May 29, 2020

Mr. Robert Day
Senior Specialist Business Planning
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
rday@osc.gov.on.ca

Dear Mr. Day:

Re: Ontario Securities Commission ("OSC") Notice 11-788: Statement of Priorities

We thank you for the opportunity to provide feedback on the OSC's existing priorities as set out in its 2019-2020 Statement of Priorities and suggestions for potential priorities or areas of consideration for the fiscal year 2020-2021.

CCGG's members are Canadian institutional investors that together manage approximately $4.5 trillion in assets on behalf of pension fund contributors, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies, as well as regulatory improvements to best align interests of boards and management with those of their shareholders and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

We understand the OSC's rationale for not releasing its 2020-2021 Statement of Priorities for comment at this time given the on-going global pandemic and the need for pragmatism and flexibility in adapting to new and emerging priorities, balanced against staying the course on existing initiatives. We further recognize that the recommendations expected later this year from Ontario's Capital Markets Modernization Taskforce (the "Taskforce") will also impact the OSC's priorities. CCGG has provided the Taskforce with a summary of the governance initiatives its members believe should be prioritized by the Taskforce in fulfilling its modernization mandate.

Given this landscape, we look forward to providing substantive comments on the OSC's 2021-2022 Statement of Priorities later this year. In the interim, we would like to briefly follow up with the OSC on the status of the recommendations made by CCGG in its initial May 2019 response to the 2019-2020 Statement of Priorities, especially in light of the on-going work of the Taskforce.

Review of Disclosure Oversight of Environmental and Social Sustainability Risks, including Climate Change

CCGG was pleased when, in August 2019, the CSA issued its climate change-related disclosure guidance to public issuers through CSA Staff Notice 51-358 *Reporting of Climate-related Risks*. This guidance was a priority identified in CCGG's comment letter to the OSC on the 2019-2020 Statement of Priorities and we are of the view that the guidance is both timely and useful to both issuers and investors in helping to coalesce and standardize expectations with respect to disclosure of climate-related risks. Clarity around disclosure expectations in itself helps to reduce regulatory burden.

The 2019-2020 Statement of Priorities indicates that the OSC will continue to monitor developments among global financial system regulators that are examining the need for companies to disclose exposure to economic, environmental and social (E&S) sustainability risks, including climate change, to determine the need for a regulatory response. Throughout 2019 and into 2020, a number of global regulatory initiatives have either been recommended or are underway, with the goal of furthering such disclosures, recent examples include:

- *The UK Financial Conduct Authority (FCA) consultation on TCFD climate-related disclosure requirements (ending June 5, 2020).* The proposed rule will require issuers with a premium listing on the London Stock Exchange to either make climate-related disclosure consistent with the approach set out by the Taskforce on Climate-related Financial Disclosure (TCFD) or explain why not.

- *The European Commission (EC) consultation on revision of the Non-Financial Reporting Directive (closed May 14, 2020).* This consultation was premised on a recognition that there is inadequate publicly available information on non-financial issues and that companies incur unnecessary and avoidable costs related to reporting non-financial information. Problems noted include that companies do not report all non-financial information that users think is necessary, and many companies report information that users do not think is relevant.

- *Recommendation from the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee Relating to ESG Disclosure (As of May 14, 2020).* The sub-committee recommends that the SEC address the issue of whether environmental, social and governance (ESG) disclosures are material and should therefore be incorporated into integrated disclosures for issuers. One of the key reasons articulated to support the recommendation is that "without the availability of reliable ESG-related material information for all US Issuers, capital could be redirected by investors with their own sets of mandated ESG duties to companies outside the US that are required to report ESG data pursuant to disclosure obligations of non-US regulators, rendering

US Issuers at a distinct disadvantage to access future international capital"[1]. A similar argument applies with respect to Ontario issuers.

The above regulatory consultations and recommendations illustrate a growing awareness and momentum within international jurisdictions that establishing strong governance practices along with clear and consistent E&S disclosure expectations for issuers will become a competitive advantage for their capital markets as they compete to attract institutional investors. As the integration of ESG factors into the global investment decision-making process has become the norm, meeting investors' expectations and the need for consistent, comparable, and comprehensive disclosure of material ESG factors is increasingly important in attracting long-term capital. Issuers are confronted with a surfeit of ESG disclosure frameworks and no authoritative or definitive consensus on which framework will best satisfy investors' needs.

In CCGG's view, consideration of a regulatory response on ESG disclosure is consistent with the OSC's priorities because it will reduce the cost and burden of uncertainty for issuers and begin to drive consistency in disclosures, which in turn helps serve investor information needs, contributing to efficient capital markets. It will also align Ontario's regulation with the direction of international developments and will facilitate Ontario's capital markets accessing international capital from investors with mandated ESG duties in other jurisdictions.

