executive compensation.

In our experience, the shareholder proposal process need not be adversarial. For example, in 2015 we filed a shareholder proposal at Suncor (under the CBCA), asking the company to provide ongoing reporting on how it was assessing and ensuring long-term corporate resilience in a future low-carbon economy. We filed after much dialogue with the company and based on the explicit understanding that management would recommend a vote for the proposal. Suncor did indeed make a positive recommendation, and the proposal received over 98% support at the annual meeting in 2016. We believe that part of the motivation of the company in supporting the proposal was a desire to engage its shareholder base in a deeper discussion on strategy for a low-carbon future.<sup>3</sup>

## ***Shareholder proposals at Alberta energy companies***

Enabling the filing of shareholder proposals would remove a question mark about corporate governance and accountability to shareholders at ABCA companies, and give capital markets more power to encourage positive change. It could also contribute to building Alberta's reputation as a progressive energy jurisdiction.

Institutional investors are increasingly concerned about risks and opportunities associated with climate change, as demonstrated by widespread support for initiatives such as the Financial Stability Board Task Force

---

<sup>3</sup> Details of the proposal can be found in the 2015 section here: <https://www.neiinvestments.com/pages/about-nei/about-ethical-funds/esg-difference/shareholder-resolutions/>

### **Head Office**

151 Yonge Street, Suite 1200  
Toronto, ON  
Canada M5C 2W7  
Tel: 416 594-6633 | Fax: 416-594-3370  
Toll-Free Tel: 1 888 809-3333

### **Western Region**

505-1111 West Georgia Street  
Vancouver, BC  
Canada V6E 4M3  
Tel: 604 633-0615 | Fax: 604 633-0619  
Toll-Free Tel: 1 866 888-0615

### **Quebec & Eastern Region**

2410-1800 McGill College Avenue  
Montreal, QC  
Canada H3A 3J6  
Tel: 514 286-3292 | Fax: 514-286-3489  
Toll-Free Tel: 1 877 906-3332



on Climate-related Financial Disclosures.<sup>4</sup> Some major investors have chosen to respond to climate risk concerns by divesting from fossil fuel energy companies, and in particular from companies that are exposed to production that is considered to be "high-carbon", such as the oil sands. We favour a more nuanced approach, taking into account the extent to which companies are demonstrating how they will adapt to a low-carbon future economy, rather than blanket exclusion targeting specific types of production.<sup>5</sup> However, we strongly support the growing consensus that shareholders should be highly engaged with energy companies on climate risk, if they continue to hold them. Given these investment trends impacting Alberta energy companies, allowing a barrier to healthy escalation of corporate engagement to persist could make divestment a more likely outcome at ABCA energy companies – which is not in the interest of the companies concerned.

***Proposed solution – reduce the threshold for "support" in the Regulation to 0%***

It appears to us that a relatively simple way to enable the use of shareholder proposals, without re-legislating the ABCA, would be to reduce the required percentage of "support" for a proposal from 5% to zero in section 18.1(c) of the Regulation. This would result in holdings eligibility criteria that are in line with those of the CBCA and other provincial statutes: holding 1% of shares or shares worth \$2,000.

A secondary concern regarding the ABCA shareholder proposal provisions relates to the ability to re-file a proposal. Under the ABCA, the same proposal may not be re-submitted within two years if it has been defeated at the annual meeting. By contrast, under the CBCA, the proposal may be re-submitted at subsequent meetings if it achieves a minimum level of support that increases from year to year. Based on our knowledge of proxy voting practice, it may take several years for a strong shareholder proposal on a new issue to gain widespread support among institutional investors. Given the reality that many shareholders continue to vote based on management's recommendation and without giving detailed consideration to the merits of items on the ballot, it is difficult for a shareholder proposal that has not received management support to achieve a majority. Yet an upward trend in support for such a proposal, even if it falls short of a majority, may provide important guidance to the company in determining whether to take action on the issue raised. We therefore suggest that the ABCA could follow the example of other jurisdictions in adopting a "minimum level of support" approach for determining whether a defeated shareholder proposal may be re-submitted within a defined time period. However, we recognize that addressing this would likely require changes to the Act, not just the Regulation; and at present the problem of subsequent filings is academic, as we do not enjoy an effective right to file a shareholder proposal for the first time.

