September 7, 2020

Mr. Walied Soliman, Chair
Ontario Capital Markets Modernization Task Force
Via email at: CMM.Taskforce@ontario.ca

Dear Mr. Soliman;

We are writing to comment on the draft recommendations published by Ontario's Capital Markets Modernization Task Force in its July report.

First, we want to commend the Task Force for its thorough and thoughtful work in reviewing a large set of issues and concerns, and arriving at a set of recommendations that will help both to ease regulatory burdens and, more importantly, position Ontario's capital markets system for current and future needs.

The signatories to this letter all have ideas and comments on the full set of recommendations the Task Force drafted, but we will focus in this submission on a smaller sub-set of recommendations that address our common concerns with shareholder rights and responsibilities, and the integration of environmental, social and governance concerns in capital markets regulations and investor decision-making.

Specifically, we offer comments below on Recommendations 19, 20, 23, 24, and 25.

1. Recommendation 19: Improve corporate board diversity

As investors, we are supportive of the Taskforce's proposal to recommend enhanced diversity disclosures on an annual basis and require target-setting by issuers at the board and executive levels. In doing so we recommend building from the experience of current OSC governance and disclosure requirements and the Canada Business Corporations Act (CBCA) disclosure requirements.

1.1 Disclosure of representation on Boards and Executive officer positions

First, we agree with the Taskforce's intention to expand the requirements for disclosure of representation of underrepresented groups on corporate boards and in executive officer positions. In particular, we suggest that the Taskforce recommend that the requirement that an issuer report annually on the representation of women on its board and in executive officer positions be amended

to include annual reporting on the representation of persons who are Black, Indigenous and persons of colour (BIPOC). To facilitate consistency the taskforce may also want to consider aligning its recommendation with the designated groups identified in the diversity disclosure requirements under the CBCA.[1]

Likewise, we support a reform that would expand the current requirement for an issuer in Ontario to disclose whether it has any policy for the identification and nomination of women directors, to also require disclosure of any specific policy for the identification and nomination of BIPOC persons for director positions. To facilitate consistency, the taskforce may also want to consider aligning its recommendation with the designated groups identified in the diversity disclosure requirements under the CBCA. To provide complete and relevant information, an issuer should also be required to disclose a summary of that policy, or where it has no such policy explain why it does not and how it aims to achieve its diversity targets in the absence of such policy.[2]

1.2 Targets for representation by gender

With respect to targets, we support the Taskforce recommending that issuers be required to set targets for the representation of women on boards and in executive officer positions. Rather than setting a common target for all companies, we suggest the Taskforce recommend that companies be required to set their own target, and to explain any target that is less than 40 percent representation of each of women and men. We agree with a maximum 5-year timeframe for achievement of the targets. This approach provides a reasonable next step building from the progress made to date. In 2019 the OSC reported that 33% of new board appointments were women, up from 26% in 2017, suggesting opportunity for acceleration in progress going forward. The approach would also allow for appropriate board renewal and executive succession planning, particularly at companies with board and executive teams.

1.3 Targets for representation of BIPOC and other protected grounds

We support the Taskforce recommending that companies be required to set and disclose time-bound targets to enhance other aspects of diversity in board and executive positions. In the near term, we believe that the Taskforce should recommend that issuers be required to set targets of their choosing for the representation of BIPOC, and consider setting targets for other underrepresented groups, taking into consideration the designated groups identified under the CBCA and protected grounds under the Ontario Human Rights Code. This approach would facilitate the development of appropriate strategies and targets to improve diversity practices without the threat of regulatory non-compliance, as the last five years under the disclosure requirements for gender have allowed. We recommend that

[1] Canada Business Corporations Regulations, 2001, SOR/2001-512, <http://canlii.ca/t/547g3> at s 72.2(4)(h),(i)
[2] See Ibid at s 72.2(4)(b),(c); NI 58-101 Disclosure of Corporate Governance Practices at Form 58 101F1 s11-12 https://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20170119_58-101_unofficial-consolidation.pdf

after a five-year period, the OSC review progress to date and set requirements for firm targets, at minimum, with respect to BIPOC.

1.4 Board Renewal

We agree with the Taskforce that addressing Board renewal is important to enhancing board diversity. However, rather than recommending hard term-limits, we encourage the Taskforce to recommend revision of the definition of director independence in CSA National Instruments, such that a member of the Board of Directors of an issuer who has been a director of the issuer for a specified number of years from the date of their first appointment would no longer be considered independent.[3] This approach is employed in the UK where a board member that has served on the board for more than nine years from the date of their first appointment is considered to have their independence impaired.[4] For those of us that have established our own working definitions for director independence, the number of years has been set variously between nine and twelve.

