THE TORONTO STOCK EXCHANGE
SUBMISSION TO THE
ONTARIO SECURITIES COMMISSION
CONCERNING
THE REGULATION OF NON-VOTING, MULTIPLE VOTING AND RESTRICTED VOTING COMMON SHARES

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September, 1981

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I. BACKGROUND

This submission is prepared for consideration by the Ontario Securities Commission in connection with its hearing now scheduled for September 28, 1981. The hearing is the most current in a series of recent developments that indicate the importance of the policy issues to be considered. In October, 1980 the Exchange published a discussion paper on the topic of "Listing of Non-Voting, Multiple Voting or Restricted Voting Common Shares" and requested comments. In recognition of its interest in the topic, the OSC also published the Discussion Paper. The Exchange has received forty-six letters of comment on the Discussion Paper, an indication of substantial interest on the part of the business community. These comments have been carefully considered and have had a significant impact on the formulation of recommendations in this submission.

There have been other recent developments. In the fall of 1980, the OSC published for comment proposed amendments to the Securities Act that included a provision to amend the take-over bid rules so that a bid for shares carrying the right to convert into or acquire voting shares would be treated as a take-over bid. These provisions were carried forward into revised proposals published in August, 1981. In May, 1981 the OSC announced its intent to hold the public hearing now scheduled for September 28. Six weeks later, interim policy statements 3-58 and 3-59 entitled "Uncommon Equity Securities: Disclosure" and "Uncommon Equity Securities: Moratorium" were released. The Exchange announced its intention to impose a moratorium on June 26, 1981 and similar moratoria were simultaneously adopted by the Quebec and Manitoba Securities Commissions, the Superintendent of Brokers of British Columbia and the Montreal and Vancouver Stock Exchanges. If there were any doubt as to the importance of this topic, the doubt would have been resolved by the attention and controversy aroused by these moratoria.

While all these developments were afoot, the Exchange has continued to deal on a case-by-case basis with proposals that involve the policy considerations here being addressed. Although the Exchange has no formal rule or policy on the point, the staff has suggested to corporations proposing a reorganization or new issue that would give rise to a public class of non-voting common shares, that the attributes of the class include provisions to ensure the availability to its holders of the benefit of any take-over bid made for the issuing corporation. The efficacy of such provisions is discussed in this submission (see appendix I). What is important to mention here is that issuers and their investment dealers have in many or most cases concurred with the staff's suggestions. This indicates general recognition of at least some of the policy concerns addressed in this submission, and also a willingness of the business community to deal constructively with these policy concerns if they are addressed in a specific and reasonable way.

The Exchange is glad that the OSC is taking an active interest in this difficult and important topic. As this submission indicates, a number of the policy difficulties could not be effectively addressed by the Exchange through the use of its own authority. Even as to those matters that can be dealt with by the Exchange, it is desirable that there be OSC concurrence not only with the details of the initiatives but also with the policy context in which they are placed. Accordingly, the Exchange looks forward to a constructive dialogue with the OSC and other interested authorities on the issues canvassed by this submission. The Exchange trusts that the recommendations in this submission will be helpful to the OSC in the resolution of those issues.

In view of its close involvement with this matter and its access to data that may be helpful to the OSC and others, the Exchange feels a responsibility to provide a relatively complete analysis of the background. But many readers of this submission will already be familiar with much of the background. Accordingly, the submission itself contains policy analysis and recommendations. Extensive use is made of appendices to provide supplementary and historical data. The appendices are:

A. Discussion Paper re Listing of Non-Voting, Multiple Voting or Restricted Voting Common Shares - Notice to Members No. 3105, October 2, 1980.

B. List of Submissions made to the Exchange concerning the Discussion Paper in Appendix A.

C. Summary of Submissions to the Discussion Paper and Other Arguments in relation to the listing of Special Shares.

D. Special Shares listed on The Toronto Stock Exchange.

E. Consideration of Special Shares by Government Agencies and Self-Regulatory Organizations in Canada.

F. Federal and Provincial requirements impacting on Special Shares.

G. Position in the United States and Britain.

H. Comments of J.R. Kimber, Q.C. in an appearance before the Commissioners of the Royal Commission on Corporate Concentration - May 5, 1976.

I. Attributes of Non-Voting Residual Equity Shares Designed to provide the benefits of take-over bids.

In what follows, the various policy considerations bearing on the regulation of special shares of the type being discussed are first reviewed. The criteria by which the Exchange has judged the merits of specific recommendations are then summarized. Comments are then made on the various rules the Exchange has considered, with special reference to the take-over bid situations. Specific recommendations are set out in the concluding section, prior to the appendices.

II. POLICY CONSIDERATIONS

Non-voting, restricted voting and multiple voting shares have in common that they facilitate corporate share structures which

allocate voting power in a way different from the allocation of risk and of equity contribution. The model to which many of the comments in this area - particularly those made by the press - relate is the corporation that has two classes of fully participating equity shares, different only in that one class lacks voting rights. Focussing on this model, the problems that led to publication by the Exchange of its Discussion Paper and to the calling by the OSC of a hearing on the topic, become readily apparent.

The most obvious characteristic of this type of structure is that it enables the holders of the voting shares to retain control of the corporation despite the fact that they hold less - perhaps much less - than a majority of the participating equity. They are therefore able to dictate business decisions to the corporation without substantial reference to the holders of non-voting shares. It seems unfair that investors equally at risk should not have equal degrees of control.

Further, the discrepancy in rights could have significant economic impact. Many corporate statutes, and in particular the take-over bid provisions of the Securities Act, focus on voting shares. In days such as these when take-over bids are a frequent occurrence, that discrepancy in treatment can be important. Holders of non-voting shares can be denied the benefit of a substantial premium paid for control, if the transaction comprises the sale of the voting shares. The holders of non-voting shares might feel particularly aggrieved if the potential discrepancy of treatment was never brought to their attention. These and similar concerns have led some commentators to suggest that drastic measures be taken, such as denial of listing on the Exchange to shares that illustrate the concerns. Such suggestions usually extend beyond the model situation described above, although few of the commentators have made precise suggestions as to the share attributes that will result in denial of listing.

There is another side to the case. Few, if any, of the comments received by the Exchange on the Discussion Paper would quarrel with additional disclosure requirements. Few would quarrel with provisions to ensure that the benefit of a take-over bid premium is not arrogated to the holders of a small class of voting shares; indeed, as noted earlier in this submission, a number of issuers have voluntarily included provisions with that objective in the attributes of their non-voting shares. But beyond this the consensus starts to erode. For example, many of the commentators take strong exception to the suggestion that listing privileges should be denied.

In economic terms, the case can be made that disclosure should be an adequate remedy. If investors attach weight to the presence or absence of voting rights, that weight should be reflected in share prices. If they do not, then perhaps the topic should not be a serious regulatory concern. In legal terms, the case can be made that these problems are essentially matters of corporate law and that they are being addressed by Parliament and the Legislative Assemblies as revisions are made to corporate statutes (see appendix F). In pragmatic terms, the case can be made that controlling shareholders faced with a prohibition on listing of non-voting shares (or shares with limited or subordinated voting rights designed to ensure control is retained by some other class) could often avoid the consequences by adopting a complicated corporate structure with the business activities held by a separate corporation that they would control through a holding company. All of these considerations are relevant, but those that concern us most are concerns arising from business considerations and those concerning the inter-action with valid policies affecting various segments of the economy.

As to business considerations, the comments received by the Exchange from Teck Corporation are illustrative. It explains that the share structure of Teck was revised in 1970 to conform with a variant of the model outlined above - two classes of fully participating shares

with identical attributes except that one has 100 votes per share (the Class A shares) and the other has 1 vote per share (the Class B shares). The Class B shares have been issued in a series of amalgamations; "in each such amalgamation, minority shareholders voted overwhelmingly in favour". A major direct investment in Teck by a German investor was made through preferred shares and a debenture convertible into Class B shares. The brief comments that, if this structure had been unavailable and the acquisitions made with equally voting shares,

> Teck in all probability would then have been taken over by one of the established major companies, foreign or Canadian, that was interested in its reserve inventory. The entrepreneurial spark would have been extinguished, and the mines Teck had developed could still be just prospect inventory.

But the brief continues by calling this "an academic scenario, because management would not have put itself in that position". Instead, acquisitions would have been effected through the creation of complicated corporate structures allowing retention of control despite the prohibition of non-voting shares and other shares with limited or subordinated voting rights.

The concern as to inter-action with valid policies affecting various sectors of the economy would be present even if the discussion was restricted to the model situation described earlier in this section. The Foreign Investment Review Act and other Canadian statutes, applicable for example to natural resource industries and to financial institutions, reflect a public policy against non-resident control. Yet non-resident equity financing may be an attractive source of funds. A prohibition of non-voting and other shares with limited or subordinated voting rights would limit the availability to corporations such as Teck of this source of funds. This is one of the considerations that can be advanced when commentators suggest that the policy concerns in Canada are the same as in the United States and that the Exchange ought therefor to be heavily influenced by the approach of the stock exchanges in that country as described in appendix G.

The inter-action with national policy becomes even more direct when the wider ramifications of proposed rules are considered. As the title of this submission indicates, the discussion is not limited to non-voting shares: it extends to other situations where the voting rights of what would otherwise be fully voting common shares are designed to ensure that control is retained by another class of shares. It also extends, more generally, to any case where voting rights are restricted. The most frequently adopted restriction on voting is that the holder of shares which would otherwise be fully voting is, if he holds in excess of a certain percentage of those outstanding, either precluded from voting any shares or limited to voting a specified number. In a number of instances, these restrictions are dictated by legislation or regulation; in many cases, the focus is on non-resident investors, but that is far from invariably true. For example, the Exchange is among the self-regulatory organizations which is in the process of adopting rules concerning member firms that wish to "go public". These rules will specify that an investor who is not an industry member may not, without special approval, own over 10% of the shares of a member firm or its holding company. This limit applies to resident investors equally with non-resident.

It seems generally accepted, even by the commentators most adamantly opposed to restrictions on the voting power of participating shares, that appropriate exceptions must be provided so that any rules adopted will not conflict with voting restrictions dictated by government policy. This principle may, however, be difficult to apply in practice. Clearly it would encompass the restrictions on voting of the common shares of banks, which flow from the Bank Act. But would it encompass a situation where a corporation concludes that restrictions are desirable so that Canadian control will be preserved under the Foreign Investment Review Act? There is no requirement for a corporation to do so, but loss of Canadian control status can be seriously prejudicial to a corporation that wishes to carry out an acquisition program. Similar considerations arise as to corporations that wish to preserve a high Canadian ownership rating under Canada's national energy program.

In summary, it is apparent that the issues being addressed are of unusual complexity. A frequently-used pattern for corporate share structuring has aroused extensive controversy on the basis that it creates unacceptable unfairness. Various proposals made to reduce or eliminate the unfairness give rise to economic issues, questions of corporate law and to pragmatic considerations as to the utility of some of the proposals made. Further, the more substantive of these proposals raise questions as to the extent to which it is appropriate to limit business flexibility, and also involve complex inter-action with valid policies affecting ownership and control of various segments of the economy.

Given the complexity and importance of these issues, the Exchange has found it more than usually helpful to develop guidelines or parameters against which to test the various comments made to the Exchange, and to use as a tool in the formulation of the Exchange's recommendations. In the hope that these guidelines may be of assistance to readers of this submission, they are summarized in the following section.

III. CONSIDERATIONS AFFECTING THE FORMULATION OF RECOMMENDATIONS AND RULES

It is trite, but nonetheless important, to say that a new rule should not be adopted unless there is good reason to believe that it will produce benefits that outweigh the costs to which it will give rise, including costs of compliance and other costs. This easily-stated proposition is often difficult to apply, because the costs and benefits are very different in kind: using the colloquialism, they involve weighing apples against oranges. That is particularly true here, since the benefits cited are greater fairness to investors, an important concept but one which is difficulty to quantify, while the costs relate to business flexibility, compliance with other policies, and other matters quite different from fairness to investors. But this only means the cost-benefit analysis is complex: the exercise must still be undertaken.

Disclosure rules differ significantly from substantive requirements in the application of the cost-benefit analysis. Ordinarily disclosure requirements can be formulated so as to involve comparatively few costs. They almost always are beneficial in that they contribute to the quality of information available to investors and hence to the efficiency of the capital markets. It is, then, no coincidence that commentators on the Discussion Paper were almost unanimous in their support for disclosure requirements.

Substantive rules involve a more difficult cost-benefit analysis. That is particularly true in this case since some of the substantive rules that have been proposed are designed to meet problems which might be cured by more complete disclosure. For example, if market action clearly demonstrated that investors consider the presence or absence of voting rights as a significant factor in their pricing decisions, then the case for substantive rules to protect holders of non-voting shares would be significantly weakened. Market action does not now demonstrate this, but perhaps it will begin to do so after new disclosure rules are adopted to educate investors more forcefully as to the significance of the lack of voting rights. The fact that disclosure rules may reduce the need for substantive rules must be taken into account when disclosure and substantive rules are under consideration at the same time.

Two technical questions must also be dealt with in the formulation of guidelines or criteria for new rules: the problem of definition, and the extent of "grandfathering". As to the problem of definition, a number of references are made earlier in this submission to the tendency of commentators to focus discussion on the comparatively simple model of a corporation with two classes of fully participating shares that have identical attributes except that one is without voting rights, and to analyze that simple model to provide support for changes in rules that would have much wider application. There is often imprecision concerning the types of shares to which these rules would apply, and the task of definition is not an easy one.

The problem of the extent of "grandfathering" flows from the fact that there are now in place a substantial number of corporations with publicly distributed, and listed, securities of the type here being discussed (see appendix D). Application to them of a number of the rules that have been proposed would produce substantial unfairness. Other rules - particularly those requiring disclosure - could appropriately be made of general application. Accordingly, for each proposed rule it is necessary to determine whether grandfather treatment is to be made available. Where the treatment is made available, further analysis is needed as to the extent of the treatment; for example, should it apply to additional issues of an already-outstanding class of non-voting shares, or shares with limited or subordinated voting rights?

Other questions have also been of concern to the Exchange in the formulation of the recommendations in this submission. Where a rule seems desirable, the determination of whether it should be applied by the Exchange or should be adopted by the OSC (or even the Legislative Assembly) is not always easy. Also, some possible rules involve issues of corporate law and might be resented by corporate law administrators in other jurisdictions.

In summary, the Exchange believes that, on this topic as on other topics, a rule should not be adopted unless it satisfies a reasonable cost-benefit analysis. That test is generally more easily met by a disclosure rule than by a substantive rule. Where it is met, the rule should be carefully formulated, with full consideration being paid to: the problem of definition; the extent of grandfathering; the interaction between the Exchange and the OSC in the application of the rule; potential concerns of administrators (including corporate law administrators) in other jurisdictions, and other relevant matters.

IV. ANALYSIS OF SPECIFIC PROPOSALS; RECOMMENDATIONS

The first question to be considered is whether the Exchange should continue to accept for listing non-voting shares or other shares that give rise to the questions and difficulties discussed above. If that question is answered in the negative, detailed analysis of other possible rules becomes unnecessary. The Exchange's view is that the question should be answered in the affirmative. The perceived evils are not so great as to justify the drastic step of refusal to accept for listing. The refusal could not extend to already-listed shares since that would produce substantial unfairness to public investors who have purchased in reliance on the availability of the Exchange market. Discrimination would, then, result from refusal to list new shares. Further, the Exchange believes that the concerns would be significantly reduced by implementation of the less drastic recommendations set out below.

If it is accepted that these shares will not be rejected from listing, it is necessary to consider the regulatory structure that should apply to them. The possible rules can be conveniently divided into three categories:

(a) those designed to improve the quality of disclosure;

(b) those designed to reduce the possibility that public holders will be denied the benefits of a take-over bid;

(c) other substantive rules.

These three categories are discussed in the following subsections.

(a) Rules Designed to Improve the Quality of Disclosure

The Exchange believes that more should be done to bring home to investors the significance of the share structures here being discussed. Here it is necessary to deal with the question of definition, for the disclosure concerns go beyond the simple model of the corporation with two classes of fully participating shares with identical attributes except that one is non-voting. On the other hand, the concerns do not extend to conventional preference shares with a fixed participation in dividends. The Exchange has concluded that the most appropriate test is whether the attributes of the particular class or series of shares impose a maximum on the participation of holders in dividends. The suggested disclosure rules should apply to any shares ("residual equity shares") that are not restricted in their participation in earnings. Of course, it is not necessary to apply the rules to full voting common shares where there is no other class of shares with superior voting rights.

The Exchange believes that a full appreciation by investors of the significance of share attributes with respect to these matters is of sufficient importance to justify a rule concerning the designation of shares, and requiring more meaningful disclosure than the "Class A/Class B" distinction often used today. The Exchange is satisfied that this rule is of sufficient importance that it should be applied not only to newly-listed classes or series of shares, but also to those already listed so that a change in their designation would be required within, say, eighteen months after the rule becomes effective. The following are the details of the designation requirements that the Exchange proposes:

(i) The designation of a class of shares may not include the words "common shares" unless they are residual equity shares which carry the right to one vote per share at meetings of shareholders of the corporation and do not fall within (or are exempted from) the designations described in (ii) to (v) below.

(ii) The designation of a class of residual equity shares shall include the words "non-voting" if they do not carry the right to vote at meetings of shareholders except for a right to vote in certain limited circumstances (such as the right to elect a limited number of directors or to vote in circumstances where the statute under which the corporation is organized provides a right to vote for shares which are otherwise non-voting).

(iii) The designation of a class of residual equity shares shall include the words "subordinate voting" where the shares carry the right to vote at meetings of shareholders but there is another class of shares of the corporation which carries greater voting rights per share in relation to their relative equity interests in the corporation.

(iv) The designation of a class of shares shall include the words "multiple voting" if the voting rights per share are greater than those of another class of shares in relation to their relative equity interests in the corporation.

(v) The designation of a class of residual equity shares shall include the words "restricted voting" if they carry the right to vote subject to some limit or restriction on the number or percentage of shares which may be owned or voted by a person or group except where the restriction or limit is applicable only to persons who are not Canadians or residents of Canada. The Exchange may exempt a corporation or group of corporations from this requirement where, in its opinion, the limit or restriction is generally known to the investing public or it would only affect an investor making a substantial investment who could be expected to be aware of the limit or

restriction. For instance, chartered banks would be affected by reason of the provision in the Bank Act which states that no person, whether a Canadian resident or non-resident, may hold in excess of 10% of the issued and outstanding shares of a class of shares of a bank. Banks would be exempted from the requirement to designate their shares as "restricted voting", on the basis of the substantial investor ground referred to above.

(vi) The designation of a class of shares may not include the words "preference" or "preferred" unless, in the opinion of the Exchange, there is attached thereto some real right or preference.

(vii) The rules would include a definition of "residual equity shares" based on the definition earlier in this subsection.

(viii) The Exchange would reserve the right to determine which of the above designations should be applied to a class of shares and to exempt a corporation or group of corporations from the designation requirements set out above.

To ensure that these designation requirements are fully effective and become known to investors, the Exchange also proposes to abbreviate them as "NV", "SV", "MV" and "RV" in the names published in its Daily Record and other publications of the Exchange and in the quotations prepared for the financial press. Brief explanations of the abbreviations would appear in footnotes. The Exchange believes that these steps would do much to contribute to investor awareness. They will, of course, not be adopted until the OSC has had an opportunity to review them. Any comments the OSC may have at this time would be appreciated.

The Exchange also believes that a summary of the attributes of these shares should appear in each information circular of the issuing corporation, and in the notes to its financial statements. The Exchange urges the OSC to recommend an amendment to the regulations under the Securities Act to set out the former requirement. The latter requirement would most appropriately appear in the Handbook of the Canadian Institute of Chartered Accountants. The Exchange urges the CICA to adopt such a requirement and trusts that the OSC will concur in the suggestion to the CICA. In addition, the Exchange would appreciate the comments of the OSC as to whether the Exchange ought itself to implement either or both of the requirements recommended in this paragraph.

These disclosure rules would be of little advantage unless the material actually reaches shareholders. Many issuers now make a practice of distributing to holders of non-voting or subordinate voting residual equity shares all of the material that is sent to holders of voting shares. The Exchange believes that issuers should be obligated to send to the holders of non-voting or subordinate voting residual equity shares all of the material required to be sent to holders of voting shares, and any additional material voluntarily sent in connection with a specific meeting of shareholders. The Exchange would be prepared to implement this requirement on its own authority, but can see advantages to its being implemented instead by the OSC, or to joint action by the two organizations. For example, the Exchange hopes that the OSC will amend numbered paragraph 10 of the exempting order included in OSC Policy 3-44, so that reporting issuers will be obligated to send financial statements to the holders of non-voting residual equity shares. The Exchange would be pleased to discuss these matters with the OSC.

Finally as to disclosure, the Exchange feels that listed corporations should be urged to provide their shareholders with this information through any other feasible channels, including the annual report.

(b) Rules Designed to Reduce the Possibility that Investors will be Denied the Benefit of a Take-over Bid

The possible inability of the investor in non-voting residual equity shares to participate in the premium offered on a take-over bid is the substantive concern that evoked most discussion in the comments received by the Exchange concerning the Discussion Paper. The Exchange shares the concerns expressed by these commentators. It would be harmful to the credibility of the trading markets for control to change hands at a premium under a sale of one class of residual equity shares, probably held by a restricted group of holders, when no bid is made for publicly-distributed residual equity shares with lesser (or no) voting rights. The real questions lie in what should be done to meet the situation.

The Exchange and its legal advisors have canvassed in depth the feasibility of amendments to the Securities Act to force inclusion of a bid for the non-voting residual equity shares when one is made for the full voting shares. Both technically and substantively the complications are very great. For such legislation to be effective, the question of pricing must be addressed. Even in the simple model of classes of fully participating shares that are identical in attributes except that one is non-voting, that question can be complex. If non-voting shares trade at a higher price than voting shares in the pre-offer trading market (because of available liquidity or for other reasons), is the offeror who really wishes only to bid for the voting to be obligated not only to offer for the non-voting as well, but to offer a higher price than for the voting? If so, by whom or by what formula is the required price to be selected? Where the attributes of the two classes are different (for example, if one has an initial dividend preference, after which the two participate equally in further dividends) the problem of determining the price at which the mandatory offer must be made becomes even more serious.

The problem of pricing would not be the only difficult aspect of mandatory offer provisions. Other complexities would arise from

the statutory provisions as to the conditions that an offeror may include in a bid, since these conditions are not now designed for the situation of linked bids for two classes of shares, perhaps at different prices. The likelihood of a price differential between the two bids would also complicate the application of the rule requiring an offeror who purchases shares on the market at a price greater than the offering price to increase the offering price correspondingly. Similar difficulties would arise with the follow-up offer obligation.

It is essential that take-over bid rules be clear and workable. Recent experience in Ontario demonstrates that there are many respects in which our rules are unclear. The amendments currently under discussion to extend the rules so that they will regulate voluntary offers for securities convertible into common shares would add substantial additional complications and uncertainties to the rules. The Exchange has concluded, reluctantly, that the very great complexities of rules mandating an offer for the non-voting (or limited or subordinated voting) residual equity shares when one is made for the voting shares, would involve a cost that would outweigh the benefit to be obtained. The Exchange therefore recommends against amending the Securities Act for this purpose.

But this does not end the matter. As explained in the first section of this submission, the Exchange staff has worked with a number of issuing corporations to develop provisions for inclusion in the attributes of non-voting residual equity shares to ensure they will receive the benefit of a take-over bid or a follow-up offer. Substantial cooperation has been received from issuers on a voluntary basis. Provisions now appear in the attributes of the non-voting shares of Maclean Hunter Limited, Versatile Corporation, Bombardier Inc., Newfoundland Capital Corporation Limited and Atco Limited, among others. The mechanisms used differ among issuers, but include:

(i) granting voting rights to holders of non-voting shares where there is an obligation to make a follow-up offer to holders of the voting shares or where an offer is made to the holders of the voting shares but not to the holders of non-voting shares;

(ii) providing for a right of conversion of non-voting shares into shares of a class which carry voting rights where the controlling shareholder accepts an offer to sell or reduces its holdings below 50%; and

(iii) providing for a conversion of multiple voting shares into single vote shares where no offer is made for the single voting shares.

Generally, the rights of conversion are structured so as to be triggered only where there has been a take-over bid which results in an actual change in control, i.e. the conversion takes place after the take-over bid is successful. As a result, the offeror may not be legally required to make an offer for the non-voting or subordinate voting shares at the time of its offer for the voting or multiple voting shares. However, the offeror will have a significant incentive to make an offer for the non-voting or subordinate voting shares at that time because if it fails to do so it will be faced with an immediate dilution of its voting control. The protection provided by these provisions is not perfect, but they establish the principle of fair treatment and provide the holders of non-voting or subordinate voting shares with some support in asserting their right to fair treatment.

A more detailed analysis of the mechanisms with comment on their relative merits appears in appendix I. Subject to any comments the OSC may have, the Exchange proposes to require that each new class or series of non-voting or subordinate voting residual equity shares which is listed on the Exchange should include appropriate protective provisions in its attributes. Details of these provisions will be settled between the Exchange and the applicant for listing, based on the criteria described in appendix I. The Exchange anticipates that this approach will encourage fair treatment on take-over bids while retaining flexibility to adapt the rules to suit the circumstances of particular cases.

APPENDIX A

THE TORONTO STOCK EXCHANGE

234 Bay Street
TORONTO, CANADA
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NOTICE TO MEMBERS
NO. 3105
OCTOBER 2, 1980

DISCUSSION PAPER RE LISTING OF NON-VOTING MULTIPLE VOTING OR RESTRICTED VOTING COMMON SHARES

I. Introduction

In a partnership or closely-held corporation, investors normally enter into detailed agreements setting out their respective rights and responsibilities to each other and to the company. The agreement is specific to that company and its paricular shareholders' requirements. In a public corporation, the full incidents of ownership have been generalized and reduced to a set of legal and factual interests in the enterprise. The legal rights are defined in corporate and securities legislation.

The availability of this general framework, given appropriate standards and protections, attracts investors without the costly bargaining which would accompany the formation of a company if each investor negotiated for his preferred terms and protections. As one of the fundamental institutions of an enterprise economy, the "standard form" provided by corporate and securities legislation for public companies/investors, facilitates investment on a portfolio basis and makes investment in equity securities feasible for persons of modest means. Its key function in this regard is to draw the rules as to what is acceptable for entrepreneurs, major shareholders, corporate management and their financial advisors.

Similarly, by providing a standardized facility for the purchase and sale of corporate securities and drawing the rules as to what securities are admitted to trade within it, the Exchange seeks to attract public participation in Canada's capital formation process. Since it is to the market that most public shareholders look, both for an appraisal of the expectations on their security and for their chance of realizing them, the Exchange can play a powerful role. The shareholders' various legal rights - of which voting is paramount - all effect and enter into this open market appraisal. Aggregated, interpreted by a public market and appraised on a security exchange, these rights have a concrete and measurable value upon which the corporate security system is largely based.

On a mandatory basis, this proposal would not apply to already-listed classes or series of non-voting or subordinate voting residual equity shares, or to new issues of shares of the same class or series. The Exchange is reluctant to extend the rule in this way, because the only recourse available to it as to an issuer which refused to comply would be to delist the shares involved. This would produce unacceptable unfairness to investors who have acquired those shares in reliance on the availability of the Exchange trading market. Instead, the Exchange proposes to approach the issuers of listed non-voting and subordinate voting residual equity shares whose attributes do not already include the proposed provisions, to request that the appropriate amendments be made. The Exchange hopes that the OSC will lend its support to these approaches.

Further, where a take-over bid is made for non-voting shares of a corporation on a voluntary basis, it is the view of the Exchange that the procedures to be followed for such a bid be the same as those governing a take-over bid for voting securities contained in Part XIX of the Securities Act. Accordingly, the Exchange recommends that Part XIX of the Securities Act be amended to make the procedures set forth therein applicable where a take-over bid is made for non-voting residual equity shares.

(c) Other Substantive Rules

The Exchange has considered a number of other rules that might be recommended to the OSC. We are reluctant to recommend far-reaching rules when the impact of the new disclosure requirements cannot yet be predicted, particularly since a number of the proposals might be seen to involve questions of corporate law and the protection of shareholders under corporate law is already under active consideration by the appropriate authorities. There are, however, two topics as to which new requirements seem desirable: attendance at meetings and mandatory voting rights. The former is quickly dealt with. The Exchange believes that all issuers of

non-voting residual equity shares should follow the practice already followed by some, of permitting the shareholders to attend meetings of the holders of voting shares, to speak thereat, but not to vote except on matters as to which they have voting rights. The very presence of these shareholders at meetings, even without voting rights, can sometimes have a significant impact on management. As with the distribution of material to shareholders, this is a recommendation the Exchange would be prepared to implement, but which would preferably be implemented by the OSC; the Exchange would be pleased to discuss this with the OSC.

The question of mandatory voting rights is more complex. The availability of voting rights is ordinarily a matter of corporate law. As appendix F indicates, it is being addressed in the more modern Canadian corporate statutes. Accordingly, the Exchange is reluctant to undertake major initiatives on this topic, or to recommend that they be undertaken by securities administrators. However, matters sometimes arise as to which it seems wrong to permit the corporate decisions to be made entirely by the holders of voting shares. The most obvious example is the approval of a material transaction with a shareholder who controls the outstanding voting shares. The Exchange proposes to identify such transactions on a case-by-case basis and, if thought appropriate, to use its authority under its by-laws and policies to require approval at a meeting at which the holders of otherwise non-voting shares are given the right to vote. At any such meeting, the Exchange proposes that holders of subordinate voting residual equity shares would be entitled to vote on an equal basis with the holders of any class of shares of the corporation which otherwise carry greater voting rights per share in relation to their relative equity interests in the corporation.

Consideration was also given to a prohibition against listing restricted voting residual equity shares where the restriction was imposed other than pursuant to a statutory requirement. However, in that such shares will be designated as "restricted voting" shares under the proposed disclosure recommendations, it was felt to be inappropriate to fetter the issuer's ability, if otherwise legal, to create such

limitations. Nevertheless, the Exchange does propose to require an issuer of restricted voting residual equity shares, if so requested by the Exchange, to provide a legal opinion, acceptable to the Exchange, that the restriction constitutes a legal and valid limitation upon the voting rights attaching to such shares.

Turning to other rules that the Exchange has considered, the general caution as to new substantive rules that is set out at the beginning of this subsection becomes more relevant. A number of proposals have been canvassed, including the possibility of requiring that holders of non-voting or subordinate voting shares be entitled to elect at least a specified percentage of directors, or to receive at least a specified portion of any discretionary dividend payments. Rules such as this would involve a major incursion on corporate flexibility and decision-making. The Exchange believes that these further considerations should be postponed until there has been an opportunity to accumulate experience as to the practical impact of the rules proposed above, particularly the disclosure rules.

V. SUMMARY OF RECOMMENDATIONS

The recommendations in this submission are summarized as follows:

(1) the Exchange should not refuse to accept non-voting and other types of residual equity shares for listing;

(2) new disclosure requirements should be adopted, comprising;

(a) a pattern of requirements as to the designation of non-voting, subordinate voting, multiple voting and restricted voting shares, to become applicable on adoption to all newly-listed classes or series of shares and, within eighteen months thereafter, to all existing listings;

(b) inclusion in all information circulars of a brief description of the attributes of such shares, pursuant to amendments to the regulations under the Securities Act;

(c) inclusion in all financial statements of information similar to that in (b), pursuant to amendments to the Handbook of the Canadian Institute of Chartered Accountants;

(d) mandatory distribution to holders of non-voting residual equity shares of all material required to be sent to holders of voting shares, and all additional material voluntarily sent in connection with a specific meeting; the Exchange would be prepared to implement this requirement on its own authority, but suggests that it should be implemented by the OSC (including by an amendment to paragraph 10 of the order included in OSC Policy 3-44);

(e) issuers be urged to communicate information about voting rights to their shareholders in other ways;

(3) the Securities Act should not be amended to mandate a take-over bid to the holders of non-voting residual equity shares when when one is made for the voting shares, but the Exchange should require the inclusion of appropriate protective provisions (see appendix I) in the attributes of newly-listed classes or series of non-voting residual equity shares. The Exchange and the OSC should urge the issuers of such shares that are already listed but lack such attributes to make corresponding amendments;

(4) Part XIX of the Securities Act should be amended so that the rules concerning take-over bids will apply when a bid is made for non-voting residual equity shares;

(5) holders of non-voting residual equity shares should be allowed to attend and to speak at meetings of the holders of voting shares and should be given voting rights in certain cases where shareholders' approval is required pursuant to the by-laws and policies of the Exchange. In these cases, holders of subordinate voting residual equity shares should be given equal voting rights to shares carrying greater voting rights in the same circumstances.

Recently, public attention has been focussed on listed companies placing voting restrictions on, or granting special voting privileges to, different classes of common shares. In response to these concerns, the Exchange is releasing this discussion memorandum which is intended to facilitate a more informed public discussion of the issues prior to a formal review of present policy.

II. Pressures for Change

Since 1926, the New York Stock Exchange has refused to authorize the listing of non-voting common stock or any non-voting stock, however designated, which by its terms is in effect a common stock. The New York Stock Exchange also refuses to list the common voting stock of a company which has outstanding a non-voting stock, however designated, which by its terms is in effect a common stock. Finally, the New York Stock Exchange may refuse to list any class of stock which has unusual voting provisions which tend to nullify or restrict its voting, or which is subject to unusual voting provisions of another class of stock having such effect.

Approximately 10 years ago, in response to pressure from state legislators, the American Stock Exchange adopted policies which, while less stringent that the New York Stock Exchange, prohibit the listing of common stocks which are non-voting or which have unduly restricted voting rights. In both instances, the U.S. exchanges have determined, as a matter of policy, to preserve the universality of voting privileges in order to ensure equal treatment of shareholders and to minimize confusion on the part of public investors.

The use of non-voting, multiple voting or restricted voting stock has also been examined from time to time by authorities responsible for administering corporate law in Canada as well as by the Exchange and securities administrators. For example, in 1976, the Exchange appeared before the Royal Commission on Corporate Concentration to review its policy, and those applicable in other jurisdictions, on the question of voting rights attached to listed shares. That Commission concluded that, so long as public companies are required to disclose the voting rights attached to particular classes of shares, the presence of non-voting or multiple voting stock is not a danger to the investing public.

In Ontario, this philosophical commitment has assumed increased significance since the proclamation of The Securities Act, 1978 (the "Act"). In a take-over, the Act requires that, subject to certain exemptions, the same offer must be made to all holders of a single class of shares. By splitting shares into voting and non-voting stock, the majority shareholders can avoid the intent of this provision and retain the full premium on their controlling block. Such practices are

contrary to the principle of equal rights for all shareholders which, as a matter of policy, the Exchange seeks to invoke.

In the face of these pressures and resultant adverse public commentary, the Exchange's listing requirements, which allow the listing of non-voting, multiple voting or restricted voting shares must be re-examined.

III. Current Exchange Policy

The Exchange's policy of listing non-voting shares was most recently reviewed when a significant number of companies commenced placing restrictions on voting shares. During 1967, in response to an action taken by a trust company which purported to restrict shareholders or their associates to voting no more than 10% of the shares of the company, the Board of Governors resolved that voting restrictions would not prevent a company's application to list shares on the Exchange. The view was that, given appropriate disclosure, the Exchange should not restrict issuers' ability to structure new share issues or deny investors the right of choice between different investment instruments. Additional background of the decision to list this company was the Board's feeling that the Exchange should not move to restrict that which was permitted by company law and related legislation unless some clearly inappropriate purpose was being served. In the particular instance, it was not felt justified for the Exchange to impede the ability of companies or legislators to restrict foreign ownership by way of limitation of voting and transfer rights on shares. Subsequently, legislation has sought to extend such restrictions to a number of Canadian industries.

The Exchange would welcome comments as to whether such restrictions are viewed as appropriate for securities traded through its facilities and, if so, whether there is adequate disclosure to prevent confusion of industry professionals and public shareholders regarding non-voting, multiple voting or restricted voting shares.

In a study recently released by the Exchange entitled "Nothing Ventured... Investing in Canada's Winners", it was observed that a barrier to entry for many junior industrial companies is the fact that public markets are unreceptive to new issues and therefore demand too "big a piece of the action" in return for small equity infusions. Given the levels of maturity and concentration of the Canadian economy, the Exchange would also appreciate public views as to whether the adoption of additional disclosure or other regulatory requirements would be construed as restrictive of access by junior companies to the equity market or, by engendering increased investor confidence, would facilitate junior equity financings.

IV. Request for Comments

Before developing a policy response to the issues raised by non-voting, multiple voting or restricted voting shares, the Exchange would welcome the benefit of member and public comment on questions raised above or related issues. If, for example, such comment reveals that current disclosure requirements do not adequately prevent confusion on the part of public investors, the Exchange might consider a separate classification of non-voting, multiple voting or restricted voting shares in the statistical information which it generates each day. Alternatively, listed companies and members of the Exchange might be encouraged to better inform investors of the particular voting attributes of an issuer's various classes of shares.

Should comments indicate a general view that such measures would prove inadequate, the Exchange may wish to consider adopting a policy of not listing non-voting shares, unless satisfied that such stock carries a genuine preference. Policies would also have to be considered concerning multiple voting and restricted voting shares and to deal with listed companies whose share capital structures are presently inconsistent with the terms of any such proposed policies.

Before undertaking such an exercise, the Exchange would appreciate the benefit of member and public comment concerning the extent of the problems posed by non-voting, multiple voting or restricted voting shares and whether disclosure mechanisms might adequately address such concerns.

Comments are welcomed until December 15, 1980 and should be addressed to:

Mr. E. J. Waitzer
Vice-President
Listings & Distributions Department
The Toronto Stock Exchange
Commerce Court East
P.O. Box 293
Toronto, Ontario
M5L 1H2

BY ORDER OF THE BOARD OF GOVERNORS

A. CURRIE
SECRETARY

Appendix B

Submissions received by the Exchange in Response to the Discussion Paper Re Listing of Non-Voting, Multiple Voting or Restricted Voting Common Shares

1. A. E. Ames & Co. Limited
2. Algonquin Mercantile Corporation
3. Bell Canada
4. Beutel, Goodman & Company Ltd.
5. A.A. Bruneau, Vice President, Chief Legal Officer and Secretary of Alcan Aluminum Limited
6. The Canadian Bankers' Association
7. Canadian Cablesystems Limited
8. Canadian Foremost Ltd.
9. Chum Limited
10. Conwest Exploration Company Limited
11. Department of Finance, Canada, Inspector General of Banks
12. Dickenson Mines Limited
13. Dominion Foundries and Steel, Limited
14. Dylex Limited
15. Empire Company Limited
16. Extendicare Ltd.
17. Denis Goodale, Ph.D., C.A., Associate Professor, University of Alberta
18. Guardian Capital Investment Counsel Limited
19. Gulf Canada Limited
20. Harris Steel Group Inc.
21. Investment Dealers Association of Canada
22. Laidlaw Transportation Limited
23. McLeod Young Weir Limited (3 submissions)
24. MDS Health Group Limited
25. Monenco Limited
26. Nova, An Alberta Corporation
27. Ocelot Industries Ltd.
28. The Oshawa Group Limited
29. Power Corporation of Canada
30. Ranchmen's Resources (1976) Ltd.
31. Reed Stenhouse Companies Limited
32. Revelstoke Companies Ltd.
33. Royal Trustco Limited
34. Scotiafund Financial Services Ltd.
35. Standard Life Assurance Company
36. Steinberg Inc. (2 submissions)
37. Strathearn House Group Limited
38. Sulpetro Limited
39. Teck Corporation
40. Torstar Corporation
41. Trust Companies Association of Canada
42. U.A.P. Inc.
43. Union Carbide Canada Limited
44. Victoria and Grey Trust Company
45. Western Broadcasting Company Ltd.
46. Western Mines Limited

Summary of Submissions to the Discussion Paper and Other Arguments in Relation to the Listing of Special Shares

The submissions received by the Exchange advance a number of arguments for and against the listing of special shares. It is useful to summarize the arguments made by the opponents and proponents of such shares as well as other arguments considered by the Exchange.

Arguments Against the Listing of Special Shares

Shareholder democracy

The principal objection of the opponents of special shares is based on the concepts of fairness and shareholder democracy. They state that fairness demands that all holders of shares be treated alike unless the shares carry a genuine preference. A shareholder holding a non-voting or limited voting share is generally subject to the same risks as a holder of a voting or multiple voting share in the same corporation. The opponents of special shares argue that shares which represent the risk capital of a corporation should carry voting rights which are commensurate with their risk and ownership interests in the corporation. In the political context this translates into one vote per person while in the context of the capital markets it generally means one vote per share. It is contrary to the concept of corporate democracy that a small portion of the equity capital of a corporation should carry voting control of the corporation.

The submissions argue that it is inappropriate that shares which represent a minor proportion of the equity capital of a corporation have voting rights which are greater than the major proportion of the equity capital. This is wrong in principle and should not be permitted. Residual ownership, risk and control should go hand in hand. It is said that the Exchange must be seen as supporting corporate democracy

and fairness to the investing public, and proportionate voting is a prerequisite of corporate democracy and a key element of fairness.

Rights and remedies dependent on voting rights

Many of the rights and remedies of shareholders are conditional upon the shares carrying voting rights. These rights include requisitioning of shareholders' meetings by the shareholders, initiation of shareholder proposals, election of directors, approval of financial statements, confirmation of certain by-law amendments and prior approval of certain fundamental changes in the business, operations or capital of the corporation. The rights and remedies must largely be exercised in the context of a shareholders' meeting. Holders of non-voting residual equity shares are not entitled, as of right, to attend meetings or to question the directors. The trend of corporate and securities law is in the direction of expanding shareholder participation in corporate decision making. Widespread use of special shares would have the effect of negating the rights and remedies which have been granted to shareholders and, in particular, minority shareholders.

Insiders acting in own self-interest

Opponents of special shares argue that majority shareholders, directors and management who propose the creation of special shares are acting in their own self interest rather than in the interests of the shareholders as a whole. Are the sponsors of such shares and, in particular, the directors, breaching their fiduciary obligations to the shareholders? Will this lead to the directors thinking and acting as if they have a fiduciary obligation only to the class of shares which elected them rather than to the corporation as a whole?

Directors are required to act in the best interests of the corporation. Generally this has been interpreted to mean that the directors are required to take the interests of all shareholders into account, not merely the interests of holders of

voting securities. However, removal of the right to vote removes the mechanism through which directors are made directly accountable to the shareholders.

Discipline on corporate management

It is also submitted that the existence of voting rights acts as a discipline on corporate management. In saying this the opponents of special shares acknowledge that voting rights have rarely been exercised to oust an incumbent management. This, however, is not justification for removing from the shareholders the privilege of removing inadequate management. In fact, there have been a number of shareholders' meetings in recent years where the mere presence of a vocal minority of dissenting shareholders was sufficient to force management to reconsider its position. Without a check on its power, management need not concern itself as much with the market performance of its shares and other matters of importance to shareholders.

Capital Reorganizations

Public shareholders have sometimes complained that they have ended up holding non-voting shares as a result of a capital reorganization. This has sometimes resulted in adverse income tax consequences for shareholders who have chosen to dispose of such shares.

Continuous Disclosure

A cornerstone of the continuous disclosure system is the regular dissemination of financial and other information. This is achieved by providing shareholders with annual and interim financial statements and information circulars. Holders of non-voting shares are not always entitled to law to receive information circulars, annual reports, quarterly reports and other information which is required to be sent to holders of voting securities.

Some companies send all financial statements to holders of non-voting shares on a voluntary basis. By-law 19.12 of the General By-laws of the Exchange requires that the annual report of a company be sent to all shareholders. The corporate laws of certain jurisdictions require annual and interim financial statements to be sent to all shareholders, while the laws of other jurisdictions do not. The Business Corporations Act of Ontario provides that a corporation that is offering its securities to the public shall send by mail to all shareholders the annual financial statements and "interim financial statements required to be filed under The Securities Act, 1978 and the regulations thereunder". The Securities Act of Ontario requires delivery of financial statements by a reporting issuer to be made to "each holder of its securities, other than debt instruments". However, OSC Policy 3-44 provides that a reporting issuer is not obligated to send financial statements to the holders of its securities other than voting securities. It is not clear whether the Commission intended the order set out in OSC Policy 3-44 to extend to non-voting residual equity shares. In stating the reason for not requiring financial statements to be sent to holders of non-voting securities the Commission says that "the requirement for distribution of financial statements to each holder of its securities, other than debt instruments", would extend the obligation to holders of preferred shares, rights, warrants and similar securities to whom statements are not customarily distributed.

Disclosure of Voting Attributes

An investor who purchases non-voting shares may not know the holders of such shares are not entitled to voting rights. Even if the investor is aware of the voteless nature of the shares he will almost certainly not appreciate all of the consequences which flow from the lack of such rights e.g. that there is no requirement to make an offer to holders of non-voting shares where voting shares are purchased in a take-over bid.

The problem of investor confusion is even more pronounced in the case of a corporation with limited voting and multiple voting common shares. An investor

may be misled into thinking that the limited voting share is an ordinary common share carrying normal voting rights. In reality such a share may carry only a fraction of a vote, the size of that fraction being determined by the number of votes which the holders of the multiple voting shares are entitled to.

Take-Over Bids

The treatment of non-voting shares in a take-over bid situation raises a number of concerns. Firstly, a share structure which includes non-voting shares may isolate management from the possibility of an unwanted take-over. This denies the owners of the corporation an opportunity to participate in one of the benefits of share ownership. Secondly, since non-voting shares are not "voting securities", the regulatory framework governing take-over bids does not apply to such shares. This framework includes public disclosure of relevant information, sufficient time to enable shareholders to make a reasoned decision and an equal opportunity to participate in the bid. Thirdly, if a take-over materializes, holders of non-voting shares may not participate in the benefits available from the offeror where no bid is made to them and no follow-up offer is required by law. The controlling shareholders may have found a way of retaining most or all of the premium for control. This would appear to be contrary to good commercial practice and the spirit of the Securities Act. Good commercial practice requires that offers be publicly disclosed and available for acceptance by all residual equity shareholders and that shares acquired should be taken up pro rata so that all such shareholders have an opportunity to participate in any premium which might be paid. This principle has in some circumstances become a statutory requirement. Where a change of control is accomplished by way of private agreement, subsection 91(1) provides that if the purchaser pays a premium over the defined market price, it is obligated to make an offer to holders of all other securities of that class. However, non-voting shares are not included in the statutory scheme for take-over bids and, therefore, a follow-up offer need not be made to holders of such shares.

Restricted Voting Shares

Restricted voting shares raise concerns of shareholder democracy, accountability of directors and officers and isolation of management from an unwanted take-over bid. The number of votes attached to such shares is dependent on the number of other shares held by the shareholder. This would apear to be a violation of the general presumption of company law that shares of the same class must carry the same rights.

Other Jurisdictions

Finally, the opponents point out that in several jurisdictions action has been taken to limit the use of such shares. In particular, it is pointed out that the New York Stock Exchange has since 1926 refused to authorize the listing of non-voting common stock, or any common stock, however designated, which by its terms is in effect a common stock. The rules of the New York Stock Exchange state that any allocation of voting power should be in a reasonable relationship to the equity interests of such shares. They further provide that it may refuse to list any class of stock which has unusual voting provisions which tend to nullify or restrict its voting or which is subject to unusual voting provisions of another class of stock having such effect.

The opponents of special shares argue that the lack of action by the Exchange, in light of the concerns expressed and the steps taken in other jurisdictions, will invite government intervention. Since change is desirable and since intervention is probable, it would be preferable that the Exchange take action on its own to remedy the problem.

Arguments in Favour of the Listing of Special Shares

There was considerable opposition in the submissions received by the Exchange to any prohibition on the listing or continued listing of special shares. Much of the opposition came from companies which presently have special shares listed on the Exchange. However, they were supported by investment dealers and companies which have not issued special shares, some of which stated that they did not intend to issue such shares. We have summarized below some of the principal arguments advanced by the proponents of special shares.

Facilitate raising of equity capital and financing acquisitions

One of the more compelling arguments advanced by proponents of special shares is that such shares facilitate the raising of equity capital. The proponents of special shares state that such shares are useful vehicles in share and asset acquisitions, particularly where the vendor is not interested in an active role in the company. However, in order for such shares to be acceptable to the vendor they would have to be marketable. Listing on a stock exchange is the best way of achieving the desired marketability. Therefore, for the Exchange to prohibit such shares would have the effect of severely limiting a useful vehicle for financing acquisitions. In addition, it is said that owners of junior companies would often prefer to retain control of a smaller private enterprise rather than see it grow with the risk that success will result in loss of control.

Government Policy

The policy of federal and provincial governments has been to advance the cause of greater Canadian ownership of the Canadian economy. The National Energy Program announced in October of 1980 and the Foreign Investment Review Act introduced several years earlier are perhaps the two best examples of this policy. It is argued that some companies are introducting constrained share

provisions into their charter document or providing for special shares in response to this government policy i.e. in order to qualify under the NEP, to maintain "eligible" status under the Foreign Investment Review Act or to qualify for or maintain some other status under other legislation. It is argued that the adoption of special shares in order to achieve beneficial treatment or status under a statute is similar to the situation of a company which is required to maintain a constrained share status in order to qualify for a licence under a "law of Canada" as defined in the Canada Business Corporations Act (See Appendix F for a discussion of federal and provincial requirements which impact on corporate share capital.)

This argument is extended by pointing out that the tendency in recent amendments of companies acts has been to permit greater flexibility in the capital structure of companies. Companies acts permit the creation and issue of non-voting, limited voting and multiple voting shares. The legislation addresses itself to the question of the rights of holders of such shares. In particular, the Canada Business Corporations Act specifically provides that non-voting shares have the right to vote where certain fundamental changes are made. The proponents argue that it is not appropriate for the Exchange to, in effect, overrule government policy permitting flexibility in corporate finance.

Disclosure

The requirements of fairness and investor protection can be adequately served through effective disclosure of the peculiar features of the shares. Disclosure is the basis of Canadian securities legislation. As long as the public is aware of the attributes of special shares there is no need for further action on the part of the Exchange or the Commission. It is pointed out that in most cases the shareholders have in some manner approved the special shares. This was done either by the shareholder purchasing existing special shares (i.e. the inference is that the investor approves of such shares by the act of purchasing them) or by voting in favour of the creation of such shares at a shareholders' meeting authorizing a stock split or other capital reorganization.

Information and shareholders' meetings

As noted in the Exchange's submission, one of the reasons that the Exchange is concerned about non-voting shares is that holders of non-voting shares are not always entitled to receive the same financial and other information that is provided to holders of voting shares. As well, holders of non-voting shares are generaly not entitled to notice of, or to attend at, shareholders' meetings.

In response to this concern some companies have pointed out that it is their policy to inform all shareholders, including holders of non-voting shares, of each annual meeting and to make it clear that all who wish to attend are welcome to do so. Such companies generally provide the same financial and other information to all shareholders on a voluntary basis. However, this policy is not universally followed by companies issuing special shares.

Voting not an important right

The Discussion Paper stated that voting is a "paramount" right of a shareholder. Some of the proponents of special shares join issue with this statement and say that most investors attach little significance to voting rights. This can be seen from the fact that there is usually little difference between the trading prices of the special shares and those of other common shares of a listed company. Shareholders, it is said, are interested in liquidity, transferability and disclosure, not in having or exercising voting rights.

The importance of listing

In the case of companies with special shares already listed on the Exchange it is argued that delisting would have the opposite effect from that intended: it would harm public investors who had purchased such listed shares. The right to a continued listed is more important to such shareholders than the right to vote.

In a related argument it is said that an Exchange prohibition on listing of special shares will not have the effect of preventing the distribution to the public of such shares. Rather it will mean that special shares will be traded on other exchanges and over-the-counter. It is submitted that the disclosure and dissemination which is available to Exchange listed companies is more important to shareholders than voting rights.

APPENDIX D

SPECIAL SHARES LISTED ON THE TORONTO STOCK EXCHANGE

I. NON-VOTING RESIDUAL EQUITY SHARES

Company Name (Nature of Business)	Class	Date Listed
1. Andres Wines Ltd. (winery)	Class A	Nov. 1/78
2. Atco Ltd.(i) (transportable structures)	Class I	Jan. 30/81
3. Argus Corp. Ltd. (spec investment)	Class C	May 28/62
4. Baton Broadcasting Inc. (operates TV station)	Class A	June 12/81
5. Bomac Batten Ltd. (ii) (photo engravers)	Class A	June 12/81
6. Brascan Ltd. (iii) (light & power)	Class C	Mar. 24/77
7. British Columbia Packers Ltd. (seafoods)	Class A	June 5/46
8. CHUM Ltd. (radio broadcasting)	Class B	Dec. 13/69
9. Calvert-Dale Estates Ltd. (nursery gardens)	Class A	June 22/81
10. Cdn. Corporate Management Co. Ltd. (holding company)	Class X	June 2/80
11. Cdn. Foremost Ltd. (off-highway vehicles)	Common	July 4/78
12. Cdn. Tire Corp. Ltd. (auto suppliers)	Class A	Jan. 2/45
13. Cara Operations Ltd. (iv) (food services)	Class A	July 17/80
14. Central Fund of Canada Ltd. (holding & investment)	Class A	June 14/65
15. Corby Distilleries Ltd. (distillery)	Class B	June 7/50
16. Dalmys (Canada) Ltd. (ladies wear)	Class C	Mar. 7/77
17. Daon Development Corp. (real estate)	Class A	Dec. 3/75
18. Dylex Ltd. (v) (mfg. & retail clothing)	A Pr partic.	Dec. 2/68

Company Name (Nature of Business)	Class	Date Listed
19. Electrohome Ltd. (electronic equipment)	Class Y	June 24/81
20. Extendicare Ltd. (health care service)	Class A	Jan. 22/79
21. Finning Tractor & Equipment Co. Ltd. (heavy equipment)	Class B	May 21/81
22. Goldale Investments Ltd. (holding company)	Class A	July 4/79
23. Grafton Group Ltd. (clothing stores)	Class A	June 5/79
24. HCI Holdings Ltd. (holding company)	Class A	May 20/80
25. Harding Carpets Ltd. (mfg. carpets)	Class A Class B	Nov. 5/73 Nov. 5/73
26. Harris Steel Group Inc. (steel)	Class A	May 14/69
27. Heritage Group Inc. (meat packers)	Class A	Jan. 29/79
28. Investors Group (The) (investment company)	Class A	May 16/57
29. Kelly Douglas & Co. Ltd. (wholesale & retail groceries)	Class A	Dec. 13/57
30. L.K. Resources Ltd. (beef & grain products)	Class B	Apr. 6/81
31. Laidlaw Transportation Ltd. (vi) (trucking service)	Class B	Feb. 17/75
32. Lambda Mercantile Corp. (wood products)	Class A	Jan. 15/69
33. Lawson & Jones Ltd. (printing & litho)	Class A	Sept. 14/48
34. Leigh Instruments Ltd. (mfg. aircraft instruments)	Class I	June 10/81
35. Lochiel Exploration Ltd. (oil exploration)	Class A	Jan. 5/81

Company Name (Nature of Business)	Class	Date Listed
36. MDS Health Group Ltd. (develop medical equip.)	Class B	Sept. 22/80
37. MPG Investments Corp. Ltd. (investment company)	Class A	Nov. 21/79
38. MacLean Hunter Ltd.(vii) (printing & publishing)	Class Y	Dec. 30/80
39. Maplex Management & Holdings Ltd. (holding company)	Class A	April 24/81
40. Molson Companies Ltd. (brewer/diversified mfg.)	Class A	June 16/55
41. Noma Industries Ltd. (electrical mfg. & design)	Class A	Aug. 19/81
42. Nova, An Alberta Corporation(viii) (natural gas pipeline)	Class A	June 9/58
43. Nu-West Group Limited (land developers & builder)	Class C Class D	June 9/81 June 9/81
44. Oshawa Group Ltd. (wholesale grocer)	Class A	Sept. 29/59
45. Pacific Northern Gas Ltd. (natural gas distributor)	Class A Common	Sept. 10/76
46. Pagurian Corp. Ltd. (investment holding)	Class A Special	Aug. 20/79
47. Peoples Jewellers Ltd. (jewellers retail)	Class A	Sept. 5/62
48. Ranchmen's Resources (1976) Ltd. (oil and gas producer)	Class A	March 14/80
49. Realcap Holdings Ltd. (trust & real estate)	Class A	May 28/69
50. Reitman's (Canada) Ltd. (ladies wear stores)	Class A	Nov. 5/59
51. Revenue Properties Ltd. (real estate)	Class B	July 3/81
52. Robinson Little & Co. Ltd. (dry goods)	Class A	Feb. 17/47
53. Rogers Cablesystems Inc. (cable television)	Class B	Nov. 14/79
54. Rolland Inc. (fine paper mfg.)	Class A	April 25/61

Company Name (Nature of Business)	Class	Date Listed
55. Selkirk Communications Ltd. (ix) (radio & TV communications)	Class A	Dec. 4/59
56. Silverwood Industries Ltd. (dairy products)	Class A	July 29/46
57. Simpsons-Sears Ltd. (retail mail order)	Class A	April 5/65
58. Steinberg Inc. (retail food chain)	Class A	Aug. 3/56
59. Sobeys Stores Ltd. (retail grocers)	Class A	Oct. 14/66
60. Strathearn House Group Ltd. (marketing & mfg. construction products)	Class A	Apr. 3/73
61. Talcorp Associates Ltd. (investment holdings)	Class C	Dec. 20/76
62. Tele-capital Ltd. (TV station operator)	Class A	Dec. 20/72
63. Tele-Metropole Inc. (TV station operator)	Class B	Sept. 9/74
64. Tombill Mines Limited (x) (copper & silver producers)	Class B	Aug. 20/81
65. Torstar Corp. (newspaper publisher)	Class B	May 22/70
66. Traders Group Ltd. (except can elect. 2 directors) (finance company)	Class A	Dec. 14/42
67. UAP Inc. (auto parts)	Class A	Feb. 28/69
68. Unicorp Financial Corp. (real estate & investment)	Class A	July 19/79
69. Westfair Foods Ltd. (wholesale & retail grocers)	Class A	Oct. 21/46

Notes:

The following brief notes are intended to be illustrative of the variety of non-voting share attributes and the circumstances in which such shares are issued.

(i) Atco Ltd. - The Class I Shares and Class II Shares rank equally in all respects, except that the Class I Shares are non-voting shares and the Class II Shares are voting shares, provided, however, that in the event an offer is made to purchase Class II Shares and at the time the offer is made, an offer on the same terms and conditions is not made to the Class I shareholders, then if the holders of more than 50% of the Class II Shares accept the offer, the Class I Shares shall become voting shares from and after the date upon which the Class II Shares are taken up pursuant to the offer. For this purpose, the term "offer" means an offer which must, by

reason of the applicable securities legislation of any province or the rules of a stock exchange on which the Class I Shares are listed, be made to all holder of Class II Shares who reside in any province which requires the making of such an offer to such holders. The Class II Shares are convertible into Class I Shares at any time on a share-for-share basis.

(ii) Bomac Batten Limited - Subject to the prior rights attaching to the preferred shares, the holders of the Class A shares are entitled to fixed preferential cash dividends of 60 cents per share per annum, cumulative, and to participate share-for-share with the common in any further dividends paid for any fiscal year after 60 cents per share has been paid or declared for that year on the common shares. In 1980, dividends of 90 cents per share were paid on the Class A shares. In the event of liquidation, etc. the Class A shares are entitled to all accrued and unpaid dividends and thereafter to share equally share-for-share, with the common shares in all distributions of assets.

The Class A shares are non-voting unless the shares are in arrears as to eight consecutive quarterly dividends, at which point they are entitled, voting separately and as a class, to elect two directors until all cumulative dividends have been paid. The common shares are entitled to one vote per share. The common shares are not listed on the Exchange.

(iii) Brascan Limited - Brascan has three classes of ordinary shares: Classes A, B and C. The Class A and B Ordinary shares are entitled to one vote per share. The Class A and B Ordinary shares are interconvertible at the holder's option on a 1 for 1 basis and rank equally in all respects except for certain dividend rights. The only distinction between these shares is that dividends paid on the Class B shares may be paid in the form of a stock dividend of fully paid and non-assessble Class B shares so that an equivalent amount is received by each of the Class A and Class B ordinary shareholders.

The Class C Ordinary shares rank equally with the Class A and B Ordinary shares in all respects except with regard to voting rights. The Class C shareholders are not entitled to receive notice of or attend any meeting of shareholders or to vote at any such meeting, unless the company has failed to pay any dividend for a period of two consecutive years. However, the Class C shares are convertible into Class A shares on a 1 for 1 basis.

Brascan also has outstanding Bearer International Depositary Receipts which were issued in exchange, on a share-for-share basis, for the outstanding bearer share warrants, which indicated ownership of Class A ordinary shares of the company. The International Depository Receipts evidence ownership in the appropriate number of Class C Ordinary shares held by a depository on behalf of the holders of receipts. Dividends on the Receipts are paid to holders against surrender of the current coupon.

(iv) Cara Operations Ltd. - The Class A Shares and Common Shares have the same rights and attributes except with respect to voting. The holders of the Common Shares are entitled to one vote per share whereas the holders of the Class A Shares are not entitled to notice of or to attend or to vote at any meeting except in the event that the company proposes to:

(i) amalgamate,
(ii) make an arrangement,
(iii) sell, lease or transfer or otherwise dispose of its properties and assets substantially as an entirety, or
(iv) voluntarily liquidate, dissolve or wind up or distribute its assets among its shareholders for the purpose of winding up its affairs.

In the foregoing circumstances, the holders of the Class A Shares are entitled to one vote per share.

In the event that an Offer is made the Class A Shares are convertible during the conversion period into Common Shares on a share-for-share basis at the option of the holder except as provided below:

"(b) the conversion right provided for in subparagraph (a) hereof shall not come into effect in the event that:
(i) there is a Majority Holder at the Offer Date, the Majority Holder or an Affiliate of the Majority Holder is not making the Offer and the Majority Holder determines within five (5) days after the Offer Date that it will not accept the Offer; or
(ii) at the time the Offer is made, an offer on the same terms and conditions is made to the holders of Class A Shares; or
(iii) the Board of Directors of the Corporation determines within five (5) days after the Offer Date that the Offer is not bona fide but is made primarily for the purpose of causing the conversion right provided for in subparagraph (a) to come into effect and not for the purpose of acquiring Common Shares;
provided that:
(iv) in the case of clause (i), the Majority Holder delivers to the transfer agent for the Class A Shares within five (5) days after the Offer Date evidence satisfactory to the transfer agent that the Majority Holder is the Majority Holder and a certificate of the determination by the Majority Holder not to accept the Offer;
(v) in the case of clause (iii), the Secretary of the Corporation delivers to the transfer agent for the Class A Shares within five (5) days after the Offer Date a certified copy of a resolution of the Board of Directors determining that the Offer is not bona fide and the basis therefor; and
(vi) forthwith thereafter, the Secretary of the Corporation informs the holders of the Class A Shares of the determination under clause (i) or clause (iii), as the case may be, and in the case of clause (iii) sends to such holders a copy of the resolution of the Board of Directors;".

(v) Dylex Limited - The Class A preference shares are entitled to non-cumulative dividends at the rate of one cent per share per annum, subject to the prior rights of Class B shares (none of which are outstanding). Whenever in any fiscal year of the company one cent per share has been paid or declared on the Class B shares then outstanding, one cent per share has been paid or declared on the Class A shares then outstanding, and one cent per share has been paid or declared on the Common shares then outstanding all further dividends in such fiscal year are to be declared and paid in equal amounts per share on the Class A and Common shares, without preference or distinction. In liquidation, dissolution or winding up, after satisfaction of prior rights of Class B shares, Class A shares share equally with the Common shares in all distributions of assets.

The Class A shares are non-voting unless the company fails to pay dividends of one cent per share annually for a period of two consecutive years. If no payments are made, the Class A shares are entitled to one vote per share, until dividends aggregating one cent per share per annum have been paid on the Class A shares for one full fiscal year. Dividends of 40 cents per share were paid on both the Class A and Common shares in 1980.

The Class B shares are also non-voting except when in arrears. They are entitled to a non-cumulative dividend of one cent per share per annum, in preference to Class A and Common shares. They also have priority in the event of a dissolution or final distribution of assets.

The Common shares are entitled to one vote per share. They may be converted on a share for share into Class A shares, subject to the provision that no more than 90% of the issued Common shares are so converted.

(vi) Laidlaw Transportation Limited - The non-voting Class B shares are entitled to non-cumulative dividends of six cents per quarter in priority to dividends on the voting Class A shares and after a like payment of dividends on the Class A shares, the Class A and B shares rank equally as to dividends. In 1980 the Company paid dividends of 24¢ on the Class B shares and 20¢ on the Class A shares. In all other respects the Class A and B shares rank equally share-for-share.

At the time of the creation of the non-voting shares the controlling shareholder signed an agreement promising not to accept any offer made to the holders of the voting shares unless a similar offer were contemporaneously made to the holders of the non-voting shares.

(vii) MacLean Hunter Ltd. - The non-voting Class Y shares are entitled to preferential non-cumulative dividends at a rate per share equal to the lesser of the "base preferential dividend" and 20% of the quarterly dividend proposed to be paid or delared for payment on the Class A shares.

The "base preferential dividend" is 1 1/4¢ per quarter adjusted to reflect any special stock dividends. The Class Y shares were convertible into Class X shares on a one-for-one basis only until June 30, 1981 except as noted below. The Class X shares will be convertible into Class Y shares on a one-for-one basis at any time. If a take-over bid is made for the Class X shares the right of conversion of the Class Y shares will be revived unless the board of directors of the company recommends rejection of the offer or an offer on the same terms and conditions is made to the holders of the Class Y shares.

At the time of the reclassification the Company indicated that non-residents of Canada would be able to hold the Class Y shares without the likelihood of affecting the company's status under the licensing provisions of the Broadcasting Act of Canada or the status of the company's periodicals under the Income Tax Act.

(viii) Nova, An Alberta Corporation - Nova's shares are divided into Class A and Class B. The 100 million Class A shares are non-voting except that they carry the right to elect seven of the fifteen members of the board of directors. The 2,004 unlisted Class B shares carry exclusive voting rights and, in addition, carry the right to elect four directors. The Alberta government appoints the remaining four directors. The Class B shares are divided into four groups and are allotted only to qualified holders, namely utility companies, gas export companies, gas producers and directors appointed by the Alberta government.

(ix) Selkirk Communications Ltd. - Selkirk has outstanding 2,000 Class B shares and over four million Class A non-voting shares. The Class B shares which are not listed, are voting but do not carry the right to any dividend or to repayment of capital. The transfer of such shares is restricted requiring, among other things, the approval of the board of directors and the Canadian Radio-Television Commission.

(x) Tombill Mines Limited - The voting Class A and non-voting Class B shares were created pursuant to a capital reorganization as a result of which each four outstanding common shares were reclassified into one Class A share and three Class B shares. The Class A shares and Class B shares rank equally in all respects, except that the Class A Shares are voting shares and the Class B shares are non-voting shares. The Class A shares are convertible into Class B shares at any time on a share-for-share basis. There are 5,000,000 Class A shares and 10,000,000 Class B Shares authorized for issuance.

At the general meeting of June 30, 1981 where shareholders approved the special resolution effecting the reclassification, the shareholders also approved the issuance of 1,162,501 Class A shares to Stuart R. Horne, at a price of $1.755 per share, and warrants to purchase an additional 581,250 Class A or Class B shares at a price of $1.86 per share on or before July 1, 1986. The subscription price for the 1,162,501 Class A shares was paid by the transfer to the company by Mr. Horne of a portfolio of listed securities with a market value equal to the subscription price, based on the closing market prices of the securities on the trading date preceding the date of transfer. After the issuance of the 1,162,501 Class A Shares, Mr. Horne owns slightly more than 50% of the Class A shares of the company. It is understood that the transactions were approved by the majority of the shareholders represented at the meeting, excluding Anglo American Corporation of Canada Limited.

II. Subordinate Voting and Multiple Voting Residual Equity Shares

Company Name (Nature of Business)	Class	No. of Votes	Date Listed
1. Bombardier Inc. (i) (mfg. heavy equipment)	Class A	10 vote per share	Dec. 19/80
	Class B	1 vote per share	Feb. 11/81
2. Caruscan Corp. (real estate & Agricultur)	Common	1 vote per share	Aug. 14/81
	Class B	10 votes per share	Not Listed
3. Conwest Exploration Co. Ltd. (mng. expl. & dev.)	Class A	100 votes per share	June 16/80
	Class B	1 vote per share	June 16/80
4. Dickenson Mines Ltd. (gold producer)	Class A	1 vote per share	Nov. 12/80
	Class B	10 votes per share	Nov. 12/80
5. GSW Inc. (metal wares)	Class A	100 votes per share	Oct. 1/80
	Class B	1 vote per share	Oct. 1/80
6. Hatleigh Corp. (holding & investment co.)	Class A	entitled to vote 103% of all votes of common shares divided by number of outstanding shares.	Sept. 12/78
	Common	1 vote share	Not Listed
7. IU International Corp. (ii) (holding & investment co.)	Class A	4 votes per share through 1986 5 votes thereafter	Oct. 2/72
	Common	1 vote per share	Oct. 2/72
8. Magna International Inc. (metal fabricating)	Class A	1 vote per share	Dec. 20/78
	Class B	500 votes per share	
9. Monenco Limited (iii) (eng. consultants)	Common		
	-Class A	1 vote per share	June 24/76
	-Class B	1 vote per share	June 24/76
	Special Common		
	-Class X	5 votes per share	Not Listed
	-Class Y	5 votes per share	Not Listed
10. Newfoundland Capital Corp. Limited (iv) (holding company)	Class A	1 vote per share	Jan. 27/81
	Class B	10 votes per share	Jan. 27/81
11. Ocelot Industries Ltd. (expl. & dev.)	Class A	20 votes per share	Oct. 7/76
	Class B	1 vote per share	Oct. 7/76
12. Scott's Hospitality Inc. (v) (food service)	Common	1 vote per share	Dec. 1/80
	Class C	100 votes per share	Dec. 1/80
13. Spar Aerospace (mfg. technology & serv)	Common	1 vote per share	Sept. 20/72
	Special	10 votes per share	Not Listed

Company Name (Nature of Business)	Class	No. of Votes	Date Listed
14. Teck Corp.	Class A	100 votes per share	Mar. 25/52
(gold oil & gas)	Class B	1 vote per share	Mar. 25/52
15. Turbo Resources Ltd. (vi)	Common	1 vote per share	Aug. 21/80
(div. hydrocarbons)	Special	entitled to votes equal to 3 times the number determined by dividing the total of all shares represented and voted at meeting divided by the total of all special shares represented & voted at meeting.	Aug. 21/80
16. Twin Richfield Oils Ltd. (vii)	Class A	1 vote per share	Not Listed
(oil & gas)	Class B	1/10 vote per share	Aug. 31/81
17. Versatile Corp. Ltd.(viii)	Common	1 vote per share	Feb. 9/81
(diverse industrial operators)	Class B	10 votes per share	Feb. 9/81
18. Villacentres Ltd. (ix)	Common	1 vote per share	Aug 14/81
(nursing homes)	Special	1 vote per share	Aug 14/81
19. Waferboard Corp. Ltd.	Common	1 vote per share	March 15/78
(mfg. waferboard)	Class A	2 votes per share	Not Listed

Notes:

The following brief notes are intended to be illustrative of the variety of subordinate voting and multiple voting share attributes and the circumstances in which the shares were issued.

(i) Bombardier Inc. - In 1980 the former common shares were reclassified into Class A Common Shares carrying ten votes per share. The company then issued 1,500,000 Class B Common Shares by way of a prospectus dated December 2, 1980.

The Class B Common Shares carry one vote per share. The holders of Class B Common Shares are entitled to receive, in each fiscal year, if, as and when declared by the board of directors, a non-cumulative dividend of 20¢ per share, and after payment or setting aside for payment of the said dividend, the holders of Class A Common Shares and Class B Common Shares will be entitled, share-for-share, to any additional dividends that may be declared by the Board of Directors in such fiscal year in respect of the Common Shares, The Class A Common Shares and Class B Common Shares rank on a parity with respect to repayment of capital. The Class B Common Shares shall be convertible into Class A Common Shares on a share-for-share basis at any time on and after the occurence of either of the following events:

(i) if an offer is made to all or substantially all holders of Class A Common Shares to acquire Class A Common Shares and such offer is accepted by the present controlling shareholder of the company (the Bombardier family); or

(ii) if such controlling shareholder of the company ceases to hold more than 50% of the Class A Common Shares.

(ii) IU International Corporation - The Common Shares are entitled to one vote per share. There are curently about 35 million Common Shares outstanding.

The Special Stock, Series A are entitled to three votes per share until December 31, 1980, four votes per share thereafter until December 31, 1986 and five votes per share thereafter. Aggregate voting power (as defined) shall not exceed 95% of the total Common Share vote. The Series A shares are not entitled to any dividends and are redeemable in whole or in part on or after January 1, 1978 at $70 per share. In the event of liquidation they are entitled to $15 per share prior to any distribution on the Common Shares and they are entitled to the liquidation value of Common Shares if converted prior to liquidation date. Each Series A share is convertible into Common Shares, $1.20 par, on the following basis (which has been adjusted throughout for the 2-for-1 split in 1972 and from December 8, 1979 for the distribution of shares of Gotass-Larsen Shipping Corp. to holders of the Common Shares) during each calendar year.

1979.....3.7471	1984.....4.5589
1980.....3.8968	1985.....4.7412
1981.....4.0529	1986.....4.9308
1982.....4.2150	1987.....5.1280
1983.....4.3834	

and thereafter into 5.3331 Common Shares. The basis of conversion is subject to adjustments in certain circumstances including issue of Common Shares dividends or any capital reorganization or classification.

The by-laws permit the directors to limit transfer of shares to non-U.S. citizens. In the election of directors, all classes of shares are entitled to cumulative voting rights.

(iii) Monenco Limited - Only the Class A and B Common are listed on the Exchange. They are entitled to one vote per share, are interconvertible on a share-for-share basis and rank equally in all respects. The Class X and Y Special Common are not listed as all outstanding shares are controlled by employees of the company. They are entitled to five votes per share, are interconvertible on a share-for-share basis and rank equally in all respects.

(iv) Newfoundland Capital Corporation Limited (formerly Eastern Provincial Airways Ltd.) - The Class A common shares and the Class B common shares rank equally in all respects, except that the Class A common shares carry one vote

per share and the Class B common shares carry ten votes per share, provided, however, that the Class B common shares will carry only one vote per share:

(i) in respect of a vote to change any provisions attaching to the Class A common shares or the Class B common shares; or

(ii) 180 days following the acquisition, pursuant to a take-over bid, of Class B common shares:

(A) where the number of Class B common shares so acquired together with the number of Class B common shares beneficially owned, directly or indirectly, on the date of the take-over bid, by the offeror or associates of the offeror exceeds in the aggregate 50% of the outstanding Class B common shares; and

(B) where the provisions of The Securities Act of Ontario and the rules of a stock exchange on which the Class A common shares and the Class B common shares are both listed for trading, applicable to such take-over bid, have not been complied with as if the Class A common shares and the Class B common shares were shares of the same class or series of securities having a price equal to that of the Class B common shares.

(v) Scott's Hospitality Inc. - The common shares are entitled to one vote per share. The common shares are not convertible into Class C shares but the Class C shares are convertible at any time into common shares on a one-for-one basis. The Class C shares are entitled to 100 votes per share and participate equally with common shares in any payment of dividends.

(vi) Turbo Resources Ltd. - Turbo has outstanding approximately 15,650,000 common voting shares and 5,830,000 special voting shares. The common voting shares are entitled to one vote per share whereas the special shares entitle the holder to a number of votes which is equal to three times the number determined by dividing the total of all shares represented and voted at such meeting. In the event that the formula results in a fraction, the determination is rounded off to the next highest number. The holders of the common shares are entitled, voting separately and exclusively as a class, to nominate and elect two directors. At the present time the share structure results in shares representing about one-third of the equity carrying approximately 80% of the voting rights.

(vii) Twin Richfield Oils Ltd. - The Class A Shares are convertible into Class B Shares on the basis of 1 Class B Share for each Class A Share. The Class A Shares and the Class B Shares rank equally as to dividends and on any distribution of assets of the Corporation. The holders of the Class A Shares are entitled to 1 vote for each Class A Share held and the holders of the Class B Shares are entitled to 1/10 of 1 vote for each Class B Share held. In addition, the Class B Shares are entitled, voting separately and exclusively as a class, to elect two directors of the Corporation. The present Class A Shares and Class B Shares were created on a reorganization pursuant to which holders of common shares were entitled to 1 Class A Share and Class B Share for each 2 common shares held. The Class A Shares are listed on the Alberta Stock Exchange but not on The Toronto Stock Exchange.

(viii) Versatile Corporation - The Class A shares and Class B shares rank on a parity with respect to payment of dividends and repayment of capital. The Class A shares carry one vote per share and the Class B shares carry ten votes per share. Provision is made in the Articles of Continuance for a right of conversion of Class A shares into Class B shares if an offer to purchase Class B shares is made to all Class B shareholders and the same offer is not made to the Class A shareholders. The provision provides, in part, as follows:

"In the event an Offer is made, a Conversion Right shall exist during the Conversion Period but not thereafter unless:

(i) The board of directors of the Company determines within ten (10) business days after the Offer Date that it will recommend a rejection of the Offer, and forthwith thereafter informs the holders of Class A shares of such determination; or

(ii) at the time the Offer is made, an Offer on the same terms and conditions is made to the holders of the Class A shares."

(ix) Villacentres Ltd. - Common shareholders of Villacentres Ltd. of record as of June 15, 1981 were issued stock dividends of non-transferable Junior Preferred Shares, Series 1 of the company ("Junior Preferred Shares") on the basis of one Junior Preferred Share for each common share held. The Junior Preferred Shares existed for only two months. Under their terms and conditions, holders could elect to either have them converted into common shares of the company on the basis of one common share for every 50 Junior Preferred Shares or into Special Shares of the company on a one-for-one basis. Holders who made no election on or before August 14, 1981 would have their Junior Preferred Shares automatically converted into common shares on a one-for-fifty basis.

The following are some of the conditions attaching to the Special Shares: (a) non-transferable except in certain limited circumstances; (b) rank, as to payment of dividends and repayment of capital, junior to all existing and currently proposed shares of the company and not entitled to receive, in the case of a repayment of capital, any amounts in addition to the amount paid up thereon; (c) not entitled to dividends except in the year for which dividends of at least $1.00 (adjusted for subdivisions and consolidations of common shares) have been paid on the common shares, in which case dividends may be paid, subject to certain prescribed limits; (d) entitled to one vote per share; (e) not redeemable prior to June 15, 1991, but redeemable thereafter at an amount equal to the capital paid up thereon together with declared and unpaid dividends; and (f) convertible at any time into one common share for each 150 Special Shares held.

Public shareholders would generally not elect to convert Junior Preferred Shares into Special Shares because the Special Shares are non-transferable except in very limited circumstances. It is the Exchange's understanding that only the controlling shareholder of the company made this election.

III. RESTRICTED VOTING SHARES

A. Restrictions on the number or percentage of shares which may be held by any one person (Canadian and non-Canadian)

Company Name (Nature of Business)	Class	Date Listed
1. British Columbia Resources Investment Corp.(i) (holding company)	Common	Aug. 8/79
2. Canada Development Corporation(ii) (equity investor)	Common	Oct. 22/79
3. Canada Trustco Mortgage Company (iii) (mortgage and loan)	Common	June 14/79
4. Dome Canada Limited (iv) (oil & gas)	Common	April 8/81
5. Nova Scotia Savings & Loan Co.(v) (savings & loan)	Common	April 28/70
6. All nine chartered banks(vi)	Common	Various dates

Notes:

(i) British Columbia Resources Investment Corporation - BCRIC has close to 100 million issued common shares. BCRIC went public in 1979 when the British Columbia government distributed free to residents of the province of British Columbia approximately 10.5 million shares (5 shares per person). An additional 80 million shares were subscribed for at $6 per share. Share certificates were registered only if the free shares and those subscribed for totalled a minimum of 100 shares. Bearer certificates were issued to holders of 5 to 99 common shares. The holders of the bearer certificates do not have the right to attend or vote at the annual meetings. Only Canadian citizens or residents can own shares and even they are restricted to 1% (3% in the case of a mutual fund, pension fund or similar fund). There is no restriction on the number of shares which may be held by the Province of British Columbia.

(ii) Canada Development Corporation - The CDC has only one class of residual equity shares. These shares are standard voting common shares. However, ownership must be in the hands of either Canadian residents or citizens and no one person or group, other than the Canadian government, may hold more than 3% of the issued and outstanding voting shares of the company. By restricting the maximum percentage ownership Parliament has, in effect, placed a restriction on the number of votes which a shareholder can hold.

(iii) Canada Trustco Mortgage Corporation - The letters patent of Canada Trustco provide that the greatest number of voting shares held by or for any persons and associates shall be 10% of total number of issued and outstanding voting shares.

(iv) Dome Canada Limited - The following excerpt from the prospectus dated March 2, 1981 is a summary of the restrictions on the holding of common shares:

There are two types of restrictions attaching to the Common Shares: (1) restrictions on eligible subscribers, transferees and holders of Common Shares designed to enable DCL to achieve and maintain a Canadian ownership level in excess of that level required in order that DCL may qualify for the maximum level of grants available under the National Energy Program of the Canadian Government and (2) restrictions limiting the number of Common Shares that may be held by or on behalf of a holder and its associates other than Dome Petroleum Limited ("Dome"), to 5% of the issued and outstanding Common Shares which will facilitate the maintenance by DCL of a Canadian ownership level in excess of that level required in order that DCL qualify for the maximum level of grants.

The following is a summary of the significant terms of these restrictions which are authorized by the Memorandum of Association:

(1) Eligible Holders of Common Shares

Except as noted under the heading "Exception for Dome" below, and except for the issue of Common Shares to underwriters in the course of a distribution to the public and except market-making activities coincident with such distribution, and except for the shares held by nominees or bare trustees, Common Shares may only be held by individuals and others who have a Canadian ownership level of 100% ("Eligible Holders") determined, until legislation implementing the National Energy Program comes into force, in accordance with a release of the Petroleum Monitoring Agency entitled "Measurement and Determination for Canadian Ownership and Control" dated November 21, 1980, as supplemented, replaced or restated, and as amended, from time to time, and thereafter in accordance with such legislation. The board of directors of DCL is empowered to make decisions, which decisions shall be final and binding, as to the qualification of individuals and others to hold Common Shares in order that DCL may take the greatest advantage of the incentives under the National Energy Program.

(2) Maximum Holdings of Common Shares

Except as noted below under the heading "Exception for Dome", and except for the issue of Common Shares to the underwriters of DCL in the course of a distribution to the public and except for market making activities coincident with such distribution, and except for shares held by nominees or bare trustees, the maximum number of Common Shares which may be held by or on behalf of a holder and associates thereof is restricted to 5% of the issued and outstanding Common Shares.

(3) Exception for Dome

The restrictions attaching to the Common Shares set forth above under "Eligible Holders of Common Shares" and under "Maximum Holdings of Common Shares" do not apply to Dome.

(v) Nova Scotia Savings & Loan Company - A 1969 Act of Parliament provides that the directors of the company shall refuse to allow in the books of the company the entry of a transfer of any shares of the capital stock to any individual, corporation or trust, when the total number of shares of the capital stock of the Company held by such individual, corporation or trust and by any other shareholder or shareholders associated with such individual, corporation or trust exceeds 15% of the total number of issued and outstanding shares of such stock.

(vi) The Bank Act of Canada provides that no person, whether a Canadian resident or non-resident, may hold in excess of 10% of the issued and outstanding shares of a bank. It also limits to 25% the number of shares of a class which may be held by non-residents.

B. Restriction on number or percentage of votes regardless of number of shares held (Canadian and non-Canadian)

Company Name (Nature of Business)	Class	Date Listed
1. Canada Southern Petroleum Ltd.(i) (oil & gas)	Common	April 21/54
2. Coastal International Limited (ii) (oil & shipping)	Common	April 14/81
	Class A	April 14/81
3. Maritime Telegraph & Telephone Co. Ltd. (iii) (telephone co.)	Common	July 25/66

Notes:

(i) Canada Southern Petroleum Ltd. - The letters patent, as supplemented, of the company provide that no person (as defined) shall vote more than 1,000 shares.

(ii) Coastal International Ltd. - Subject to the restrictions described below, each common share and Class A common share entitle the holder thereof to one vote per share at meetings of the company's shareholders and rank equally in all respects. Prior to each meeting of shareholders, the company will send to each shareholder a questionnaire designed to elicit information as to the number of shares held by the shareholders and any other persons who may be connected with him in a variety of ways to form an "affiliated group". Only shareholders who respond to such questions satisfactorily will have their shares enrolled and thus be permitted to vote their shares at the applicable meeting. Even if the shares are duly enrolled no shareholder or "affiliated group" may cast more than 9.95% of the total number of votes attached to all enrolled shares. An officer or director of the company is subject to the limitation on the number of votes which may be cast by an individual shareholder. However, he is not subject, even though part of an affiliated group, to the overall limitation on the number of votes which may be cast by such affiliated group.

No citizen or resident of the United States or its possessions or territories may beneficially own directly or indirectly, or vote Class A common shares.

(iii) Maritime Telegraph and Telephone Co. Ltd. - In 1966 Bell Canada made a take-over bid for all the shares of the company. The offer was opposed by Premier of Nova Scotia on the grounds that the company should not be controlled by any company that also manufactured telephone equipment. When the Bell Canada offer succeeded Nova Scotia passed legislation which, in essence, limits any person, group or company with more than 1000 shares to 1000 votes at company meetings. Bell Canada does, however, have the right to nominate and appoint two directors.

C. Restrictions applicable to non-Canadians only

Company Name (Nature of Business)	Class	Date Listed
1. Agra Industries Ltd.(i) (diversified mfg.)	Class A	Dec. 31/68
	Class B	Dec. 31/68
2. Alberta Energy Company Ltd (ii) (petroleum & nat. gas)	Common	April 17/80
3. Aquitaine Company of Canada Limited (iii) (oil & gas expl.)	Common	Dec. 31/68
4. Brascan Ltd. (iv) (light & power)	Class A	July 10/73
	Class B	July 10/73
	Class C	Mar. 24/77
5. British Columbia Resources Investment Corporation (ii) (investment holding)	Common	Aug. 7/79
6. Canada Development Corp.(ii) (equity investment)	Common	Oct. 22/79
7. Canada Permanent Mortgage Corp. (v) (mortgage & loan)	Common	June 21/22
8. Canadian Corporate Management Ltd. (iv) (holding co.)	Class X	June 2/80
	Class Y	June 2/80
9. Coastal International Ltd. (vi) (oil shipping & dev.)	Common	April 14/81
	Class A	April 14/81
10. Crown Life Insurance Co. (insurance company) (vii)	Common	Mar. 18/70
11. Crown Trust Co. (iv) (trust co.)	Common	Sept. 3/46
12. Dome Canada Ltd. (vii) (oil & gas)	Common	April 8/81
13. Great-West Life Assurance Co. (viii) (life insurance)	Common	July 2/65

Company Name Nature of Business)	Class	Date Listed
14. Guaranty Trust Co. of Canada (iv) (trust company)	Common	Sept. 8/43
15. Hudson's BayCo. (iv) (dept. store)	Common	June 7/63
16. John Labatt Ltd. (iv) (brewery)	Class A Class B	Mar. 5/68 Nov. 3/73
17. National Trust Co. Ltd. (iv) (trust company)	Common	July 23/46
18. Premier Trust Co. (viii) (trust company)	Common	Mar. 9/49
19. Ranchmen's Resources (1976) Ltd. (ix) (oil & gas)	Common	Feb. 27/80
20. Royal Trustco (ix) (trust company)	Class A Class B	June 7/74 June 7/74
21. Southam Inc. (iv) (newspaper & publishing)	Common	June 1/45
22. Standard Broadcasting Corp. Ltd. (iv) (radio station)	Common	July 3/68
23. Tele-Capital Ltd. (iv) (TV station operator)	Class A	Dec. 18/72
21. All nine chartered banks(vi)	Common	Various dates

Notes:

(i) Agra Industries Ltd. - The company may not permit the transfer of its shares to a non-resident of Canada if such transfer would impair the Company's right to conduct a broadcasting undertaking.

(ii) Ownership of shares is restricted by statute to citizens or residents of Canada.

(iii) Aquitaine Company of Canada Limited - 10,567,000 common shares are held by CDC Petroleum Inc. and are restricted from sale or transfer to residents of the United States and the stock certificates bear a notation to this effect. 5,563,000 common shares are held by Societe Nationale Elf Aquitaine and are restricted from sale or transfer to residents of the United States and the stock certificates bear a notation to this effect. 930,000 of such shares also bear a notation that they do not constitute "good delivery on the Toronto or Montreal Stock Exchanges".

(iv) The company is a "constrained share corporation" under the provisions of the Canada Business Corporations Act.

(v) Canada Permanent Mortgage Corporation - The Loan Companies Act restricts the shares held by non-residents to 25% of the total shares outstanding and shares held and voted by any non-resident shareholder and his associates to 10% of the shares outstanding.

(vi) See notes under III-B for Coastal International and chartered banks.

(vii) Ownership of shares is restricted by the charter documents to citizens or residents of Canada.

(viii) The Canadian and British Insurance Companies Act and The Trust Companies Act restrict non-resident ownership to 25% and the total number of shares which may be held and voted by a non-resident and its associates to 10% of the shares outstanding.

(ix) The charter documents of Royal Trustco provide that the number of Class A and B Common shares that may be voted by any one registered shareholder and persons associated with such shareholder at any meeting of shareholders is limited to 10% of the outstanding Common shares. Class B Common shares issued as stock dividends on Series B Preferred Shares may not be registered with a U.S. address.

D. Other Restrictions

	Company Name (Nature of Business)	Class	Date Listed
1.	Ulster Petroleums Ltd. (i) (oil & gas)	Common	February 5/69

Notes:

(i) The common shares are restricted as a result of the following resolution adopted on June 26, 1981:
"The directors may refuse to allow a transfer of shares that would adversely affect the status of the company or any subsidiary thereof."

APPENDIX E

Consideration of Special Shares by Government Agencies and Self-Regulatory Organizations in Canada

Lawrence Report

The use of non-voting, multiple voting and restricted voting shares has been considered from time to time by government agencies and commissions and by self-regulatory organizations in Canada. In its 1967 Interim Report (the "Lawrence Report"), the Ontario Select Committee on Company Law questioned whether a company should be permitted to issue common shares which carry no voting rights. It noted that none of the briefs or submissions had advocated the adoption of the voteless common share. However, it pointed out that the companies acts of most provinces permitted such shares and that there was no evidence of actual abuse or impropriety. The Lawrence Report recommended against the adoption of voteless common shares on the grounds that (1) the concept of a voteless equity share was contrary to the well founded principles of company law that ultimate control over management should be exercised by the equity shareholders in a general meeting and (2) no case had been made out as to the usefulness of such shares.

The Toronto Stock Exchange

As noted in the Discussion Paper, the Exchange's current position is that voting restrictions would not prevent acceptance of a company's application to list shares on the Exchange. This position was last reviewed back in 1967 in response to the decision of The Royal Trust Company to restrict shareholders or their associates to voting no more than 10% of the shares of the Company. The response of the Exchange was explained by the President, J.R. Kimber, Q.C., in an appearance before the Commisioners of the Royal Commission on Corporate Concentration on Wednesday May 5, 1976:

> "After some discussion, the Board of Governors of the Exchange made a ruling on March 21, 1967, which provided that as a matter listing policy it was duly moved and seconded and carried that voting limitations on a

> company's shares, which limitations have been established by an Act of the Legislature of a Province of Canada or of the Parliament of Canada shall not impede acceptance of a company's application to list its shares on the Exchange."

A copy of the remarks of Mr. Kimber before the Royal Commission is attached as Appendix 6 hereto. Mr. Kimber's statement clearly restricted the Board of Governors review of the Exchange policy to situations where the limitations have been established by statute. However, the policy of the Exchange at that time was, as it still is, that voting restrictions will generally not prevent the listing of a company's shares.

Proposals for a New Business Corporations Law for Canada, 1971

The question of non-voting shares was again raised in the drafting of a new business corporations statute for Canada. At pages 8-9 in Volume I of the Proposals for a New Business Corporations Law for Canada, 1971, the authors considered and rejected singling out voting rights for special attention:

> Non-voting shares
>
> 25. The non-voting share is something which has generated a good deal of discussion from time to time (see Lawrence Report, pp. 31-33). Most of the Corporation Acts in Canada permit non-voting shares, although Ontario, since 1953, has provided that voting rights may only be restricted in "preference" shares ("special" shares in the new Ontario Act). Section 12(14) of the Canada Corporations Act is applied to require that even preferred shares must have the right to vote in certain circumstances.
>
> 26. The controversy over voting rights is largely confined to the question of whether "common" shares may be voteless; most writers do not object strongly to the elimination or restriction of voting rights on "preferred" shares. The argument therefore rests on the assumption that the terms "common" and "preferred" have a precise meaning, an assumption which we have rejected, along with the adjectives which we think are misleading. The Draft Act speaks only of "shares", although it recognizes that shares may be of different classes, with different terms and conditions attached to the shares in the different classes.
>
> 27. Ingenious corporate solicitors have not, of course, been defeated by those Acts which restrict the use of non-voting shares. The trick is simply to design a share which has voting rights in certain

circumstances, but to ensure that, for practical purposes, those circumstances can almost never arise. The legal profession has been equal to the task, with the result that the protection given to shareholders by provisions such as those in the Ontario Act and in the Canada Corporations Act is largely illusory.

28. In the Draft Act, voting rights are not singled out for special attention. They are only one of the usual rights which shares will have unless, where there are two or more classes of shares, voting rights have been eliminated or restricted in some way. At least one class of shares in every corporation must always have unrestricted voting rights. Part 14.00 provides, however, that even shares which are normally non-voting can nevertheless be voted on matters which affect fundamentally the shares of that class. Moreover, the holder of a non-voting share has the same right as any other shareholder to invoke the "dissent" provisions which require the corporation to buy back his shares. In our view it is for the prospective shareholder to decide whether he wants to buy shares that don't carry a right to vote. If, knowing the circumstances, he elects to buy such shares, there seems no compelling reason why the law should prevent him from doing so. The law should ensure, however, that the shareholder is given a voice on any proposal that is made to change his rights subsequently, and a chance, if he disagrees with the proposal, to withdraw from the corporation.

Royal Commission on Corporate Concentration

In considering questions of corporate ownership, control and management, the Report of the Royal Commission on Corporate Concentration, 1978, discussed the issue of voting rights. The Royal Commission Report accepted the concensus judgment of the groups appearing before it to the effect that the presence of non-voting or multiple voting stock was not a danger to the investing public. Disclosure of the voting rights attached to particular classes of shares satisfied any concerns for the interests of purchasers of such shares.

Proposals for a New Alberta Business Corporations Act

Recently, the Alberta Institute of Law Research and Reform considered the advisabiltity of permitting certain restrictions on voting rights in its August, 1980 Proposals for a New Alberta Business Corporations Act (pages 74-5):

If there is only one class of shares, we think that the shares should be equal in the right to vote, the right to receive dividends, and the right to share in property upon dissolution. CBCA s. 24(3) so provides. In Jacobsen v. United Canso Oil & Gas Ltd., June 12th, 1980, Q.B. 7901-10596, Calgary, Mr. Justice Forsyth held that s. 24(3) invalidates a provision in the articles of continuance of a CBCA corporation (and we think that the same reasoning would apply to articles of incorporation) which would restrict a shareholder to voting 1,000 shares no matter how many shares he holds. We think that the law should be as the judge has held it to be. If the case should go to appeal, and if the appeal should be successful, we think that consideration would then have to be given to the insertion of stronger affirmative wording in the proposed ABCA.

Mr. Justice Forsyth's decision however, insofar as it relates to the CBCA, is founded entirely upon CBCA s. 24(3) which applies only "if a corporation has only one class of shares". The judge did not expressly say so, but it appears that if the corporation before him had had more than one class of shares, his decision might have been different. In the present state of CBCA s. 24, it is easy to see why the judge might hold that view, as CBCA s. 24(4) which allows the articles to provide for more than one class, does not say that the shares of a class are equal. However, while the CBCA draws a distinction between a corporation having one class of shares and a corporation having more than one class, we do not think that that distinction is based upon any policy considerations. It appears to us that the relationship of United Canso's common shareholders among themselves should be the same whether or not the corporation had issued another class of shares. S. 24(5) of the draft Act would therefore apply to corporations having more than one class of shares the rule that the rights of the holders of the shares of a class are equal. S. 22(5) of the proposed Ontario BCA contains the same provision.

CBCA s. 27(3) provides, in effect, that a series of a class cannot be given priority in respect of dividends or return of capital over any previous series. It appears to us that the fundamental characteristics of each share in the class should be the same as the fundamental characteristics of each other share, and it appears to us that the right to vote is as fundamental as the right to receive dividends and return of capital. S. 27(3) of the draft Act therefore includes the right to vote among the aspects in which one series cannot be given priority over another.

Appendix F

FEDERAL AND PROVINCIAL REQUIREMENTS IMPACTING ON SPECIAL SHARES

The following supplementary material sets out various statutory bases upon which the creation of non-voting, restricted voting and multiple voting shares may be authorized. This appendix does not attempt on exhaustive summary of all such existing statutes; instead, it discusses those which most frequently motivate corporations to include such shares in their capital stock.

Part A deals with the federal and provincial (Ontario) statutes which govern the incorporation of business corporations. The coverage also includes the proposed revisions to the Business Corporations Act (Ontario) contained in recent Bill 6, as well as a discussion of certain Special Acts. This material describes the authorization for the creation of residual equity shares, as defined in this discussion, and also the circumstances in which the rights of holders of such shares are preserved through an entitlement to vote such shares or otherwise to consent to corporate action.

Part B considers those statutes which impose mandatory restrictions on voting rights. For the most part, such statutes govern the operation of financial intermediaries. The material sets out the circumstances in which voting restrictions will apply; primarily these restrictions are used as a tool for the enforcement of constraints on the transfer or allotment of shares to non-residents.

Part C deals with those statutes which enable a corporation to qualify for some benefit if a requisite level of Canadian ownership is achieved. Such statutes encourage the use of the 'constrained share' provisions permitted by the Canada Business Corporations Act (discussed infra) or alternative share structures by which the required level of Canadian voting control may be retained.

PART A

Corporation Statutes

1. Canada Business Corporations Act ("CBCA")

The statute permits the creation of any number of classes of shares, with any number of series. The share

attributes are unlimited except as regards certain fundamental rights, including voting rights. Where there is more than one class of shares, the right to vote at any meeting of the shareholders of the corporation must be attached to at least one class of shares.

The Act specifically permits a corporation distributing its shares to the public to impose constraints on the issue or transfer of its shares to persons who are not resident Canadians or to allow the corporation or its affiliates to qualify under federal or provincial laws with Canadian ownership requirements (1) to obtain licences, (2) to become a publisher of a Canadian newspaper or periodical or (3) to acquire shares of a financial intermediary. Where such constraints are imposed and where the number of shares held by or for a person in the constrained class exceeds the maximum permissible holdings, no person may, in person or by proxy, exercise the voting rights attached to such shares.

In certain circumstances the holders of a class or series are entitled to vote separately as a class or series; in such cases the right to vote applies whether or not shares otherwise carry the right to vote. These circumstances include proposals to amend the articles of a corporation which affect the class or series to which such shares belong, i.e.

(1) changes in authorized capital (subject to authorization in the articles);

(2) exchange, reclassification or cancellation of shares (subject to authorization in the articles);

(3) altering the attributes of that class, including prejudicial changes in dividend entitlement and redemption rights, reduction or removal of dividend preference or liquidation preferences or prejudicial changes in conversion privileges, options, voting, transfer or pre-emptive rights, rights to acquire a corporation's securities or sinking fund provisions;

(4) altering the rights of any class ranking equal or superior to that class;

(5) creating a new class ranking equal or superior to that class (subject to authorization in the articles);

(6) increasing the rights of any inferior class to a level equal or superior to that class;

(7) effecting or creating a right of exchange of shares of another class into shares of that class; and

(8) imposing or removing issue or transfer constraints.

Each share also carries the right to vote, whether or not it otherwise carries the right to vote, in respect of:

(1) shareholder approval required for an amalgamation agreement (and the holders of a class or series may be entitled to vote separately as a class or series if the amalgamation agreement contains any of the provisions described in (1) through (8) above);

(2) continuance (export) in another jurisdiction; and

(3) the sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business (and the holders of a class or series may, in some circumstances, be entitled to vote separately as a class or series).

2. Ontario Business Corporations Act ("OBCA")

The OBCA provides that the authorized capital of a corporation may be divided into a stated maximum number of shares with par value or without par value or both and may consist of shares of more than one class. One class of the shares of the corporation must always be common shares, except where the corporation is a mutual fund. Common shares are defined to be those shares without preference, right, condition, restriction, limitation or prohibition, other than a restriction on the allotment, issue or transfer. Each common share has attached the right to vote at all meetings of shareholders. The remaining classes of shares are defined to be special shares; the Act sets out several preferences, rights, conditions, restrictions, limitations and prohibitions which may be attached to special shares but does not limit those which may be attached. Each share of a class must be the same in all respects as every other share of that class, except in the case of special shares which may be issued in series having different attributes. The shares of all series of the same class of special shares must carry the same voting rights or the same restrictions on the right to vote.

In the case of certain corporate changes affecting holders of special shares, i.e. a variation of attributes or creation of a class of shares ranking in priority or on a parity with an existing class, approval to amend the articles must be

obtained from the special shareholders by a two-thirds majority vote of shareholders (where the articles so provide) or, alternatively, by written confirmation by 100% or, in certain circumstances, 95% of the holders of such shares. Where an amalgamation agreement would result in such corporate changes, approval in this form is also required.

Where special shares have limited or restricted voting rights, the holders of such shares must be entitled to notice of shareholders' meetings called for the purpose of authorizing the dissolution of the corporation or the sale of the whole or a substantial part of its undertaking.

3. Proposed Revisions to the Business Corporations Act

The Act permits the creation of any number of classes of shares without par value, including special shares issuable in series. The share attributes are unlimited except as regards certain fundamental rights, including voting rights. Where there is more than one class of shares, the right to vote at all meetings of shareholders must be attached to at least one class of shares.

In certain circumstances, classes or series of shares are entitled to vote separately and the right to vote is available to all shares, whether or not they otherwise carry the right to vote. Such circumstances include:

(1) certain additions or reductions made to a corporation's stated capital account;

(2) the authorization of amendments to a corporation's articles in the circumstances which are described in the discussion of same for the CBCA;

(3) the approval of an amalgmation agreement wich contains any of the provisions which would entitle shareholders to vote under (2);

(4) the approval of a statement of arrangement which contains any of the provisions which would entitle shareholders to vote under (2); and

(5) the approval of a sale, lease or exchange of all or substantially all of the property of a corporation, other than in the ordinary course of business, where such would affect different classes of shares in a different manner.

PART B

Statutes which impose Mandatory Restrictions on Voting Rights

I. Federal

1. The Bank Act

(1) The Bank Act applies to all banks empowered to carry on the banking business in Canada.

The Act provides that the authorized capital of a bank may consist of more than one class of shares; there must, however, be at least one class of shares which are entitled to vote at all meetings of shareholders except meetings at which only holders of a specified class of shares are entitled to vote.

The Act includes foreign ownership restrictions in the form of a "25/10" test: the registration of transfers and allotments of shares is subject to the restriction that non-residents may not hold in excess of 25% of the total issued and outstanding shares of the stock of a bank, and no one shareholder (together with his associates) may hold in excess of 10% of the total issued and outstanding shares of the stock of a bank. The 10% restriction also applies to resident shareholders.

Shareholders who are the registered owners of shares may exercise voting rights. The voting rights attached to shares of a bank, with the exception of shares of a foreign bank subsidiary owned by a foreign bank, may not be exercised, in person or by proxy:

(a) by a resident, if shares are held by a resident for a non-resident;

(b) where shares or any class of shares of a bank held by or for a shareholder together with the total number of shares of that class held by or for any shareholders or others associated with him exceed 10% of the outstanding shares of that class;

(c) where shares are held by or for the Government of Canada, a provincial government, an agent of either or certain officials, trustees, or corporations (including an official or corporation performing a function or duty in connection with the administration, management or investment of a fund

established to provide compensation, hospitalization, medical care, annuity, pension or similar benefits to individuals or moneys derived from such funds) or a government of foreign state or any political subdivision or agent thereof.

Shares which do not otherwise carry the right to vote are, however, entitled to vote where a class or series is entitled to vote separately in respect of authorization of certain fundamental changes. (Changes are those discussed in respect of amendment of articles for CBCA corporations.)

2. Trust Companies Act

The Trust Companies Act applies to all federal companies incorporated for the purpose of (i) exercising all of the powers specifically set forth in the Act, or (ii) executing the office of executor, administrator or trustee, either with or without other objects or powers.

The Act permits the issue of preference shares, the attributes of which may include restrictions or qualifications on voting rights.

The Act limits the registration of transfers and allotments of shares to non-residents subject to a '25/10' test (as described above for banks). The Act provides that only the registered holders of shares shall exercise voting rights. Voting rights may not be exercised, in person or by proxy:

(a) by a resident, if shares are held for a non-resident;

(b) where shares held by or for a non-resident, together with shares held by or for any shareholders associated with the non-resident, exceed 10% of the issued and outstanding shares of stock.

Certain exceptions to these limitations are available in respect of non-resident shareholdings which exist at the date upon which the Act becomes applicable ('grandfather' clauses).

3. Loan Companies Act

The Loan Companies Act applies to all federal companies incorporated for the purpose of:

(1) exercising all of the powers specifically set forth in the Act, or

(2) executing the office of executor, administrator, or trustee, either with or without other objects or powers.

The Act permits the issuance of preference shares to which may be attached restrictions or qualifications on voting rights.

The Act limits the registration of transfers and allotments of shares subject to a '25/10' foreign ownership restriction. It also provides that voting rights may not be exercised in the circumstances described as above for trust companies, except where permitted by 'grandfather' clauses.

4. Canadian and British Insurance Companies Act

The Canadian and British Insurance Companies Act applies to all federal companies incorporated for the purpose of carrying on the business of insurance.

The Act limits the registration of transfers and allotments of shares subject to a '25/10' foreign ownership restriction. It also provides that the voting rights of shares may not be exercised in the circumstances described as above for trust companies, except where permitted by 'grandfather' clauses.

5. Investment Companies Act

The Investment Companies Act applies to all federal companies incorporated for the purpose of carrying on the business of investment, or to carry on the business of investment other than as loan companies, trust companies and chartered banks. In particular, the Act applies to "sales finance companies" which are defined as investment companies at least 25% of the assets of which consist of (i) loans, whether secured or unsecured, made by the company, or (ii) purchases by the company of conditional sales contracts, accounts receivable, bills of sale, chattel mortgages, bills of exchange, promissory notes or other obligations representing part or all of the sales price of merchandise.

The Act contains restrictions on the registration of transfers and allotments of shares of sales finance companies subject to a '25/10' foreign ownership test. The voting rights of shares may not be exercised in the circumstances described as

above for trust companies, except where permitted by 'grandfather' clauses.

II. Provincial (Ontario)

1. Loan and Trust Corporations Act

This Act applies to corporations incorporated for the purpose of exercising the powers set forth in the Act.

The authorized capital of such corporations may include preference shares upon which there may be conditions, restrictions, limitations or prohibitions on the right to vote.

Foreign ownership restrictions are present in a '25/10' test. The Act provides that a non-resident shall not exercise the voting rights unless he is entered in the books of a corporation as a shareholder in respect of the shares. Where a non-resident is not so registered, no resident holding such shares for the non-resident shall exercise, in person or by proxy or by a voting trust, the rights pertaining to those shares. In addition, where the shares held by or for a non-resident, together with shares held for any shareholders associated with the non-resident exceed 10% of the issued and outstanding shares of such stock, the voting rights may not be exercised.

Certain exceptions to these rules are provided by 'grandfather' clauses.

2. Securities Act

The Regulations made under the Securities Act govern the registration requirements of securities dealers, (including brokers), underwriters, and advisers. Registration and renewal of registration is conditional, generally, upon the applicant or registrant being a resident and the aggregate number of shares held by or for non-residents, their associates and affiliates not exceeding 25%, with no single non-resident and his associates or affiliates having a beneficial interest in or exercising control of more than 10% of the issued securities of that class of securities.

It is noteworthy that the recent Report of the Joint Industry Committee on Public Ownership in the Canadian Securities Industry, issued March 2, 1981, recommended the retention of these restrictions as to both public and non-public

securities firms. Moreover, this Committee proposed additional ownership limitations for public securities firms:

(1) no outside or public investor should be permitted to own more than 10% of the voting or participating securities of a public securities firm or, where applicable, a holding company used as the public vehicle, where the 10% limit represents the aggregate of any such shareholder's holdings together with those of his associates, affiliates, or other investors acting in concert; and

(2) a firm which goes public should adopt "constrained share corporation" status under the CBCA and should have the corporate power to require redemption or sale of offending shares when a contravention occurs. In asserting this recommendation, the Committee recognized both the need for an amendment to the CBCA regulations to extend enforceability of constraints on transfer to Canadian resident investors as well as non-residents and the need to include domestic ownership restrictions in regulations under provincial securities laws.

III. Special Act Companies

Certain of these statutorily created entities impose foreign ownership and accompanying voting restrictions. For example:

(1) ownership of shares in the Alberta Energy Company, Canada Development Corporation, and British Columbia Resource Investment Corporation is restricted to citizens or residents of Canada;

(2) the Nova Scotia Savings & Loan Company restricts the number of shares held for the benefit of a non-resident shareholder and its associates to 15% of issued and outstanding shares; the British Columbia Resources Investment Corporation limits the maximum number of shares held for the benefit of one person or group of persons other than the Province of British Columbia to one per cent (restrictions of three per cent for mutual fund, pension fund, or other); and

(3) Maritime Telegraph and Telephone Company restricts any person, group or company with more than 1,000 shares to only 1,000 votes at company meetings.

PART C

Statutes under which Share Voting Restrictions are Required to Qualify for a Benefit

1. Income Tax Act

The Act accords favourable tax treatment to publishing or printing companies, the product of which can qualify as a "Canadian newspaper or periodical". A qualifying corporation must be a domestic corporation, of which the Chairman and other presiding officer and at least 3/4 of directors or similar officers are Canadian citizens and of which 3/4 of the shares having full voting right and shares representing 3/4 of paid up capital are beneficially owned by Canadian citizens or by corporations other than corporations controlled directly or indirectly by foreign citizens or subjects.

2. The Broadcasting Act

The Canadian Radio-Television Commission regulates the licensing of broadcasting undertakings, including television systems. In order to qualify for a licence, a corporation must be a domestic corporation, of which the Chairman or other presiding officer and each of directors or other similar officers are Canadian citizens and of which at least 4/5 of shares having full voting rights and shares representing in the least 4/5 of paid up capital are beneficially owned by Canadian citizens or by corporations other than corporations that are controlled directly or indirectly by foreign citizens or subjects.

3. Foreign Investment Review Act

Under the terms of the Act, a "non-eligible" person wishing to acquire control of a Canadian business or to establish a new business in Canada must make application for approval to the Foreign Investment Review Agency. Non-eligible persons include foreign governments and their agencies, citizens of other countries and certain Canadian citizens and landed immigrants, and any corporation controlled by such individuals or governments.

Unless the contrary is established, a public corporation will be deemed to be a non-eligible person if 25% of its voting shares are owned either by non-eligible persons or corporations incorporated outside of Canada. A private

corporation will be deemed non-eligible if 40% of its voting shares are held by non-eligible persons or corporations incorporated outside of Canada. Further, if more than 5% of the shares of a corporation, whether public or private, are owned by one non-eligible person or a corporation incorporated outside of Canada, then that corporation will be deemed to be a non-eligible person unless the contrary is so established.

4. The National Energy Program

The National Energy Program, tabled with the Budget speech of October 28, 1980, introduced new incentives for the exploration and development in Canada of natural gas and oil. These incentives are applied in a manner which favours high degrees of Canadian ownership.

(a) Canada Lands

Oil and gas activity on Canada lands (lands in the territories and offshore) will be governed under the proposed Canada Oil and Gas Act (Bill C-48). That legislation will require a minimum of 50% Canadian ownership for any production from Canada Lands. In addition, the National Energy Board will be asked to consider Canadian ownership as a factor in the approval of export applications.

(b) Incentive Payments

The Petroleum Incentives Program, administered by the Petroleum Incentives Board, provides incentive payments for Canadian oil and gas exploration, development, and the use of certain enhanced recovery processes on Canadian or Provincial lands. The amount of such grants depends upon the Canadian Ownership Rate ("COR"), with most favourable treatment accorded to those corporations which qualify as 75% owned.

The rate of Canadian ownership will be determined by regulations to be established by the Petroleum Monitoring Agency. It is expected that the measurement of COR for the majority of applicants will be based on the beneficial ownership of their equity.

The Position in the United States and Britain

United States

The New York Stock Exchange ("NYSE") has refused to authorize the listing of non-voting common shares. The NYSE also refuses to list the voting shares of companies which have non-voting common shares outstanding. The creation of a class of non-voting shares is a criteria for delisting a company. Similarly, the NYSE may refuse to list any class of shares which has unusual voting provisions which tend to nullify or restrict its voting or which is subject to unusual voting provisions of another class of shares having such effect. The policy behind the NYSE's position is one of shareholder democracy. Shares with equity interests in a company should have proportionate voting rights. The NYSE makes it clear that this policy extends even to non-common shares. In the NYSE Company Manual, the NYSE states that "the Exchange is of the view that any allocation of voting power under normal conditions to classes of stocks other than common stock should be in reasonable relationship to the equity interests of such classes. If the voting power of such other classes is in excess of such reasonable relationship, the Exchange may refuse to authorize listing of the common stock." Extracts from the NYSE Manual appear as Exhibit 1 to this Appendix.

The current NYSE position is the result of an evolutionary process dating back to the 1920's. It was, at least in part, related to perceived abuses resulting from "banker control" of a number of companies. However, the exact origins of the position are not entirely clear.

The American Stock Exchange ("AMEX") will not approve an application for the listing of non-voting common shares. However, it may approve the listing of shares which have limited or restricted voting rights. The holders of restricted voting shares must have the right,

(i) to elect a minority of the directors (generally at least 25% of the directors);

(ii) to vote on matters where AMEX requirements provide for shareholder approval. Approval is required for options to directors, officers or key employees, major acquisitions and in certain other circumstances.

As a general rule, the policy of AMEX is not to permit a ratio of voting rights as between multiple voting and limited voting shares to exceed 10 to 1.

The present rules of AMEX are more recent in origin than those of the NYSE. They were the result of concerns about shareholder democracy and pressure from state securities administrators during the early 1970's. The administrators indicated that they would favourably consider AMEX's request for the granting of exempt status to its listed securities if AMEX modified its listing policy in respect of non-voting common stocks so that it would no longer consider this type of security for original listing. At the time, there were only four companies with non-voting shares listed on AMEX. These companies were grandfathered when the new rules were put in place. AMEX staff stated at the time that with the wider acceptance of the principle of corporate democracy, the practice of creating non-voting common stock "appears to be extinct". Only two listings of non-voting shares had occurred in the ten year period preceding adoption of the rules.

Britain

The London Stock Exchange continues to permit the listing of non-voting, restricted voting and limited voting common shares provided they are properly designated. Where the shares do not carry voting rights the words "non-voting" must appear in the designation of such shares. Where the equity capital of a company includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words "restricted voting" or "limited voting".

The question of whether to prohibit the issuance of ordinary or "equity" shares without any right of voting was considered in the 1962 Report of the Company Law Committee chaired by The Right Honourable Lord Jenkins (the "Jenkins Report"). The matter was said to have sparked a more marked division of opinion among the witnesses before the Committee than any other matter. It left the Committee divided. The majority concluded that the case for "abolition by law" of voteless shares had not been made out. However, the majority did (a) call for better disclosure of any lack or restriction of voting rights attaching to particular equity shares and (b) recommend that all shareholders should be entitled to receive notices of general meetings of shareholders and of any chairman's statement which is circulated with the financial statements. In a Note of Dissent, the minority, which included Professor L.C.B. Gower, argued that the growth of non-voting and restricted voting shares strikes at the basic principle on which British company law is based, is inconsistent with the principles underlying the Jenkins Report and earlier reports and is generally an undesirable development. The minority recommended (a) that all shareholders, whether or not they have votes, should be entitled to attend, in person or by proxy, and to speak at all general meetings of their company and (b) that there should be a prohibition on the granting of a quotation on a stock exchange for non-voting and restricted voting equity shares except in exceptional circumstances and except for further issues of shares which were quoted prior to the publication of the Jenkins Report.

The commentary and recommendations of the majority and the Note of Dissent of the minority appear as Exhibit 2 to this Appendix.

SECTION A 15

VOTING RIGHTS AND

STOCKHOLDER APPROVAL

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SECTION A 15

VOTING RIGHTS AND STOCKHOLDER APPROVAL

Exchange Policy as to Non-Voting Common Stock

Since 1926, the Exchange has refused to authorize the listing of nonvoting common stock, or any non-voting stock, however, designated, which by its terms is in effect a common stock. The Exchange will also refuse to list the common voting stock of a company which also has outstanding a nonvoting stock, however designated, which by its terms is in effect a common stock. In line with the above, the Exchange normally will refuse to list voting trust certificates. Exception has been made in the case of voting trusts established pursuant to reorganization proceedings under Court direction (See also Delisting Criteria—*A Class of Non-Voting Common Stock is Created* Section A 16.)

(See also Section A 2 regarding Conflicts of Interest.)

Restrictions on Voting Rights

Through Voting Trusts or Similar Arrangements

The Exchange will also refuse to list common stock (or other voting stock) where the voting rights of shareholders in stock to be issued for assets or sold for cash would be restricted by the use of a voting trust, irrevocable proxy, or any similar arrangement to which the company or any of its officers or directors is a party, either directly or indirectly. This also applies to original listings where a voting trust has arisen in this manner and the voting restrictions are still present.

Classified Boards of Directors

The Exchange expects that Boards of Directors will be elected by all of the shareholders entitled to vote voting as a class except where special representation is required by the default provisions of a class or classes of Preferred Stock.

Exchange will refuse to authorize listing where the Board of Directors is divided into more than three classes. Where classes are provided, they should be of approximately equal size and tenure and directors' terms of office should not exceed three years.

Concentration of Voting Power

The concentration of a substantial proportion of a common stock issue in one holding, or in several affiliated holdings is not necessarily an obstacle to the listing of the issue. However, in considering its listing, the Exchange will take into account the proportion of the total voting power of the issue represented by such concentrated holdings and, particularly, the expectancy of such holdings ultimately being distributed.

Defensive Tactics
(See Section A —2)

Proportionate Voting Power

In cases where voting power is divided between the common stock and one or more other classes of stock under normal conditions (as distinguished from conditions under which such other class or classes temporarily acquire voting power as a result of dividend default or some such occurrence), the Exchange, when considering the listing of the common stock, will take into account the relationship between the proportion of the total voting power represented by such other class or classes and their relative equities in the company.

The circumstances under which different classes of stock are issued, their priorities and preferences, and their equity interests are so varied that the Exchange has not found it feasible to fix standards as to what constitutes the appropriate apportionment of voting power as between different classes of stock; therefore, each case must be considered individually.

However, the Exchange is of the view that any allocation of voting power under normal conditions to classes of stock other than common stock should be in reasonable relationship to the equity interests of such classes. If the voting power of such other classes is in excess of such reasonable relationship, the Exchange may refuse to authorize listing of the common stock.

See Section A—2 regarding Defensive Tactics.

See also Special Types of Listing Applications — *Requirements for Stocks which have Periodic Increases in Conversion Rate into Common Stock* Section B—6.

PREFERRED STOCK
Minimum Voting Rights Required by Exchange Policy

As a matter of policy, the Exchange may also refuse to authorize listing of a preferred stock which does not have, as the minimum, certain provisions enabling it to obtain representation on the Board of Directors in event of dividend default and protecting it against compulsory change in its existing rights, preferences and privileges, even though such provisions are not required or conferred by law.

In order to be acceptable for listing under this policy a preferred stock should provide for:

1. The right of the preferred stock, voting as a class, to elect at least two directors upon default of the equivalent of six quarterly dividends;
2. The affirmative approval of at least two-thirds of the outstanding preferred stock as a prerequisite to any charter or by-law amendment altering materially any existing provision of such preferred stock.

This policy applies equally to cumulative and non-cumulative preferred stock. Any right to elect directors upon dividend default should remain in effect until cumulative dividends have been paid in full or until non-cumulative dividends have been paid regularly for at least a year.

It is expected, of course, that a preferred stock will have, in addition to the minimum voting provisions described above, the provisions for voting in other matters, as well as the other provisions normally found in a security designated "preferred stock," and that, if it is junior to any other class of stock of the company, its title will so indicate.

While those minimum provisions are acceptable under Exchange policy, they should not be regarded as an expression of opinion of the Exchange as to the adequacy of protective provisions under all circumstances. It is hoped that companies will continue their efforts toward improvement of the voting position and protective provisions of preferred stock beyond these minimum provisions.

Exceptions to This Policy: In the application of the policy (relating to the above-stated minimum voting provisions for preferred stock), the Exchange may make exception in a case where the laws of the state of incorporation preclude, or make virtually impossible, the conferring of exclusive voting rights upon any particular class of stock.

Exception may also be made in cases where the preferred stock has provisions which, while not conforming exactly to the above-stated minimum provisions, give the stock the practical equivalent of those minimum provisions.

Exception may also be made in a case where the company agrees to submit to its stockholders at a reasonably early date, a proposal to amend the voting provisions of the preferred stock to conform, at the least, to the minimum provisions stated above, along with the management's recommendation to stockholders that the proposal be adopted.

However, such exceptions are made only after consideration of the circumstances of the particular case, and it should not be assumed, in any case, that they will be made. Any company contemplating issuance of a preferred stock which it desires to list on the Exchange, and which, for any reason, does not have, at the least, the voting provisions described above, is urged to discuss the matter with the Division of Stock List at an early date and, if at all possible, before definitive steps are taken to fix the provisions of the class.

The above-described policy of the Exchange in respect to preferred stock voting provisions was adopted in 1940. It was not applied retroactively to preferred stocks already listed at that time, some of which did not have such minimum voting provisions.

UNUSUAL VOTING PROVISIONS

The Exchange may refuse to list any class of stock which has unusual voting provisions which tend to nullify or restrict its voting, or which is subject to unusual voting provisions of another class of stock having such effect, as, for example, a situation in which one class of stock has the right to veto the actions of another class.

QUORUMS

Common Stock: The Exchange is of the opinion that the quorum required for any meeting of the holders of Common Stock should be sufficiently high to insure a representative vote.

In authorizing listing (whether original listing or listing of additional securities), the Exchange gives careful consideration to provisions fixing any proportion less than a majority of the outstanding shares as the quorum for stockholders' meetings. In general, the Exchange has not objected to reasonably lesser quorum requirements.

Preferred Stock: While a representative vote of stockholders is desirable the fixing of a high quorum requirement for a preferred stock which, voting as a class when dividends are in default, has the right to elect some number of directors, may tend to make such right of election ineffective, due to inability of the class to attain the required quorum.

The Exchange, therefore, considers it preferable that no quorum requirement be fixed in respect of the right of a preferred stock, voting as a class, to elect directors when dividends are in default. Where a quorum requirement is fixed in respect of such right, the Exchange will object if such requirement calls for a higher percentage of the outstanding shares of the class to constitute a quorum that is required to constitute a quorum of the common stock for election of directors.

STOCKHOLDER APPROVAL—EXCHANGE POLICY**

Stockholders' interest and participation in the corporate affairs of the companies which they own has greatly increased. This has been accompanied by a tremendous expansion in the number of shareowners. Management has responded by providing more extensive and frequent reports on matters of interest to investors. In addition, an increasing number of important corporate decisions are being referred to stockholders for their approval. This is especially true of transactions invoiving the issuance of additional securities.

Good business practice is frequently the controlling factor in the determination of management to submit a matter to stockholders for approval even though neither the law nor the company's charter makes such approval necessary. The Exchange encourages this growth in corporate democracy.

Stockholder approval is a prerequisite to listing securities to be issued for or in connection with the following:

1. Options granted to or special remuneration plans for directors, officers or employees. (See Sec. A—7)
2. Actions resulting in a change in the control of a company.
3. The acquisition*, direct or indirect, of a business, a company, tangible or intangible assets or property or securities representing any such interests:
   (a) From a director, officer or substantial security holder of the company (including its subsidiaries and affiliates) or from any company or party in

A series of closely related transactions may be regarded as one transaction for the purpose of this policy.

** See also conflicts of interest—Section A—2 Part IV—Pages A—27 to A—29.

which one of such persons has a direct or indirect interest;

(b) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding ** common shares approximating 20% ***; or

(c) Where the present or potential issuance of common stock and any other consideration has a combined fair value approximating 20%*** of the market value of the outstanding** common shares.

Companies are urged to discuss questions relating to this subject with the Division of Stock List sufficiently in advance of filing a listing application to allow time for the calling of a stockholders meeting and the solicitation of proxies where this may be involved. All relevant factors will be taken into consideration in applying the above policy and the Division will be pleased to advise whether stockholder approval will be required in a particular case.

Listing Authorization Subject to Stockholder Action: Under certain circumstances, the Exchange will act upon a listing application, relating to a matter on which stockholders are to take action, prior to the time such action is taken. In such cases it is practice of the Exchange to make its listing authorization subject to the action subsequently taken by stockholders on such matter, so that such authorization does not become final until stockholders have acted. Where this procedure is followed the application is not released for public distribution, nor is public announcement of the Exchange's action made, until advice of stockholder approval is received. By this procedure, early admission of the securities involved and, perhaps, early consummation of the transaction in which they are to be issued may be expedited, while there is avoided any possible influence which the prior announcement of the Exchange's listing authorization might have upon the outcome of stockholders' action.

Vote Required—Definition: Where stockholder approval is a prerequisite to the listing of any additional or new securities of a listed company, the minimum vote which will constitute stockholder approval for listing purposes is defined as "approval by a majority of votes cast on a proposal in a proxy bearing on the particular matter, provided that the total vote cast on the proposal represents over 50% in interest of all securities entitled to vote on the proposal."

Results of Stockholder Voted Considered: Where issuance of the securities to which a listing application relates is to be, or has been, acted upon by stockholders, it is the policy of the Exchange to consider the results of the stockholder vote before giving final listing authorization. This policy applies both to cases in which the stockholders' action is in direct relation to such issuance and to cases where their action does not relate directly to such issuance but, instead, relates to a matter implementing such issuance. In reporting stockholder action to the Exchange, the number of votes cast in favor of, and against, the related proposal should be given.

***Only those shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making this calculation. Unissued shares reserved for issuance upon conversion of securities, exercise of options or warrants for any other purpose will not be regarded as outstanding.*

***18.5% used for this calculation.

[The next page is A—289]

CHAPTER IV

OWNERSHIP AND CONTROL OF COMPANIES

Shares with Restricted or No Voting Rights

123. No exception is taken to the restriction of voting rights so far as preference shares are concerned, but the practice of issuing ordinary or "equity" shares without any right of voting, though not without its supporters, has been strongly criticised, and it is no exaggeration to say that there was a more marked division of opinion amongst our witnesses on this matter than on any other.

124. The opponents of voteless ordinary or "equity" shares (which for the purposes of the present discussion we may call simply "voteless shares") found themselves on the principle that shares conferring interests in the equity or "risk" capital of a company should carry voting rights commensurate with those interests, and say that given acceptance of this principle it is wrong that the holders of shares representing a minor proportion of the equity, or perhaps preference shares conferring no interest in the equity, should carry voting control, to the exclusion of shares representing a major proportion of the equity.

125. Apart from the general question of principle, the opponents of voteless shares point to specific evils arising or likely to arise from their use. It is said, for instance, that the holders of voteless shares have no redress short of expensive and difficult Court proceedings in the event of misconduct on the part of directors appointed by the voting section of the company's members, however small their interest in the equity may be. It is said further that short of actual misconduct the vesting of the entire voting power in a minority exposes the voteless majority to the risk of the management changing for the worse, and tends to perpetuate inefficient management. The point is also taken that the exclusive voting power of the minority may result in a take-over offer being made for their shares without a reasonable parallel offer for the voteless shares to which the greater part, if not the whole, of the equity is attached, and this is said to be unfair.

126. More generally the opponents of voteless shares say (in effect) that as a matter of public policy ownership of interests in companies should carry with it some measure of responsibility for their control, and that voteless shares tend on the contrary to establish *de jure* the severance of ownership from control which frequently arises *de facto* from the indifference of shareholders.

127. The practical point is added that the descriptions applied to voteless as distinct from voting shares may not be sufficiently clear to ensure that a purchaser knows which kind he is getting. It is also suggested that even if a purchaser knows he is getting voteless shares he may not fully comprehend the implications.

128. On the other side it is said that the abolition of voteless shares would be an unwarranted interference with freedom of contract. If a company in need of fresh capital chooses to raise it by an issue of voteless shares, and finds subscribers who are ready and willing to take voteless shares for their money, why should the bargain not be carried out in accordance with its terms, suited as it is to the needs of both parties to it?

129. The supporters of voteless shares point to more than one type of case in which voteless shares have served a useful purpose. Suppose the founder and majority shareholder of a family business desires to make provisions for the death duties which will become payable on his shares when he dies, he may well find it convenient to do so by issuing voteless shares, thus raising the requisite funds without losing control. Apart from death duties, voteless shares may be useful where it is desired to raise fresh capital for the extension of a business while leaving control in the same hands as formerly. Again, on an amalgamation between two companies it may well be found convenient to provide for any desired adjustment of control by means of voteless shares.

130. On the same side it is pointed out that if in cases such as those referred to in the last preceding paragraph the issue of voteless shares were to be prohibited, it would be possible, though perhaps inconvenient, to raise the funds required by means of loan capital which would be voteless and the holders of which could (with a little ingenuity) be given rights against profits and assets approximating to those attached to equity shares. A legislative prohibition of voteless shares could also be evaded by giving a right of voting to a given issue of equity shares but nullifying that right by the attachment of loaded voting rights to other capital. The Act, to be effective, would have to deal with these various possibilities of evasion and would consequently be, in the opinion of many, not only exceedingly complicated but also unduly restrictive. It has been suggested that, in the case of quoted shares, the Stock Exchange could enforce compliance with the spirit as well as the letter of any legislative prohibition by refusing a quotation to securities which avoided it; with this assistance, it is suggested, the operation of the Act itself might be simplified. But there are obvious objections to imposing upon the Stock Exchange, instead of the Courts, the duty of interpreting Parliament's intentions.

131. As to the perpetuation of inefficiency feared by the opponents of voteless shares, the supporters of such shares are able to assert with no less justification that voteless shares may well tend to perpetuate efficiency. Moreover, in the end a company under inefficient management must in a competitive field either become efficient or be submerged.

132. As to the bearing on voteless shares of the principle of public policy above suggested, the supporters of voteless shares might well call in question the existence of any such rule. It is difficult, they might say, to see how any question of public policy is involved in a bargain between an individual wishing to have an interest as a shareholder in a company but having no desire to interfere in its direction, and a management wishing to raise money by the issue of shares but not to part with control, under which the company issues and the individual takes and pays for shares in the company carrying all the normal rights of ordinary shares except

the right of voting. If such a bargain cannot as between the original parties to it be impeached as contrary to public policy, it is difficult—so the supporters of voteless shares might say—to see how it can be so impeached as between the company and any assignee of the shares from the individual who originally took them, or his successors in title.

133. Considerable reliance is placed by the supporters of voteless shares on the difficulty of working out the principle of equating voting rights to interests in the equity propounded by the opponents of voteless shares, and they suggest cases involving several classes of shares in which it would be impracticable to do so.

134. On the same side it is pointed out that the enfranchisement of existing voteless shares in a company would necessarily involve compensation to the holders of the voting shares for their loss of exclusive voting power. The compensation could only come from the holders of the voteless shares, who, it would seem, would thus in many cases be compelled to pay for something they did not want. This follows from evidence to the effect that an investor given the choice between voting and voteless shares in a company may well choose the latter because they are cheaper and because he is not interested in voting rights.

135. The supporters of voteless shares take the view that in the event of discrimination by the voting section of shareholders against the holders of the voteless shares the Court would, under section 210 or otherwise, intervene at the instance of the latter, and we think this view is well-founded.

136. We have found this question a difficult one, but after careful consideration of the arguments either way we have come to the conclusion that the case for abolition by law of voteless shares has not been made out. Notwithstanding the objections to which they may give rise in certain cases we think that their abolition would be too drastic a step. In any case it would be likely to encourage alternative methods of vesting control in the holders of particular shares or classes of shares. So far as we can see this could only be prevented by imposing a statutory requirement that equity shares should carry voting rights proportional to their rights to participate in the distribution of profits and assets, and that no other shares should have any ordinary voting rights. In our view any such requirement would be unduly restrictive. A minority of the Committee however feel that measures are required to control the growth of voteless shares, and a note by these members is on page 207.

Designation

137. We think there is justifiable criticism of the practice of designating voteless shares simply as "A" or "B" shares without taking further steps to indicate their true character. So far as quoted voteless shares are concerned the Council of the London Stock Exchange issued a press notice on the 19th August, 1957, in which they said they were taking such steps as were open to them to ensure that the public were not being misled when they were being invited to acquire voteless shares. The fact remains that there is a danger that a person may acquire equity shares, whether quoted or unquoted, without realising that they give him either no voting rights or only restricted rights. This seems to us,

however, to be a singularly intractable problem. There are so many ways in which voting rights may be restricted or loaded that it is virtually impossible to draw a line between shares which can be regarded as "voteless" shares for our present purpose and those which may be regarded as carrying full voting rights. In our view, therefore, this is not a matter which could be effectively provided for by legislation providing in advance for all possible types of share and specifying all occasions on which and the manner in which their voteless character should be disclosed. We do, however, feel that a considerable advance could be made by voluntary action on the part of those concerned and we make recommendations below about the form such action might take.

Notice of meetings

138. There is considerable support for the view that the holders of voteless equity and preference shares should be given a statutory right to receive, for information, notice of all general meetings of the company at the same time as other members, in addition to the annual accounts and directors' reports to which they are already entitled under the Companies Act. They should also be entitled to receive a copy of any chairman's statement which is circulated with the accounts. This would help to ensure that all members were kept informed of developments affecting their company. We have considered, but the majority of us have rejected on grounds of administrative difficulties, the suggestion that holders of voteless shares should be given a statutory right to attend and speak at company meetings. A minority recommendation on this is on page 210.

139. The possibility of giving voteless shares a right of voting on matters of special importance to them or in circumstances such as failure to pay any ordinary dividend for some specified period, has also been raised, but we think the adoption of this suggestion would involve too great an interference with contractual rights and would also unduly favour voteless shares as compared with preference shares with restricted voting rights which enjoy no similar statutory protection.

140. We recommend that:

(a) the Board of Trade should seek to enlist the voluntary co-operation of the Stock Exchange, the press and other institutions and representative organisations concerned, to give full publicity in the press, investment circulars, etc. to any lack or restriction of voting rights attaching to particular equity shares;

(b) notice of all general meetings of their company should be required to be sent to holders of voteless equity and preference shares at the same time as they are circulated to other members (when a meeting is held on short notice the notices should be required to be sent to such shareholders as soon as possible);

(c) holders of voteless equity and preference shares should be entitled to receive a copy of any chairman's statement which is circulated with the accounts.

NOTE OF DISSENT

by Mr. L. Brown, Sir George Erskine and Professor L. C. B. Gower

SHARES WITH RESTRICTED OR NO VOTING RIGHTS

1. As the Report states, there was a more marked division of opinion amongst our witnesses on the matter of equity shares with restricted or no voting rights than on any other. After a lengthy discussion in paragraphs 123 to 136 of Chapter IV (which, however, does not seem to us to give adequate weight to the arguments against non-voting shares) the Report fails to express any view on the merits or de-merits of such shares and makes only two recommendations, namely, that all concerned should be exhorted to ensure that such shares are clearly designated and that all shareholders (whether or not they have votes) should be entitled to receive notices of general meetings and of chairman's statements. A further suggestion that all shareholders should be entitled to attend meetings is rejected on "grounds of administrative difficulties". Feeling, as we do, that the development of non-voting equity shares is undesirable both in principle and practice, we find ourselves unable to concur in the failure to make stronger recommendations for their control.

2. In our opinion the growth of non-voting and restricted-voting shares (*a*) strikes at the basic principle on which our Company Law is based (paragraph 3 below), (*b*) is inconsistent with the principles underlying our Report and the Reports of earlier Company Law Committees (paragraphs 4, 5 and 6) and (*c*) is undesirable (paragraphs 7 *et seq.*)

3. The business corporation is a device for enabling an expert body of directors to manage other people's property for them. Since these managers are looking after other people's money it is thought that they should not be totally free from any control or supervision and the obvious persons to exercise some control are the persons whose property is being managed. Hence the basic principle adopted by British Company Law (and, indeed, by the laws of most countries) is that ultimate control over the directors should be exercised by the shareholders. This control cannot be exercised in detail and from day-to-day, but shareholders retain the ultimate sanction in that it is they who "hire and fire" the directorate.

When the directors own the majority of the equity they are free from outside control, but here they are managing what is, as to the major part, their own money. Hence the interests of the directors and the shareholders are unlikely to conflict, and self-interest should be a sufficient curb and spur (subject to certain legal rules to protect the minority against oppression). When, however, the directors have no financial stake in the prosperity of the company, or only a minority interest, the outside control operates.

4. Successive Company Law Amendment Committees have, in the words of our immediate predecessor, made it their major concern "to find means of making it easier for shareholders to exercise a more effective general control over the management of their companies", in the belief that the result will be "to strengthen the already high credit and reputation of British companies": Cohen Committee Report, paragraph 5. In pursuance of this aim the Cohen Committee recommended, among other reforms, what is now section 184 of the Companies Act, 1948, whereby the ultimate sanction vested in the shareholders (the right to dismiss the board) was greatly strengthened by enabling them to dismiss any director at any time by simple majority vote.

5. Many of our Committee's recommendations are expressly directed towards the same end of enhancing shareholder control. In particular, in Chapter III we recommend that certain activities should require the prior approval of resolutions in general meeting. These recommendations make sense only on the assumption that the general meeting will express the views of the majority of the equity shareholders and not merely the minority views of the directors themselves.

6. In recent years, however, control by shareholders has been stultified in two ways: firstly in a few cases by cross-holdings and circular-holdings within a group of companies, and secondly by non-voting equity shares. The first method has already received the attention of the legislature and an attempt has been made to control it by section 27 of the Act. In our discussion of this section in paragraphs 151–155 of Chapter IV we recognise that it is improper for directors to maintain themselves indefinitely in office, against the wishes of the other shareholders. We also recognise that section 27 does not go far enough in preventing this mischief and we reject an extension of the section with reluctance and only because of the complexity and arbitrary nature of the provisions which would be necessary. Where the mischief can be easily prevented, for example by banning the exercise of votes on shares held on trust for the company, we recommend that this should be done: Chapter IV paragraphs 154 and 156 (*b*).

The second method of maintaining control by the existing directors, by utilising non-voting shares, is not as yet controlled in any way; it is only of recent years that it has become a major issue. Today non-voting shares are the simplest and most straightforward method whereby directors can render themselves irremovable without their own consent, notwithstanding that they only own or control a fraction of the equity. This is different from cross-holdings and circular-holdings which may have grown up for legitimate business reasons and with no intention of stultifying shareholder control and section 184.

7. It is said that shareholder control is ineffective because of the indifference of shareholders. Everyone would probably agree that shareholders are apathetic while all goes well. But, while all goes well, there is no reason why they should not be apathetic; their intervention is required only when things go ill. No doubt it is true that the small individual shareholder has little power even then, but, as we point out in paragraph 106, the institutional investor has considerable influence; and even non-institutional shareholders are collectively powerful so long as

they have votes. It can hardly be doubted that the possibility that a take-over bidder will obtain control by acquiring these votes has caused directors to pay greater heed to the interests of shareholders.

8. It is also said that shareholder control is inefficient, since directors, as a class, know better what is good for business and for the shareholders than the shareholders themselves. In the normal case this is usually true. But if shareholder control is destroyed and nothing put in its place we have to go still further and say that business efficiency is best ensured by allowing the directors to function free from any outside control, except that of the Courts in the event of fraud or misfeasance, and by making themselves irremovable, without their own consent, however inefficient they may prove to be.

9. It is, admittedly, difficult to name actual examples where non-voting shares have already led to the prolongation of inefficient managements, but the development is relatively new and the testing time will come later. All one can say is that it appears to be generally agreed that take-over bids have on the whole served a useful economic purpose and led to a desirable re-deployment of resources, and that in most cases the new managers have proved more efficient than the old. We do not understand how one can at the same time favour take-over bids and countenance non-voting shares which are designed to frustrate take-overs. Some recent take-overs have been made in the face of opposition by the existing board and would not have been possible had the board been entrenched through the use of non-voting shares. There may have been some cases where an efficient management has been able, thanks to non-voting shares, to protect itself against an inefficient or unscrupulous raider, but there is even less evidence of this. Efficient directors who have treated their shareholders fairly and frankly should have little to fear from a raider. In any case, it goes too far to allow them to protect themselves against this remote risk by converting themselves into a self-perpetuating oligarchy.