***Conclusion***

By including a right to file shareholder proposals within the ABCA, we can only assume that Alberta legislators recognized the potential value of this corporate engagement tool. It was surely not the intention of legislators that investors should not be able to exercise that right.

---

<sup>4</sup> <https://www.fsb-tcfd.org/>

<sup>5</sup> NEI Investments (2016). The End of the World as We Know It: Transitioning to a Low-Carbon Energy System. <https://www.neiinvestments.com/documents/Marketing/Transitioning%20to%20a%20Low-carbon%20Energy%20System.pdf>

---

**Head Office**

151 Yonge Street, Suite 1200  
Toronto, ON  
Canada M5C 2W7  
Tel: 416 594-6633 | Fax: 416-594-3370  
Toll-Free Tel: 1 888 809-3333

**Western Region**

505-1111 West Georgia Street  
Vancouver, BC  
Canada V6E 4M3  
Tel: 604 633-0615 | Fax: 604 633-0619  
Toll-Free Tel: 1 866 888-0615

**Quebec & Eastern Region**

2410-1800 McGill College Avenue  
Montreal, QC  
Canada H3A 3J6  
Tel: 514 286-3292 | Fax: 514-286-3489  
Toll-Free Tel: 1 877 906-3332



We have copied this letter to Ministers Ceci, McLean and Phillips, with whom we have already had the opportunity to discuss this question; and also to Minister McCuaig-Boyd, as we believe addressing this matter could have a positive impact for the reputation of the Alberta energy industry within the international investment community. We also draw your attention to letters on this subject that have been submitted previously to the Alberta government by the Principles for Responsible Investment and the Canadian Coalition for Good Governance (noting that NEI Investments is a member of both of these networks); and by our colleagues at SHARE.

Please do not hesitate to contact me if you have any questions in relation to this submission, or if you would like to discuss this matter further.

Sincerely,

**NEI Investments**

A handwritten signature in black ink that reads "Michelle de Cordova".

Michelle de Cordova  
Director, Corporate Engagement & Public Policy  
[mdecordova@neiinvestments.com](mailto:mdecordova@neiinvestments.com)  
604-742-8319

cc:

The Honourable Joe Ceci, M.L.A., President of Treasury Board and Minister of Finance  
The Honourable Stephanie McLean, M.L.A, Minister of Service Alberta and Minister of the Status of Women  
The Honourable Shannon Phillips, M.L.A., Minister of Environment and Parks and Minister Responsible for the Climate Change Office  
The Honourable Margaret McCuaig-Boyd, M.L.A., Minister of Energy  
Board of Directors, NEI Investments  
Responsible Investment Executive Committee, NEI Investments  
Mr. Robert Walker, Vice President, ESG Services, NEI Investments  
Mr. Jamie Bonham, Manager, Corporate Engagement, NEI Investments

---

**Head Office**

151 Yonge Street, Suite 1200  
Toronto, ON  
Canada M5C 2W7  
Tel: 416 594-6633 | Fax: 416-594-3370  
Toll-Free Tel: 1 888 809-3333

**Western Region**

505-1111 West Georgia Street  
Vancouver, BC  
Canada V6E 4M3  
Tel: 604 633-0615 | Fax: 604 633-0619  
Toll-Free Tel: 1 866 888-0615

**Quebec & Eastern Region**

2410-1800 McGill College Avenue  
Montreal, QC  
Canada H3A 3J6  
Tel: 514 286-3292 | Fax: 514-286-3489  
Toll-Free Tel: 1 877 906-3332