Canadian Capital Markets Regulatory System (CCMRS)

CCGG supports the OCS's priority of promoting confidence in capital markets through supporting transition to the CCMRS. CCGG strongly supports the implementation of a national securities regulator and encourages the OSC's continued efforts to support the CCMRS and maintain Ontario's commitment to this important endeavour by continuing to work with its CCMRS partners to develop effective legislation, regulations, and efficient regulatory oversight processes.

Shareholder Democracy Issues

We continue to note that there are several issues of significant importance to CCGG's members that have not been mentioned or are not included in the OSC's 2019-2020 list of priorities. We discuss these areas below and believe they should be high on the OSC's agenda for 2020 as it considers the interests of investors in its response to the COVID-19 pandemic.

[1] Recommendation from the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee Relating to ESG Disclosure (As of May 14, 2020): https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-of-the-investor-as-owner-subcommittee-on-esg-disclosure.pdf, at P. 9, para 4.

Say-on-Pay

The benefits of advisory say-on-pay votes in terms of enhancing both disclosure and company/shareholder communication around executive compensation are widely recognized. Until the *Canada Business Corporations Act* ("CBCA") was amended last year to require mandatory advisory say-on-pay votes for federally incorporated companies, 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 executive compensation. The CBCA's say-on-pay requirements, however, apply only to those companies incorporated under that statute and therefore the large number of Canadian companies not incorporated under the CBCA are not required to hold say-on-pay votes and both those companies and their shareholders do not have the benefit of what has become a best practice.

We note that the OSC did not include say-on-pay on its list of priorities for 2019-2020. We continue to encourage the OSC to keep the issue of mandating say-on-pay under securities regulation on its agenda. CCGG's members believe it is an important issue that the OSC should prioritize and preferably spearhead as the regulator of Canada's primary capital market. It is important that the OSC act to level the playing field so that all issuers and investors in Canada share in the benefits of enhanced communication and improved disclosure.

CCGG does not believe that adopting say-on-pay constitutes an undue additional burden on issuers. Say-on-pay requires only that a say-on-pay resolution be included in the proxies and information circulars that are already distributed to shareholders annually and the votes tallied in the same manner and at the same time as other annual resolutions. Given the challenges arising for boards confronting the unforeseen impacts of COVID-19 on most existing executive compensation plans, including targets and contemplated payouts, providing shareholders with an advisory voice through universal say-on-pay will be more important than ever in holding directors accountable.

Majority Voting

Once implemented through regulation, the May 2018 amendments to the CBCA under Bill C-25, will enable shareholders of companies governed by the CBCA to vote "against" directors rather than "withhold" their vote, making true majority voting for uncontested director elections a reality. However, because this will apply only to those public companies incorporated under the CBCA, more work remains to be done to ensure that all public shareholders in Canada can meaningfully exercise their right to elect directors. CCGG believes that the provinces and the territories should follow the CBCA's lead and encourages the OSC to work with the federal momentum in this area and publicly lend its voice in support of including similar majority voting provisions into Ontario corporate statutes.

In the meantime, we encourage the OSC to use its influence to have the TSX rules on majority voting expanded so that they apply to the approximately 1,600 issuers listed on the TSX–V as well as to TSX listed issuers. There is no reason to exclude the shareholders of smaller companies from this fundamental shareholder right.

Universal Proxies

We also recommend that the OSC adopt rules requiring the use of a 'universal proxy' in all contested director elections. In its Universal Proxy Policy, CCGG recommends that all director nominees be included in a fair manner on the same proxy form whether nominated by management or by dissidents so that shareholders are able to freely choose the combination of nominees they wish to support, just as they are able to do if they attend the shareholder meeting in person.

Empty Voting

We also would like to see an acknowledgement that the OSC is considering the issue of empty voting. In its Empty Voting Position Statement, CCGG cautions that the separation of voting interests from economic interests calls into question some of the fundamental assumptions of shareholder democracy upon which our system of corporate governance is based and we believe the OSC should turn its attention to this issue.

We thank you again for the opportunity to provide you with our comments. Please feel free to contact our Executive Director, Catherine McCall, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at sneville@ccgg.ca if you would like to discuss the matters in this letter further or if we can be of any assistance.

Yours very truly,

Marcia Moffat
Chair of the Board
Canadian Coalition for Good Governance

CCGG Members 2020

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- Aviva Investors Canada Inc.
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépot et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Fondation Lucie et André Chagnon
- Forthlane Partners
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OPSEU Pension Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- Scotia Global Asset Management

- Sionna Investment Managers Inc.
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- SLC Management Canada
- TD Asset Management Inc.
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund