

September 5, 2020

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

Dear Mr. Soliman;

We are a group of US-based institutional investors and associations representing more than CA\$4.3 Trillion in assets under management. We are writing to comment on several of the draft recommendations made by Ontario's Capital Markets Modernization Task Force.

First, we commend the Task Force for its thorough work in evaluating current regulations and requirements in Canadian capital markets and for its objective of modernizing a capital markets regulatory framework that will support and sustain a healthy and prosperous capital markets ecosystem.

While the Task Force outlined 47 distinct draft recommendations, we are writing with regard to several of those recommendations which are specifically aimed at improving environmental, social and governance (ESG) performance by issuers, and the regulatory structures that encourage those outcomes.

As US institutional investors we can confirm the Task Force's view that "globally, and in Ontario, there is increased investor interest in issuers reporting on ESG-related information" and that "Enhanced ESG disclosure can set the basis for improved access to global capital markets and enable an equal playing field for all issuers."

For this reason, we support the objectives of the following Task Force recommendations:

#19: Require TSX-listed [Toronto Stock Exchange] companies to set targets, and annually provide data in relation to the representation of women, black people, indigenous people, and people of colour (BIPOC), on boards and in executive officer positions

With respect to targets, we recommend that issuers be required to set targets for the representation of women, black people, indigenous people, and people of colour (BIPOC), on boards and in executive officer positions. However, rather

than setting a common, regulated target for all companies, we suggest the Taskforce recommend that companies be required to set their own time-bound targets, and to explain the reason for their choice of targets for women and BIPOC.

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

In the United States, we benefit from a regulatory requirement for issuers to hold an advisory vote on executive compensation, and we exercise this vote as shareholders to better align executive incentives with building long-term value. Canada is an outlier in developed countries in not providing shareholders with an avenue to routinely express their views on a company's approach to compensation, and we strongly encourage the Task Force and the Ontario Ministry of Finance to advance this 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 (Sustainability Accounting Standards Board) and TCFD (Task Force on Climate-Related Financial Disclosures) recommendations through the regulatory filing requirements of the Ontario Securities Commission (OSC). We note that this requirement should be for SASB and TCFD, as the two frameworks are complementary, but distinct (SASB covers a broad range of material ESG factors while TCFD focuses solely on climate). As investors we would like consistent and comparable data and metrics for material ESG factors. Globally, we are seeing an increase in regulated requirements for standardized ESG reporting, particularly in Europe. As yet there is no such requirement in Canadian capital markets, and the result is a lack of standardized, decision-useful reporting from issuers. Standardized ESG reporting will increase the attractiveness of Canada for US and global investors. Further, the SASB and TCFD frameworks have global support and recognition and meet investor needs for concise, standardized metrics on material issues.

We appreciate the Task Force's attention to these potential improvements to Canada's capital markets regulatory regime.

However, we must raise concerns with two of the Task Force's other recommendations which we believe will negatively impact on shareholder rights and good corporate governance:

Recommendation #20: Introduce a regulatory framework for proxy advisory firms (PAFs) to: (a) provide issuers with a right to "rebut" PAF reports, and (b) restrict PAFs from providing consulting services to issuers in respect of which PAFs also provide clients with voting recommendations.

In our view the proposal to provide issuers with a statutory right to rebut the advice of proxy advisory firms is unnecessary and unworkable. It mimics highly-controversial rule-making currently being undertaken by the US Securities Exchange Commission in response to a concerted lobby by certain corporate managers to limit oversight of corporate governance by shareholders. That lobby infamously relied upon letters from "main street investors" whose supposed signatories, it turns out, had no idea they were being sent, or from coalitions of "main street investors" created and funded by corporate management trade associations.

The lobbyists contend that proxy voting advice provided by PAFs is error-ridden, and that these errors therefore justify regulatory intervention in private advice provided to investors by their agents. Yet there is no significant evidence of faulty advice. A recent 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."

A rule providing issuers with a right of rebuttal will therefore be insignificant as a corrective mechanism, but it will have very meaningful and negative effects on competition, decision-making by investors, and costs borne by retirees.

First, 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 only the largest. Imposing additional

technological, logistical and personnel costs associated with compliance on smaller firms will affect small 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.

Second, 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.

Lastly, 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. Those costs should be weighed against the evidence of specific benefits to the market of imposing the new rule –none of which benefits have been credibly articulated.

For these reasons we urge the Task Force to shelve the proposal to offer a “right of rebuttal” to issuers.

Recommendation #24: Empower the OSC [Ontario Securities Commission] 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)

One might expect us, as institutional investors active in the US market, in which the “no action” process is a feature of the SEC's regulatory oversight, to support a similar process in Canada.

However, in our view the establishment of a “no action” process in Canada is unnecessary, and we fear it will saddle the Canadian market with many of the problems we are currently contending with in the process in our own country.

According to SHARE, an investor advocacy organization that maintains a public database of proposals, there have been almost no cases of Canadian issuers refusing to accept shareholder proposals in the past twenty years. 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 (a total of three proposals in the 2020 proxy season). 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).

We fear, however, that creating the “no action” apparatus will create the problem it’s trying to solve. Our experience in the US shows us that issuers will frequently avail themselves of the no-action process 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, 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 faced 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. Any attempt to replicate the no action process in the U.S. is not necessary based on the minimal activity currently taking place in your

jurisdiction and would in fact, work against the principle of constructive engagement.

We thank the Task Force once again for its work and its openness to considering the broad range of issues which affect the smooth functioning of markets, and its effort to prepare capital markets systems for the next decades. We hope that the above comments support the Task Force in its efforts and result in a well-crafted set of final recommendations that can be swiftly enacted by the relevant authorities.

Should you wish to arrange an opportunity to discuss this with us, or receive clarification on any of these points, please contact Kevin Thomas, CEO, SHARE, at kthomas@share.ca to make arrangements.

Sincerely,

SIGNATORIES IN ALPHABETICAL ORDER:

AFL-CIO

Boston Common Asset Management, LLC

California State Teachers' Retirement System

Congregation of Sisters of St. Agnes

Corporate Responsibility office - The Province of Saint Joseph of the Capuchin Order

CtW Investment Group

Domini Impact Investments LLC

Dominican Sisters ~ Grand Rapids

First Affirmative Financial Network

Franciscan Sisters of Perpetual Adoration (FSPA)

Harrington Investments, Inc.

Heartland Initiative

Leadership Team of the Felician Sisters of North America

Maryknoll Sisters

Mercy Investment Services, Inc.

Miller/Howard Investments, Inc.

New York City Comptroller Scott M. Stringer

Northwest Coalition for Responsible Investment

Segal Marco Advisors

Seventh Generation Interfaith Inc

SHARE

Sisters of Charity Halifax

Sisters of Mary Reparatrix

Sisters of Mary Reparatrix

Sisters of Saint Joseph of Chestnut Hill, Philadelphia, PA

Sisters of St. Dominic of Blauvelt, New York

Sisters of St. Francis of Philadelphia

Sisters of St. Francis-Dubuque

Sisters of the Holy Names of Jesus and Mary

Skye Advisors LLC

SumOfUs

Trillium Asset Management

Trinity Health