10. The objections to non-voting shares are strongest in the case of publicly quoted companies, particularly with the current movement to encourage the spread of shareholdings amongst small private investors. Even here they may sometimes be justified (perhaps, for example, in the case of the television programme companies where the original subscribers for the voting shares and subsequent transferees have to be approved by the Independent Television Authority).

In the case of public companies, non-voting equity shares are banned by legislation in South Africa and India and in many Continental countries. For many years the New York Stock Exchange has refused to list non-voting shares. The Australian Associated Stock Exchanges have recently done likewise; see their Official List Requirements dated 26th June 1961. The Rules of the London Stock Exchange provide that quoted Preference Shares must be afforded reasonable voting rights but, despite this, the Exchange has hitherto refused to apply the same rule to Ordinary Shares although it has expressed its dislike of non-voting shares.

11. If the British Stock Exchanges were prepared to refuse quotations for new issues of non-voting shares it might still be unnecessary to impose

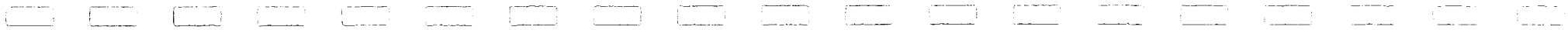
legislative control. But, as it is, we think that legislation is called for to prevent the continued growth of such shares in the case of quoted companies. We would not think it necessary to provide for the compulsory enfranchisement of existing non-voting shares and, to avoid complications, we would be prepared to allow companies which already have non-voting shares to make further issues. The Stock Exchanges could be relied upon to ensure that this power was not abused, just as they would ensure that the legislative ban was not evaded by giving quotations for special types of securities designed to that end.

12. For these reasons we consider that the recommendations in paragraph 140 should be strengthened, and we recommend :—

(a) that all equity shareholders, whether or not they have votes, should be entitled to attend, in person or by proxy, and to speak at all general meetings of their company;

(b) that there should be a prohibition on the granting of a quotation for non-voting and restricted voting equity shares (save in exceptional circumstances and subject to the approval of the Board of Trade) except as regards further issues of such shares for which a quotation had already been granted prior to the publication of our Report.

L. Brown.
George Erskine.
L. C. B. Gower.



APPENDIX H

J. R. KIMBER, Q.C.

APPEARANCE BEFORE THE COMMISSIONERS

ROYAL COMMISSION ON CORPORATE CONCENTRATION

PUBLIC HEARING

O.I.S.E. - 252 Bloor St. West,

Toronto

11:00 a. m.

Wednesday, May 5th, 1976

ONE CLASS VOTING THE OTHER NON-VOTING

CHUM LTD. - The company has common shares and Class B shares listed on the Exchange. The common carries one vote per share and the Class B which has certain preferences with respect to dividends is a non-voting class.

Q BROADCASTING LTD. - The company has two classes of stock, Class A and Common. The Common, which is not listed on the Exchange is voting stock, the Class A which is listed on the Exchange is non-voting.

SELKIRK HOLDINGS LTD. - The Class A shares which are listed on the Exchange are non-voting and carry all rights of participation in profits or assets. The Class B shares are not listed on the Exchange but are voting shares with transfer restricted. The Class B shares have no right to dividends or repayment of capital.

MULTIPLE VOTING

SECURITY CAPITAL CORPORATION (Presently suspended)

The Class B shares of the company carry certain preferences with respect to dividends and entitle the holder to one vote per share (4,829,204 shares outstanding). The company also has common shares which entitle the holder to 25 votes per share. There are presently 44,693 common shares which would provide for 1,117,325 votes. The issuance of any additional common shares would have to be given full consideration since the issuance could directly affect the control of the company.

Generally the Law in Canada is fairly lenient on the question of votes attached to shares. Because of this leniency, a wide variety of voting rights attached to shares has come into being.

VOTING SHARES

The general rule is that each shareholder is entitled to one vote for each share of stock that he owns, unless the statute, charter, or by-laws provide otherwise. However, every company has the right to restrict the voting power of stock. Generally it is the preferred stock that is deprived of voting power.

Frequently, a certificate of incorporation will provide that a certain class of stock shall not have the right to vote at all. Some times the voting stock represents a much smaller ownership than the non-voting stock. In many companies a class of stock that has no right to elect directors will have voting power on questions that affect the relationship of the group to the company.

Sometimes non-voting stock is given the right to elect or assist in electing directors under certain circumstances, such as failure to pay dividends for a certain period.

Acquisitions are sometimes financed by using participating non-voting preference shares. The shares (possibly designated as Class A) are often virtually the same as common shares except they are non-voting. The main purpose for using this Class of security is to maintain control with the present control group.

Some examples of different voting rights are as follows:

CUMULATIVE VOTING

Cumulative voting is a system of voting for directors of a company under which each shareholder is entitled to a number of votes equal to the number of shares he owns multiplied by the number of directors to be elected. He may cast all the votes for one candidate - cumulates them -- or he may distribute his votes among the candidates in any way he sees fit. This system enables the minority shareholders to elect one or more of the directors. The right to cumulative voting cannot be claimed unless provided for (1) by statute, (2) by the company's charter or by-laws, or (3) by contract among all the shareholders, provided the agreement is not otherwise illegal.

To determine how many shares one should hold or control to ensure the election of a certain number of directors:

1. Multiply the total number of shares entitled to vote by the number of directors it is desired to elect.
2. Divide the figure found in (1) by one more than the total number of directors to be elected.
3. Add one to the figure obtained in (2); the result will be the least number of shares that it will be necessary to hold or control in order to elect the desired number of directors.

Thus, if a company has outstanding 1,000 voting shares, 5 directors are to be elected, and it is desired to elect 2 out of the 5, the least number of shares that will be necessary to hold or control in order to accomplish this result will be found as follows:

$$\frac{1000}{5} \times \frac{2}{1} + 1 = 334\ 1/3$$

The desired result, therefore can be accomplished only if 335 shares are held or controlled (where there is a fraction, it is to be counted as an extra share).

To illustrate how cumulative voting operates to give the minority the opportunity to be represented on the board of directors, take as an example the following situation : The company has outstanding 100 shares; the majority controls 51 shares and the minority 49 shares. The faction strength is nearly equal. If 5 directors are to be elected, the majority is entitled to 255 votes (51 X 5) and the minority to 245 votes (49 X 5). If the majority contents itself with casting this cumulative vote for 3 out of 5 directors, it can secure their election by giving each director 85 votes. The minority can elect only 2 directors by giving 1 of the directors 122 and another 123 votes. In this case, if the majority frittered away its strength among the 5 directors, while the minority concentrated its strength upon 4, the minority would gain control of the board.

CONSTRAINED SHARE COMPANIES

There are about 50 listed companies that restrict the shares held by non-residents to a percentage of the total shares outstanding and in some cases restrict the percentage of shares that may be voted by any one non-resident and his associates. The list includes companies under the Loan and Trust Companies Act, communication companies such as Cable TV, radio, etc., and banks and insurance companies. A notation is generally carried on the share certificate to show that the sale or transfer of shares is restricted.

Member houses of the Exchange are notified of the companies that have such restrictions through the published "List of Transfer Agents".

VOTING TRUST

A method devised for concentrating the control of a company in the hands of a few people. A voting trust is usually organized and operated under a voting trust agreement. This is a contract between the shareholders and those who manage the corporation, called the voting trustees. The shareholders transfer their shares to the trustees, giving them the right to vote the shares during the life of the agreement. The trustees, in turn, issue certificates of beneficial interest, called voting trust certificates to the shareholders. All shareholders may become parties to the agreement, which is generally subject to statutory regulation. The trust is usually for a definite period of time. When it is terminated,

the certificate holders are notified to exchange their trust certificate for certificates of stock.

This centralization of control of the affairs of a company may be found necessary or desirable upon organization, upon reorganization, upon merger or consolidation, in raising capital, or in carrying out any other corporate plan. Its most common use is in connection with reorganization.

POLICY OF THE T.S.E.

For many years, the T.S.E. has permitted the listing of voting and non-voting shares. However, the policy was reviewed when companies commenced placing restrictions on voting shares.

This question was highlighted by an action taken by the Royal Trust Company. That Company provided that each common share carry one vote at all meetings of the shareholders. However, if a shareholder, or "associated" shareholder, as defined, acquires more than 10% of the shares, such holders lose the voting rights in respect of the excess over 10% of the shares that they hold. (Quebec Statute 16 Eliz. Bill 180 (1967), a summary of which is printed on the reverse of each share certificate).

After some discussion, the Board of Governors of the Exchange made a ruling on March 21, 1967, which provided that as a matter of listing policy it was duly moved and seconded and carried that voting limitations on a company's shares, which limitations have been established by an Act of the Legislature of a Province of Canada or of the Parliament of Canada shall not impede acceptance of a company's application to list its shares on the Exchange.

The general philosophy behind that resolution was that the Exchange would not in this area move beyond the permissible corporate law. It was recognized that the threat of foreign take-overs was a fact of life in Canada. Companies and governments would take steps to restrict foreign participation The Royal Trust action was taken in the face of a threat of a take-over. Subsequently, government legislation has been passed in a number of situations restricting foreign ownership by way of limitation of voting and transfer rights on shares. The restrictions apply to the TV industry and with banks, trust and insurance companies. I have already mentioned this in connection with constrained share companies.

In addition to the foreign control issue, there is also public policy restricting the concentration of control within industries or fields of activity.

For example, banks are restricted in the number of shares they may have in trust companies and one cable TV company may not freely purchase the shares of another.

Some companies have adopted as policy that voting rights should be restricted apart from any of the foreign ownership or other legislative requirements. An example of this is CANADA SOUTHERN PETROLEUM LTD. - Pursuant to Supplementary Letters Patent the Company has provided that no shareholder shall have the right to vote more than 1,000 shares of the company's common stock.

the certificate holders are notified to exchange their trust certificate for certificates of stock.

This centralization of control of the affairs of a company may be found necessary or desirable upon organization, upon re-

The Company has stated that the provision is to encourage ownership of and participation in the affairs of the company by the small investor. The company has noted that the voting provisions make it more difficult for shareholders with more than 1,000 shares to adopt any proposal that is opposed by management including a take-over by or merger with another company or to remove management. On the other hand, the provision makes it easier for the majority of shareholders in number having 1,000 shares or less to adopt a proposal that is opposed by management, including a take-over by or merger with another company or to remove management. The provision also makes it more likely that in the event an attempt was made by another entity or group to acquire their shares, all shareholders desiring to sell would be accorded more equal treatment.

Another example is

CANADA PERMANENT MORTGAGE CORPORATION - Under Supplementary Letters Patent dated April 3rd, 1974, the company refuses to allow the transfer to a shareholder and his associates, if, as a result of the transfer, the shareholders holdings would exceed 10% of the total issued and outstanding shares of Canada Permanent.. The provision restricts the maximum percentage ownership and in so doing places a restriction on the number of votes a shareholder may hold.

NEW YORK AND AMEX POLICY

The policy of the Exchange is quite different from that of New York and American Stock Exchanges. They have adopted rules which prohibit the listing of non-voting shares. They do however list shares of corporations where there are government restrictions on foreign ownership.

The Toronto Stock Exchange recognizes there is general merit in the policy of the U.S. exchanges, but at the same time, we recognize the economic and social standards in Canada. We feel that since there are a number of restrictions imposed by government in voting and transferring of shares, then it would be a disservice to the capital market to deny corporations under such restrictions from having access to listing and the public benefits which flow from that.

We require disclosure of the restrictions so purchasers know their rights as shareholders. To date we have had no particular problems with the administration of the Exchange policy.

APPENDIX I

Inclusion in Share Attributes of Provisions to Ensure Availability to the Holders of Non-Voting or Subordinate Voting Shares of the Benefits of Take-Over Bids

The submission of the Exchange to the OSC comments that, when a new class of non-voting or subordinate voting residual equity shares is to be listed on the Exchange, the staff now follows the practice of seeking inclusion in its attributes of provisions such as those here described. Subject to any comments of the OSC the Exchange proposes to formalize this procedure. The provisions must, to be effective, satisfy these criteria:

1. All holders of non-voting or subordinate voting residual equity shares should have the opportunity to participate in any premium offered on a basis that is fair, both among themselves and as between them as a class and the holders of voting shares as a class having regard to their respective equity interests.

2. The flexibility to design a share structure to satisfy government policies or to achieve other corporate purposes should not be impaired.

3. Offerors should not be unfairly disadvantaged.

The range of situations that can arise is almost infinite. Accordingly, if the criteria set out above are to be attained, the Exchange staff must be allowed to settle with the issuer an appropriate pattern on a case-by-case basis. Even then, it is unlikely that perfection can be attained. Situations may arise that are not specifically addressed by even the most detailed sets of rules. But if the principles of fair treatment are clearly established, denial of that treatment on the basis of a technical interpretation of the rules can leave an offeror in a difficult situation, exposed to litigation with uncertain consequences. It seems probable that well designed rules will attain the desired results in most situations.

In some cases, the attributes now in place relate to a take-over bid for the fully voting or superior voting shares. The staff should modify the pattern in cases where it is not appropriate. For example, if the fully voting or superior voting shares are unlisted and closely held, it may be feasible for an offeror to acquire them without a take-over bid. If these shares are held by a holding company, the offeror might acquire the shares of the holding company. One of the advantages of the flexibility inherent in the case-by-case approach is that it should be feasible to deal with such situations in a manner that satisfies the three criteria above.

The comments that follow are intended only to review and describe the basic patterns used for non-voting and subordinate voting shares that are now listed. They are not intended to restrict flexibility in designing attributes appropriate for particular situations in the future.

Analysis of Provisions Now in Use

The relevant provisions in the attributes of non-voting or subordinate voting residual equity shares now listed on the Exchange may be divided into two general groups. Within each group the attributes are similar in principle, although they vary considerably in detail. An example from each group is provided at the end of this appendix. The first example under the heading "Attributes with Immediate Conversion Privilege", is of attributes that provide that non-voting or subordinate voting residual equity shares become convertible into voting shares during the period a take-over bid for voting securities is open for acceptance. The holders of the non-voting or subordinate voting shares are thus enabled to participate in the same take-over bid made to holders of voting shares. In most cases, the provisions state that the conversion right will not arise if an equivalent and contemporaneous offer is made for the non-voting or subordinate voting residual equity shares. In some cases, conversion is not permitted if, within a specified period, the directors of the corporation recommend rejection of the take-over bid.

In the view of the Exchange, it is appropriate to request or require provisions of this type in the attributes of non-voting or subordinate voting residual equity shares issued by a widely held corporation, i.e., for some purpose other than protecting a control position, such as maintaining Canadian ownership requirements for purposes of the national energy program.

But insistence on this type of attributes in a class of non-voting or subordinate voting residual equity shares issued by a controlled corporation might be unfairly prejudicial to the interests of the controlling shareholder. Assume an offer is made having as a minimum deposit condition some number of shares greater than that held by the controller - a possibility that would be made more likely by reason of the special attributes described above, which would give rise to a conversion privilege that would dilute the controlling shareholder's voting position. If insufficient shares are tendered, the offer will be withdrawn, but the controlling shareholder would be left in the diluted position.

The second group of provisions illustrated by the example under the heading "Attributes with Postponed Conversion Privilege", are designed to alleviate the potential problem for the controlling shareholder. Typically, they provide that the non-voting or subordinate voting residual equity shares acquire voting rights when a specified percentage of voting shares are taken up pursuant to a take-over bid made for voting shares only. However, this technique does not fully protect the holders of non-voting or subordinate voting residual equity shares, or even ensure that an offer is made to them. For example an offeror might acquire his desired position in shares of a target corporation by acquiring unequal percentages of different classes of shares. Assuming two otherwise equivalent classes of voting and non-voting shares, an offeror might acquire control (50% + 1) by making a first take-over bid

for 80% of the voting shares and then a subsequent bid for 20% + 1 of the formerly non-voting shares. If the non-voting shares are purchased first, in a transaction that would not be a take-over bid, the need for a take-over bid for the formerly non-voting shares would be obviated altogether, even where these share attributes are present.

Where these attributes do dictate a separate offer for the non-voting or subordinate voting residual equity shares, the offeror may feel disadvantaged by being required to put the control element of his completed investment in voting shares at the risk of the success of his offer for non-voting or subordinate voting shares.

Further Comments

In cases where there is no controlling shareholder, attributes modelled on those that appear below under "Attributes with Immediate Conversion Privilege" should provide sufficient protection to deal with the take-over bid situation. However, some additional provisions may be desirable to protect the holders of non-voting or subordinate voting shares where control is acquired by private agreement at a premium without a formal take-over bid.

In the situation where there is a controlling shareholder, provisions such as those under "Attributes with Postponed Conversion Privilege" provide a reasonable starting-point, but may require revision if the three criteria at the beginning of this appendix are to be satisfied. What is needed is some additional provision that will motivate the offeror to make a bid for the non-voting or subordinate voting shares. One technique would be to provide in the attributes of those shares that in the event a specified percentage of voting securities are taken up and paid for pursuant to a take-over bid made for voting securities, the non-voting or subordinate voting shares will not only become voting, but will become entitled, as a class, to vote on all matters formerly requiring

approval of the voting shares. Furthermore, the requisite degree of approval may be linked to the number or percentage of voting shares acquired by the offeror. Such provisions should have the desired effect of motivating an offeror to make a simultaneous offer for the voting and restricted voting shares. Doubtless there are alternative ways of attaining the same objective and the Exchange staff should be receptive to other suggestions from issuers.

Attributes with Immediate Conversion Privilege

These type of provisions are appropriate in the case of a widely held corporation. In the example given below, Class X and Class Y shares both have substantially the same attributes as common shares except that class Y shares do not carry the right to vote. Class Y shares were convertible to Class X shares for a short period immediately following their creation. The mechanics of this conversion feature (the reference to "paragraph(4)") have been omitted.

"The Class X participating shares without par value (hereinafter called "Class X shares") [and] the Class Y participating shares without par value (hereinafter called "Class Y Shares") . . . shall have attached thereto the following preferences, rights, conditions, restrictions, limitations or prohibitions: . . .

Where used herein, the following terms shall have the following meanings respectively:

(a) "Offer" means an offer to purchase Class X shares which must, by reason of then applicable securities legislation or the by-laws, regulations or policies of a stock exchange on which the Class X shares are listed, be made to all holders of Class X shares whose last address on the records of the Corporation is in Ontario;

(b) "Offer Date" means the date an Offer is made;

(c) "Expiry Date" means the last date upon which holders of Class X shares may accept an Offer;

(d) "Conversion Period" means the period of time commencing on the eleventh (11th) business day after an Offer Date terminating on the Expiry Date; and

(e) "Conversion Right" means the right of a holder of Class Y shares to have all or any of the Class Y shares held by him converted into Class X shares in the manner provided in paragraph (4) of the provisions attaching to such shares.

In the event an Offer is made, the Conversion Right shall revive during the Conversion Period but not thereafter unless:

(i) the board of directors of the Corporation determines within ten business days after the Offer Date that it will recommend rejection of the Offer, and forthwith thereafter informs the holders of Class Y shares of such determination, or

(ii) at the time the Offer is made, an offer on the same terms and conditions is made to the holders of Class Y shares."

Attributes with Postponed Conversion Privilege

These provisions are designed for corporations having a controlling shareholder. In the example given below, Class I shares and Class II shares both have substantially the same attributes as common shares except that Class I shares do not normally carry the right to vote.

"The Class I shares and the Class II shares shall carry and be subject to the following rights, restrictions, conditions and limitations:

(III) In this provision the term "Offer" means an Offer to purchase Class I shares which must, by reason of then applicable securities legislation of any province or the by-laws, regulations or policy of a Stock Exchange on which the Class II shares are listed, be made to all holders of Class II shares whose last address on the records of the Company is in any province which requires the making of such an Offer to such holders. In the event an Offer is made and at the time the Offer is made, and an Offer on the same terms and conditions is not made to the holders of the Class I shares, then, if more than fifty percent (50%) of the Class I shares accept the Offer, which shall include any amended Offer, each holder of a Class I share shall, from and after the date upon which such shares are taken up pursuant to the terms of the Offer, be entitled to the same voting rights as the Class II shares set forth in (II) above."