

December 16, 2021

Ms. Kathryn Royal
Manager, Strategic Planning and Reporting
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
kroyal@osc.gov.on.ca

Dear Ms. Royal,

Re: Ontario Securities Commission (“OSC”) Notice 11-794 –Statement of Priorities: Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2023

We thank you for the opportunity to provide feedback on the OSC’s draft 2022-2023 Statement of Priorities and to highlight suggestions for potential priority areas of consideration for the fiscal year 2022-2023.

CCGG’s members are Canadian institutional investors that together manage approximately CDN \$5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this letter as Appendix A.

General Comments

We recognize that 2021 was a dynamic and challenging year for the OSC as it worked through the ongoing repercussions of the COVID-19 pandemic, and the recommendations in the final report of the Ontario Capital Markets Modernization Taskforce (the “Taskforce”), including the implications for the Commission’s governance, priorities and key areas of focus.

We are aware that these priorities include an expansion of the OSC’s legislative mandate to include fostering capital formation and competitive capital markets, a significant restructuring of the Commission and its governance through the passage of the *Securities Commission Act, 2021* as part

of the 2021 Ontario budget¹, and the recent release for public consultation of the draft *Capital Markets Act*. These transformational priorities are also combined with ongoing initiatives, aligned with investor priorities, that are being led by the Canadian Securities Administrators (CSA) in the important areas of climate change-related disclosures and diversity beyond gender. Effective implementation of these ambitious initiatives will require significant time and resources from the Commission and represent only a small slice of the priorities identified in the draft 2022-2023 Statement of Priorities.

Given the breadth of the priorities identified for 2022-2023, we continue to encourage the OSC to be as transparent as possible during the coming year. We further encourage the OSC to take an iterative approach to the pacing of implementation for these important and complex reforms and in the delivery of its priorities. To be effective participants in the regulatory development process, stakeholders such as CCGG will require adequate time to absorb the implications of the modernization initiatives and to provide their views and feedback as policy directions arising from the Taskforce's recommendations, the OSC's restructuring, the draft *Capital Markets Act*, and the myriad of other consultations and policy initiatives evolve over the next twelve months.

CCGG Response to OSC draft 2022 priorities

CCGG has the following comments on several specific areas identified in the OSC draft 2022 Statement of Priorities.

Goal 1: Promote Confidence in Ontario's Capital Markets

Support for the Canadian Co-operative Capital Markets

CCGG was deeply disappointed that the Canadian Co-operative Capital Markets Regulatory (CCMR) system was mothballed earlier this year and is no longer a key priority under the goal of promoting confidence in Ontario's capital markets. We concede the political conditions for the success of this initiative do not exist at the moment. For Ontario, however, as home to Canada's largest capital market, the absence of a single, national, capital markets regulator is, in our view, one of the largest impediments to Ontario achieving the economic growth benefits it is seeking through the expansion of the OSC's mandate to include fostering capital formation.

Develop a Rule Setting out Climate Change-Related Disclosures for Reporting Issuers

CCGG agrees that implementing standardized climate-change related disclosures for reporting issuers should be a priority for the OSC. We are pleased to note that action has already been taken on this initiative with the release of Proposed National Instrument 51-107: Disclosure of Climate-related matters. We look forward to providing detailed comments on the proposed disclosure framework, but would highlight that CCGG is generally supportive of the alignment by the CSA with the recommendations of the Financial Stability Board's Taskforce on Climate-related Financial Disclosures (TCFD).

¹ An Act to implement Budget measures and to enact and amend various statutes, C. 8, S.O., 2021, Ch. 9 (not yet proclaimed).

We recognize that the CSA is taking a climate first approach with its recent proposal, and that this is consistent with rapidly evolving international developments in respect of the proposed International Sustainability Standards Board². CCGG has also consistently raised the need for material ESG disclosures beyond climate change in its past submissions in response to earlier draft OSC Statements of Priorities³. CCGG is of the view that a regulatory response on broader ESG disclosure is supportive of the OSC's priority focus on promoting confidence in Ontario's capital markets because it reduces risk and uncertainty for issuers while simultaneously begins to drive consistency in disclosures. This meets the needs of investors for decision-useful information and contributes to efficient capital markets. In an effort to support such initiatives, CCGG has observed that SASB (now integrated into the Value Reporting Foundation) combined with the four pillars of the TCFD framework provide a good model for ESG related disclosures and reporting. CCGG provides an illustration of how they work together in its [The E&S Directors Guidebook](#).

Continue Consideration of Diversity on Boards and in Executive Roles at Reporting Issuers

CCGG is also supportive of the OSC's participation in the ongoing CSA consultations on diversity on boards and in executive roles. CCGG has long advocated for increased diversity on boards and in senior management, including through its [Gender Diversity Policy](#). In addition, its foundational guidance in [Building High Performance Boards](#) calls for diverse representation on boards, including a "wide variety of experiences, views, and backgrounds, which to the extent practicable, reflects the gender, ethnic, cultural and other personal characteristics of the communities in which the corporation operates and sells its goods or services". The principle that "[w]hile the quality of individual directors is paramount, we also expect boards as a whole to be diverse" continues to guide our thinking⁴. Diversity disclosures should continue to be a priority for the OSC going forward.

Goal 2: Modernizing the Regulatory Environment

We note that the preamble to this goal highlights that the OSC "will ensure the integration, across all relevant activities, of the OSC's expanded mandate on fostering capital formation and competitive markets that aims to provide greater access to capital markets in Ontario". CCGG expressed concerns with the Taskforce's recommendation to expand the OSC's mandate in its response to the Taskforce and continues to be of the view that this expansion is problematic because it has the strong potential to put the OSC into conflict with its long-standing mandate to

² See November 3, 2021 press release of the IFRS Foundation Trustees [IFRS - IFRS Foundation announces International Sustainability Standards Board, consolidation with CDSB and VRF, and publication of prototype disclosure requirements](#); two prototype standards developed by the Technical Readiness Working Group were published: Climate-related Disclosures Prototype; and General Requirements for Disclosure of Sustainability-related Financial Information Prototype.

³ See CCGG, [May 29, 2020 Letter to OSC Re: Ontario Securities Commission \("OSC"\) Notice 11-788: Statement of Priorities](#); and CCGG, [May 23, 2019 Letter to OSC Re: Ontario Securities Commission \("OSC"\) Draft 2019-2020 Statement of Priorities](#).

⁴ Research has substantiated the link between financial performance and both gender and ethnic diversity on executive teams (in the context of diversity being linked to out-performance of peers and lack of diversity being linked to under-performance) see: [McKinsey May 19, 2020, Diversity wins: How inclusion matters](#)

ensure effective investor protection. We remain unclear as to how the OSC will integrate this mandate and how it will resolve potential conflicts. We would encourage the OSC to expand on the commentary in the preamble to Goal 2 of the 2022 Statement of Priorities to provide investors and the public with insight as to how the OSC proposes to integrate this expanded mandate, and which activities it considers relevant to fostering capital formation. This context is especially important given the overarching role of the OSC in ensuring integrity of the capital markets which provides confidence to both investors as well as companies seeking to raise capital.

Implementing an Enhanced Framework for Modernizing Regulation

We interpret this priority to encompass the OSC's implementation of the governance changes to be put in place through the *Securities Commission Act* and through the proposed *Capital Markets Act*, once enacted. As noted above, Commission support for the implementation of these two initiatives on their own represents a significant dedication of Commission resources and time and will require robust change management expertise to deliver effectively.

We note that that the planned outcomes for this priority include the following [emphasis added]:

- Enhanced, centralized, and *streamlined process for all regulatory projects that reflect careful consideration of all aspects of our mandate*;
- Contribute to *expedited rule and policy making*, balancing the need to achieve harmonized outcomes that meet the needs of Ontario investors and market participants;
- Strengthen regulatory processes by *enhancing consideration of stakeholder views and impacts* in:
 - The implementation of the OSC's investor protection, capital formation and competition mandates.