Our proposed approach builds from the current requirements, under which term limits are optional, and an issuer may choose other board renewal mechanisms or no renewal mechanisms.[5] By linking director term length to independence, it advances the use of term-limits and establishes consequences for issuers with low board renewal, while allowing issuers flexibility in respect of specific company circumstances, size and changes in business structures. Companies that lack board renewal would see consequences at board elections because the proportion of independent board members is a factor commonly considered by Canadian institutional investors when casting proxy votes. In addition, under NI 58-101 and CP 58-201, if an issuer does not have a majority of independent directors, additional disclosure and scrutiny are triggered.[6]

1.5 Instruments for reform

The changes discussed above could be instituted through amendments to the OSC Disclosure of Corporate Governance Practices requirements (NI 58-101 and Form 58-101F1) or the Securities Act (Ontario) and regulations. In either instance, guidance in the form of an OSC Staff Notice will be necessary to guide application of the rules. Alternatively, the reforms contemplated could be achieved through amendment of the Ontario Business Corporations Act and regulations. In this case, the requirements would apply to companies registered in Ontario, however companies issuing in Ontario that are incorporated in other jurisdictions would not be subject to the requirements.

[3] See NI 58-101 s1.2 and NI 52-110 s1.4.
[4] Financial Reporting Council, UK Corporate Governance Code, July 2018, at Provision 10. https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf
[5] NI 58-101 at Form 58-101F1 s10
[6] Form 58-101F1 at s1 and National Policy 58-201 at s3.1

1.6 Pay Gap disclosure

Although not included in the scope of the Taskforce's recommendation 19, we would like to take this opportunity to express support for the requirement that issuers disclose pay gaps related to gender and people of colour. This transparency would assist investors, lenders and other stakeholders in identifying gaps relating to underrepresented groups before they manifest at the board and executive level. Such disclosure is provided for in the Employment Equity Act (Canada) and Ontario's Pay Transparency Act. Given that the Ontario Transparency Act received royal assent but its implementation has been delayed, we propose that the Taskforce recommend moving forward with implementation of the Act.

2. Recommendation #20: Introduce a regulatory framework for proxy advisory firms (PAFs)

We support the recommendation that Proxy Advisory Firms (PAFs) be restricted from providing consulting services to issuers in respect of which the PAF also provides clients with voting recommendations.

However, in our view the proposal to provide issuers with a statutory right to rebut the advice of proxy advisory firms is unnecessary and unworkable.

2.1 The data do not support the need for a new statutory right of rebuttal:

Prior to embarking on new rule-making related to proxy advisory firms, the Task Force, the Ministry of Finance and any other regulatory bodies should examine credible evidence to determine whether concerns reported about the influence of PAFs, errors in their reports and conflict of interests have materialized to a meaningful extent. No body should rely on anecdotal evidence or presumptions when considering a change that could have substantial costs for market participants, costs which will ultimately be borne by retirees and other investment beneficiaries.

In this instance, the only argument provided by the Task Force for imposing a new regulatory burden on proxy advisory firms is that "*Issuers and other stakeholders have expressed concerns about the influence of PAFs, errors in the reports produced by PAFs, and conflicts of interest arising from PAFs' provision of voting recommendations in respect of issuers to which PAFs also provide consulting services*."

However, there is no significant evidence of faulty advice: only advice that some issuers may not agree with. We have seen no separate Canadian data on this question, but when investigating similar considerations, the US Securities Exchange Commission (SEC) noted that in 2018 there were 17 "factual errors" and 28 "analytical errors" cited by issuers regarding proxy advisory firm advice related to companies regulated by the SEC. The Commission did not evaluate whether in fact the "factual errors" and "analytical errors" cited by companies were in fact errors at all, or just differences of opinion or

problems with the company's own disclosures. But even if they were *actual* and not just *alleged* errors, given that proxy advisors typically produce many thousands of reports each year with tens of thousands of data points, the statistical significance of that number of alleged errors is nil. A separate review conducted by the US Council of Institutional Investors (a non-profit association representing pension funds and other members with more than US$4 trillion in assets under management, and associate members with more than US$35 trillion in AUM) found a factual error rate on a report basis of between 0.057 to 0.123%, leading the Council to conclude "We believe an error rate of that magnitude does not provide a reliable basis for imposing a costly new regulatory framework that will constrain competition."

Further, there is no evidence that any alleged errors affected voting decisions. We have seen no evidence to suggest that these rare errors, if they are even confirmed to be errors and not just disagreements in interpretation, were actually material to investors' voting decisions. If the alleged errors in question had little or no effect either on the actual vote recommendation provided, the rationale for intervening in proxy advisory processes would be completely unfounded. And even if the alleged errors in question affected the vote recommendation, investors remain highly discerning in their review of proxy voting recommendations.

2.3 For investors, time is of the essence

The tight timelines between when proxy circulars are filed by issuers and investors receive information and advice from PAFs should not be constrained by additional demands that further squeeze those timelines. During the spring proxy voting season in particular, the number of meetings being held means that investors need the maximum amount of time to evaluate the proxy circular and advice provided by the PAF, and to register their voting decisions. Any rule that reduces the time available for decision-making ironically could constrain thoughtful deliberation on the part of investors and promote over-reliance on received advice.

2.4 The proposal, if applied, would have anti-competitive effects.

The additional cost of complying with this rule could further entrench the moat that is built up around the proxy advisory business, effectively hampering smaller participants and favouring the largest. Currently the market is almost entirely dominated by two corporations, ISS and Glass Lewis, which together represent approximately 97% of the market. Both of these firms are headquartered outside of Canada, are global in scope and operations, and are primarily subject to regulation in the US market by the Securities Exchange Commission (SEC). The SEC has already proposed new rules with regard to these firms. Those new rules are highly contested and subject to litigation. The contested SEC rules are also less onerous than the Taskforce's recommendation in that they do not require that issuers have the right to view and comment on proxy advisor recommendations before they go to the proxy advisors' investor clients or that the issuer's rebuttal be included in the proxy advisors' material going to clients.

Within Canada, there are only two firms that would be subjected to the regulation the Task Force is proposing that would not already be captured under US regulations. Both of these organizations – SHARE and the Groupe Investissement Responsable (GIR) are smaller operations with fewer than 20 employees. Imposing additional technological, logistical and personnel costs associated with compliance on smaller firms will affect small Canadian-owned firms much more than it will the global giants, raising barriers to entry in this market and practically ensuring a monopolistic marketplace in proxy advice, which will work to the detriment of the Task Force's objectives.

2.5 Fairness requires that other proponents should also be given a right of rebuttal, which adds to the unworkability of the proposal in general.

The requirement that proxy advisory firms provide a right of rebuttal to issuers should logically and fairly be offered to shareholder proponents or dissidents for whom the PAF is issuing a contrary recommendation. The logistics of doing so within tight timeframes, however, makes this similarly unworkable. The PAF, for instance, would be required to either identify the shareholder proponent and/or confirm the identity and authority of a shareholder proponent that contacted them for rebuttal purposes within a very tight timeframe. Yet, to offer a rebuttal to the issuer and not to other proponents of ballot items would be intrinsically unfair to those proponents who have an equal interest in fair representation. We believe the answer is not to attempt to offer the right of rebuttal to everyone, but rather not to offer it to anyone.

2.6 The costs of regulating proxy advisory services will be borne by retirees and other beneficiaries

The cost of added resources to comply with this rule will ultimately be borne by investors and pension beneficiaries whose retirement savings will be affected by any added fees associated with compliance. Further, taxpayers will bear the cost of policing the new rule for which the need and associated benefits (if any) have not been clearly articulated. When weighed against the evidence of specific benefits to the market of imposing the new rule, the costs are disproportionately high.

2.7 Recommendation #20 is un-necessary and unworkable.

We oppose the Task Force's proposed new requirements for proxy advisory services on the basis that the proposal:

- does not appear to be based on any evidence of significant errors in the advice provided by PAFs;
- will have an anti-competitive effect in the market;
- would either unfairly benefit one type of proponent, or be even more unworkable in practice; and

- would impose costs that would be borne by retirees and other beneficiaries with no quantifiable benefit.

3. Recommendation 23: Require TSX-listed issuers to have an annual advisory shareholders' vote on the board's approach to executive compensation

We fully support the Taskforce's recommendation to adopt mandatory annual advisory votes on executive compensation practices for all TSX-listed issuers.

Determining executive compensation is one of the most important duties performed by corporate directors. Shareholders should have the right, through a non-binding advisory vote, to signal their support, or lack thereof, for a board's approach to executive compensation. Such annual votes serve a dual purpose beneficial for investors: they focus director attention on executive compensation, incentivizing directors to thoroughly understand their company's compensation arrangements as an important component of the engagement process between shareholders and boards; and they further encourage directors to ensure that executive compensation is clearly and transparently explained in the company's information circular. This requirement meaningfully enhances communication between issuers and investors in a key area and does not create an onerous additional regulatory burden for issuers.

Periodic "Say on Pay" votes are mandatory in various countries around the world, including the USA, Australia, the United Kingdom, France, Germany, the Netherlands and Belgium[7]. In Canada, the *Canada Business Corporations Act* (CBCA) was amended in 2019 to require mandatory annual advisory "Say on Pay" votes for companies incorporated under that statute. Up to that point, Canada was an outlier in developed countries in not providing shareholders with an avenue to routinely express their views on a company's approach to compensation. Notwithstanding this recent development, the large number of Canadian companies not incorporated under the CBCA are not required to hold such votes.

Canadian institutional investors have long advocated that "Say on Pay" be mandated by legislation or regulation in Canada, and have encouraged companies to voluntarily implement annual "Say on Pay" advisory votes until such time as "Say on Pay" becomes a legal requirement[8]. While approximately 71% of the TSX Composite Index has voluntarily adopted "Say on Pay", implementation has stalled in recent years. The Taskforce's recommendation would level the playing field for all issuers through regulation and we commend the Taskforce for this very welcomed proposal.

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[7] Thomas, Randall S. and Van der Elst, Christoph, Say on Pay Around the World (June 1, 2015). Vanderbilt Law and Economics Research Paper 14-10, Washington University Law Review, Vol. 92, No. 653, 2015, Available at SSRN: https://ssrn.com/abstract=2401761 or http://dx.doi.org/10.2139/ssrn.2401761

[8] See for example the Canadian Coalition for Good Governance, September 2010, Model "Say on Pay" Policy for Issuers

Although we are neutral as to whether "Say on Pay" is implemented through corporate law (as with the CBCA) or securities law (as is the case in the US), perhaps the simplest method would be through an amendment to Ontario's corporate law statute, the *Ontario Business Corporations Act* (OBCA), following a similar approach as implemented in the CBCA through Bill C-97[9]. The requirement would then apply to all prescribed OBCA incorporated companies and could create significant momentum, in conjunction with the CBCA amendments, for other jurisdictions to implement similar changes to their corporate statutes. We understand that amendments to the OBCA are likely outside the mandate of the Taskforce, but we note that there is a concurrent review of Ontario's corporate laws taking place via recommendations from the Business Law Modernization and Burden Reduction Council to the Ontario government through the Ministry of Government and Consumer Services (MGCS)[10]. If the Taskforce is of the view that a corporate law amendment is the preferred path, we encourage the Taskforce to voice its support for such an initiative to MGCS.

Alternatively, if securities regulation is the preferred path, it would be appropriate to adopt a new stand-alone requirement to hold a "Say on Pay" vote through adding to the existing executive compensation regime under *National Instrument 51-102 Continuous Disclosure Obligations*.

In conclusion, regardless of the path chosen, we fully support the Taskforce's recommendation to move forward on the important governance objective of "Say on Pay".

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[9] The statutory amendments incorporated into the CBCA through Bill C-97 (although not yet in force pending the release of draft regulations) are set out below:

> **Development of an approach on remuneration**
>
> **125.1** A prescribed corporation shall develop an approach with respect to the remuneration of the directors and employees of the corporation who are "members of senior management" as defined by regulation.
>
> **Recovery of benefits**
>
> **172.3** The directors of a prescribed corporation shall place before the shareholders, at every annual meeting, the prescribed information respecting the recovery of incentive benefits or other benefits, which is included in the remuneration referred to in section 125, paid to directors and employees of the corporation who are "members of senior management" as defined by regulation.
>
> **Approach on remuneration**
>
> **172.4 (1)** The directors of a prescribed corporation shall place before the shareholders, at every annual meeting, the approach with respect to remuneration referred to in section 125.1.
>
> **Non-binding vote**
>
> **(2)** The shareholders are to vote on the approach placed before them by the directors under subsection (1). The results are not binding on the corporation.
>
> **Disclosure of results**
>
> **(3)** The corporation shall disclose the results of the vote to the shareholders.

[10] CCGG's November 2019 response to the Business Law Modernization and Burden Reduction Council, including with respect to "Say on Pay" is available on CCGG's website.

4. Recommendation #24 – Empower the OSC to provide its views to an issuer with respect to the exclusion by an issuer of shareholder proposals in the issuer's proxy materials (no-action letter)

The pursuit of an informal procedure to exclude shareholder proposals in Ontario is unnecessary and would only add to the regulatory burden that the Ministry of Finance and the Ontario Securities Commission are trying to reduce.

We understand why the Task Force might consider this option as helpful rather than problematic. At first blush it appears as an alternative dispute resolution mechanism that's less onerous and expensive than legal action. The reason it is unnecessary and unhelpful is that, as we explain further below, in Canada a) there have been almost no cases of companies refusing to accept shareholder proposals, which obviates the need for another apparatus to solve a problem that doesn't exist; and b) creating the apparatus will almost certainly create the problem it's trying to solve.

4.1 There is no need for a no-action process in Canada

In Canada, the number of shareholder proposals received by companies is substantially lower than the volume filed in the United States, and in Ontario specifically the number is very low. According to SHARE, an organization that maintains a public database of proposals, only three proposals were filed with companies under the jurisdiction of the Ontario Business Corporations Act (OBCA) to date in 2020. In 2019, there were only six. In Canada as a whole, the number of shareholder proposals filed averages around 75 per year with no noticeable increase or decrease year on year. Many of those proposals are withdrawn after constructive discussions between the shareholder and the issuer. In 2020, for example, 38 of the 77 proposals filed at Canadian issuers were withdrawn after such discussion.

Unlike in the United States, Canadian issuers have almost invariably accepted the filing of proposals as a normal course of shareholder engagement and included them in Management Information Circulars (Proxy Circulars).

While the consultation report cites a benefit of this proposal being 'reducing litigation in court', we are unaware of any such burden on the courts currently. In the 2020 proxy season, for example, out of the 77 proposals filed by shareholders, only one single proposal was omitted from the ballot. That omission was due to the filer (a British investment firm) attempting to file a proposal after the regulatory deadline for filing. In those circumstances, the company was clearly within its rights to omit the proposal, and the filer did not dispute that right. The number of cases that have come to court in the past twenty years related to a Canadian corporation refusing to include a shareholder proposal in its circular can be counted on one hand.

Given the experience of shareholder engagement and dialogue, and frequent withdrawal of proposals after such engagement, it's not surprising that in Canada the process has been less adversarial and legalistic than in the U.S. We should ensure that it remains so.

4.2 Instituting a no-action process may create the problem it's trying to solve

The US experience shows us that issuers will avail themselves of the no-action process almost as a standard step when receiving a proposal, rather than as an exceptional measure. All three parties – issuers, shareholders, and regulators – will now have to "lawyer up" for an extra process that will be time-consuming, costly for everyone, and based on the evidence above, completely unnecessary in the Canadian context.

In the United States the Securities Exchange Commission recently abandoned its practice of issuing written decisions on no-action requests – a move that substantially undermines the transparency and accountability of the process and was widely decried – in response to the sheer volume of requests, numbering between two and three hundred annually, each involving legal submissions from both sides with dozens of pages of written argument.

Further, the Task Force's proposal comes at a time when the SEC has been embroiled in controversy for contradictory and unclear explanations (where provided) of its decisions on "no-action" requests, involving even more argument over the interpretation of the rules. The system the Task Force proposes to re-create in Canada is itself in turmoil.

Everyone's time is better spent engaging with one another on substantive matters rather than on an administrative process. If the Task Force wants to encourage constructive dialogue between issuers and shareholders, creating a new administrative process will have the opposite effect, taking the focus away from discussion of the substantive matters being raised in a proposal and creating a costly and time-consuming debate over the form and definition of the proposal.

Likewise, if the goal is to clarify the law, the opposite is the likely effect. Canadian courts have been clear about the circumstances in which shareholder proposals can be excluded. Creating a parallel forum for determining such issues can only serve to diminish this clarity.

4.3 Ontario's jurisdiction to act is unclear

The right of shareholders to file resolutions and have them included on the ballot for corporate annual meetings is enshrined in Canadian corporate laws (provincial and federal, including the Bank Act). The laws are generally similar, with relatively consistent word limits, filing deadlines, ownership thresholds and holding periods, despite minor variations by jurisdiction.[11]

While Ontario clearly has a right to alter the *Ontario Business Corporations Act* to address the filing of shareholder proposals, it cannot alter corporate law in other provinces. As noted above, there were

[11] The two most notable exceptions to the right are for companies incorporated in Alberta, in which a shareholder or group of shareholders must hold more than 5% of the company's shares before being allowed the right to file, and for Real Estate Investment Trusts, for which the right does not exist in law but in some cases has been enshrined in a Trust's bylaws.

only three proposals filed under the OBCA in the 2020 proxy season. Almost half of all proposals filed in 2020 were at companies regulated under the *Bank Act*, which is outside of provincial jurisdiction.

Creating an "Ontario only" forum for determining the eligibility of shareholder proposals will create confusion – both with respect to the immediate issue and, more importantly, as regards the already uncertain boundaries between securities and corporate law. It also risks the appearance of politicization of a corporate law issue which, to date, has been dealt with efficiently by the courts without controversy or complaint.

4.4 We encourage the Taskforce not to pursue this proposal

With no evidence of either an avalanche of proposals for issuers to contend with, nor a general reluctance of issuers to respect shareholders' rights to file proposals, the current system is working as it should.

Adding a new regulatory apparatus to manage and oversee this system is therefore unnecessary and will lead to unintended consequences (including increased regulatory burden). If there is any lingering concern that conflict over the right to file proposals might grow in future without additional regulatory oversight, regulators and legislators may consider revisiting the question once there is evidence of a problem.

5. Recommendation 25: Require enhanced disclosure of material environmental, social and governance (ESG) information, including forward-looking information, for TSX issuers

We strongly support the proposal to mandate enhanced disclosure of material ESG information in alignment with SASB and TCFD recommendations through the regulatory filing requirements of the OSC. We note that this requirement should be for SASB ***and*** TCFD, as the two frameworks are complementary, but distinct (SASB covers all material ESG factors while TCFD focuses on climate). Broadly speaking, investors would like consistent and comparable data and metrics for material ESG factors. Globally, we are seeing an increase in regulatory requirements for standardized ESG reporting, particularly in Europe. There is however no such requirement currently in Canada, and the result is a lack of standardized, decision-useful reporting. We believe that standardized ESG reporting will be important for Canada to remain an attractive market for global investors. The SASB and TCFD frameworks have global support and recognition and meet investor needs for concise, standardized metrics on material issues.

5.1 What Specific Material ESG Information is Needed Beyond What is Currently Captured

Investors need consistent, comparable and relevant information on environmental, social and governance risks that are industry-specific and financially material to a company's operations. The broad recognition of climate change as a systemic risk surfaces the importance of a particular focus on

disclosure of climate-related risks and opportunities. Currently, the Canadian market does not adequately meet either of these investor needs.

SASB[12] has developed 77 industry-specific standards that outline and provide guidance for each industry on the minimum set of likely financially-material sustainability topics and metrics that companies ought to regularly disclose. Their rapid and global adoption is due in part to their emphasis on financial materiality and industry-specific information related to risks and opportunities most likely to affect a company's financial condition (*i.e.*, its balance sheet), operating performance (*i.e.*, its income statement), or risk profile (*i.e.*, its market valuation and costs of capital) in the near, medium or long term. The SASB framework also allows for the issuer to determine the material industry-specific metrics, given its unique circumstances. This is why we are very supportive of the recommendation to align mandated disclosure of material ESG information with the SASB framework.

SASB is complementary but distinct from the TCFD framework, which focuses on climate-related risks and opportunities. This is in part because climate-related risk is distinct from most ESG risks, as it has been deemed a systemic risk to the financial system, and therefore requires a different lens to guide disclosure. Many investors and companies draw on the TCFD to inform their climate-related risk oversight, planning and disclosures. Most, if not all, major mandatory or voluntary corporate ESG disclosure frameworks have incorporated the TCFD[13] and from 2020 onward, annual TCFD-based reporting will be mandatory for all PRI signatories.[14] In short, the TCFD has become the gold standard for climate disclosure.

Therefore, we believe that mandatory disclosure of material ESG information should also be aligned with the TCFD framework. The SASB and TCFD frameworks have actively worked to align with one another and should be approached as complementary rather than mutually exclusive. Whereas SASB lays out the material ESG issues and potential metrics by sector relevance, TCFD provides a framework to holistically assess governance, strategy, and risk management. Importantly, the TCFD provides a forward-looking component through the discussion and disclosure on scenario analysis, and the framework can also be used in conjunction with the SASB standards to identify relevant reporting metrics that are industry specific.

The recommendation to align with both SASB and TCFD should not absolve companies of the responsibility to determine for themselves what their material risks are, nor should it be a restriction on what a company decides to report on. Investors need to understand how a company is identifying, measuring and managing its ESG risks and opportunities in order to properly assess its value over the long-term. In other words, the process a company utilizes to determine what information is material enough to disclose is also a critical piece of information for investors. SASB standards can help

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[12] The SASB standards were released in 2018 following six years of rigorous research and consultation with investors, companies and subject matter experts (https://www.sasb.org/standards-overview/)
[13] See for example:
https://www.tcfdhub.org/resource/?search_keyword=&order=ASC&orderby=relevance&resource_type%5B%5D=framework-standard&resource_type%5B%5D=guidance-tool&resource_type%5B%5D=legislation-regulation
[14] https://www.unpri.org/news-and-press/tcfd-based-reporting-to-become-mandatory-for-pri-signatories-in-2020/4116.article?adredir=1

companies and investors identify and more fully understand financially-material sustainability risks and opportunities.

While each company's circumstances may differ, the board of directors and management should be accountable for assessing the long-term impact of ESG risks and opportunities on the company's operations. This materiality assessment and discussion on the methodology used to perform such an assessment should be a part of disclosure requirements. This is already common practice in the Canadian market and should be mandated along with alignment with SASB and TCFD.

We note that the Canadian Securities Administrators (CSA) suggested a similar course of action in CSA Staff Notice 51-354, where it stated an intention to propose new disclosure requirements on "how the issuer oversees the identification, assessment and management of material risks" in response to a perceived lack of disclosure on how issuers were assessing ESG risks – and climate change risks specifically.[15]

5.2 Should there be a phased approach to implementation, including a comply-or-explain model?

To reflect the capacity and sophistication of different sized issuers, we are recommending that the implementation of mandated ESG disclosure be done in a phased approach and expectations should vary according to firm size. Small and medium-sized companies will require extra time for clearer precedents to follow, the establishment of more reliable and affordable information and for more established professional support to develop. That said, in recommending specific timings for each phase, we believe that the Task Force should encourage early compliance and carefully weigh the relative benefits of providing investors with standardized, decision-useful ESG reporting and the negative impacts this could have on their competitiveness in global markets.

Phase one:

- In phase one all issuers face a comply-or-explain expectation regarding the disclosure of TCFD and SASB-aligned reporting. Issuers have the option to explain why they are not complying with the disclosure expectations and should provide information on their plans for complying in the future. Issuers who do not comply with the disclosure requirements in phase one should be expected to disclose if, and how, they are identifying ESG issues that are material to their business.

- For all phases, issuers who determine that climate change is not a material risk should also be required to report on the analysis they performed to determine themselves as materially unaffected.

[15] https://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20180405_climate-change-related-disclosure-project.pdf

Phase two:

- In phase two issuers are expected to provide reporting that aligns with the TCFD framework and its sector relevant SASB disclosure topics.[16] Please refer to the appendix for guidance on the recommended scope of TCFD implementation. [17]

- Large companies (market cap > $8B or companies with a market cap > $2B and revenue > $2B) would have a shorter timeframe than smaller issuers (market cap <$2B) to comply with Phase two reporting.

Phase three:

- In phase three issuers are required to show evidence of independent verification of selected metrics (e.g. GHG emissions, safety incident rates, etc.).[18] The mandating body should determine a small set of mandatory audited metrics through consultation with industry.

- Large companies would be expected to be in compliance with phase three after four (4) years. Smaller companies should be expected to comply after five (5) years.

- Following compliance with phase three, issuers, notwithstanding their size, shall have their mandated ESG disclosure subject to National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.

The regulator should ease the reporting burden for companies and increase the utility of this disclosure for investors by providing issuers with a centralized, online disclosure tool that captures disclosures in a searchable database. This tool should be intuitive for issuers to use and easy to adapt to their circumstances. This would eliminate the burden of publishing stand-alone reporting for issuers. Until such a database is established, the relevant disclosure should be included in the MD&A/AIF or the proxy circular

[16] Some issuers may have business lines that cross different SASB frameworks, as such they may be required to consider metrics from more than one sector-based framework.
[17] The Final Report of the Expert Panel on Sustainable Finance lays out a proposed Canadian approach to implementing the TCFD recommendations. https://www.canada.ca/en/environment-climate-change/services/climate-change/expert-panel-sustainable-finance.html
[18] This proposal is consistent with investor recommendations to companies in CPA Canada's report Progressive Investors and Corporate Disclosure. https://www.cpacanada.ca/-/media/site/operational/rg-research-guidance-and-support/docs/02097-rg-progressive-investors-corporate-disclosure-interviews-april-2019.pdf?la=en&hash=53EF46D9EBE691857D96C1ACC9E3526096FFCEB9

5.3 Is there a need for a short term "safe haven" regarding ESG disclosures? Should ESG disclosures be subject to the forward-looking information requirements set out in National Instrument 51-102 Continuous Disclosure Obligations, or what, if any, different considerations should apply?

Climate science and climate-related accounting and disclosure systems are developing in real-time. Matters that appear material now might later be determined not to be material, or conversely matters may turn out to be more material than originally disclosed. As such, we believe that a specific safe harbour provision should be adopted for climate-related disclosures. The safe harbour provision will encourage issuers to provide more detail on risks and opportunities and avoid reducing disclosures to "boilerplate" messages that are safer, legally, but provide little information to investors.

Unlike current protections for "Forward-Looking Financial Information" in National Instrument 51-102,[19] we propose safe harbour provisions for climate-related disclosures that would not be confined only to forward-looking information but would cover all required climate-related reporting. We also believe that this will provide comfort to issuers' management and board of directors resulting in disclosure regarding their company to be more specific on ESG risks and opportunities and avoiding the "boilerplate" messages.

Accordingly, we recommend that, in addition to updating continuous disclosure obligations to include TCFD and SASB compliant reporting, the OSC also amend section 4A.3 of National Instrument 51-102 to provide a temporary safe harbour for climate-related disclosures as follows:

1. A reporting issuer that discloses material climate-related information must include disclosure that
   (a) cautions users of the climate-related information that actual results may vary in the future due to refinements in metrics to measure risks and opportunities and identifies material risk factors that could cause results to differ materially from the reported ESG information;
   (b) states the material factors or assumptions used to develop the climate-related information; and
   (c) describes the reporting issuer's policy for updating climate-related information.

2. Climate-related outlook information that is based on assumptions that are reasonable in the circumstances must, without limitation,
   (a) be limited to a period for which the information in the climate-related outlook can be reasonably reported or be estimated; and

[19] See section 4A of NI 51-102 at https://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20111031_51-102_unofficial-consolidation-post-ifrs.pdf

(b) use the accounting policies the reporting issuer expects to use to prepare its historical financial statements for the period covered.

3. A reporting issuer that discloses climate-related information must include disclosure that states the date management approved the climate-related information.

We believe that implementing a safe harbour provision in this manner would address concerns about forward looking information.

Conclusion

Before closing, we would also like to recommend that future reviews be scheduled to take place every 5-7 years, as both the regulatory and economic environment is continuously evolving. This would also allow regulators to learn from some of the initial steps we propose in this letter, and adjust future guidance and regulation accordingly.

We trust that the above comments will be helpful for the Task Force in finalizing its recommendations, and we will look forward to viewing the final results. If you have any questions about any of the material above or wish to discuss any of it with our organizations, please contact Kevin Thomas, CEO, SHARE, at kthomas@share.ca to arrange follow up.

Signed:

Addenda Capital Inc.
BMO Global Asset Management
British Columbia Teachers Federation Salary Indemnity Fund
Canada Post Corporation Pension Plan
GIR – Groupe Investissement Responsable
Jarislowsky Fraser Limited
NEI Investments
RBC Global Asset Management Inc.
SHARE

Appendix – Recommended scope of TCFD implementation

As outlined in recommendation 5.2. of the Final Report of the Expert Panel on Sustainable Finance, a summary of the recommended scope of TCFD implementation for each phase can be found herein. Phase 1 expectations below correspond to what would be considered compliant in the comply-or-explain expectations of Phase One in the proposal. To be considered compliant in Phase Two of the proposal the issuer would have to be aligned with the expectations in both Phase 1 and Phase 2 below.

PHASE 1	
Governance	• Describe the board's oversight of climate-related risks and opportunities. • Describe management's role in assessing and managing climate-related risks and opportunities.
Strategy	• Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.
Risk Management	• Describe the organization's processes for identifying and assessing climate-related risks.
Metrics & Targets	• Disclose Scope 1 and 2 GHG emissions and related risks, or an appropriate alternative metric.

PHASE 2	
Strategy	• Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning. • Describe the resilience of the organization's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario.
Risk Management	• Describe the organization's processes for managing climate-related risks. • Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management.
Metrics & Targets	• Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process. • Disclose, if appropriate, Scope 3 Greenhouse Gas (GHG) emissions and related risks. • Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.