We would caution that there is a potential for conflict between expedited rule and policy making and enhancing consideration of stakeholder views. The OSC has identified the importance of considering stakeholder views as being vital to achieving the OSC's modernization agenda, but to be meaningful, stakeholders must have sufficient time to be able to provide substantive and thoughtful feedback.

As of writing, stakeholders are grappling with significant requests for comment in respect of the draft *Capital Markets Act* and the CSA's proposed climate-related disclosures, both of which submissions are due the same week immediately following a holiday period. In addition, the draft *Capital Markets Act* proposes to reduce the time period for rulemaking consultation from 90 days to 60 days, further compressing stakeholder bandwidth. We understand the OSC has an ambitious agenda and support modernized regulation that enhances investor protection but would encourage the OSC to provide an indication of expected timing and order of delivery of its priorities listed in the 2022 Statement of Priorities to assist stakeholders in organizing their resources and preparing for consultation opportunities. In addition, we would encourage the OSC to be mindful of the cumulative release of simultaneous or significant overlapping consultations that draw on the same stakeholders. Failure to do so risks reducing the quality, thoughtfulness and completeness of the

responses which will ultimately undermine the efficiency and effectiveness of the regulatory framework.

Continue Work on Streamlining Periodic Disclosure Requirements for Reporting Issuers

CCGG supports aspects of this ongoing priority and relies on its [recent submission](#) to the CSA in response to the proposed amendments.

Work to Modernize Delivery Options of Regulatory and Continuous Disclosure Filings for Issuers

CCGG submitted its qualified support for aspects of the access equals delivery model and refers the OSC to our [2020 submission](#) in response to the OSC's specific proposal.

Good Governance Recommendations:

Although not specifically mentioned in the 2022 Statement of Priorities under Goal 2, CCGG is highly supportive of several of the Taskforce's final recommendations that have the potential to support enhanced shareholder democracy and thereby modernize Ontario's regulatory environment. CCGG was particularly pleased to note the Taskforce's recommendation to implement an annual advisory "say on pay" vote for shareholders, which has been a long-standing CCGG policy priority⁵.

Similarly, CCGG was pleased to note that the Taskforce recommended amendments that would mandate universal proxies in contested elections⁶. We would highlight that this reform was recently implemented by the US Securities Exchange Commission and alignment between Ontario and the US in this regard would be highly beneficial⁷.

Goal 4: Strengthen our Organizational Foundation

Overall CCGG is supportive of the organizational priorities as set out in the draft 2022 Statement of Priorities, including continuing redevelopment of the CSA national systems, modernizing the OSC's technology platform and fostering diversity, but we would like to highlight two comments with regard to the identified organizational priorities.

Continue redevelopment of CSA national systems

CCGG agrees with the priority of completing the implementation of the SEDAR + project. We note that this priority has tended to be rolled over from prior years. We continue to encourage the OSC to move forward expeditiously to support the CSA in delivering on this initiative.

⁵ Ministry of Finance (Ontario), *Capital Markets Act – Consultation Commentary*, October 2021, at 25 [online: [Capital Markets Act - Consultation Draft \(ontariocanada.com\)](#)]

⁶ See recommendation #42 of the Taskforce [online: [Capital Markets Modernization Taskforce: Final Report January 2021: 2.4 Proxy system, corporate governance and mergers and acquisitions | Ontario.ca](#)]

⁷ US Securities and Exchange Commission, SEC Adopts New Rules for Universal Proxy Cards in Contested Director Elections, Press Release, November 17, 2021 [online: [SEC.gov | SEC Adopts New Rules for Universal Proxy Cards in Contested Director Elections](#)]

Technology Modernization, Digital Transformation and Data and Analytics Enablement

We are pleased to see the concept of transforming the OSC into a data-driven regulator has been expressly reintroduced as an organizational priority.

In the context of the OSC's ongoing modernization initiatives, CCGG continues to advocate that regulatory decision-making should be undertaken cautiously and based on empirical evidence that no harm is likely to occur as a result of the reduction. This is particularly true with respect to reductions in regulations impacting information available to institutional investors.

Shareholder Democracy Issues

CCGG continues to advocate for long-standing shareholder democracy issues to be identified as priorities by the OSC. Investors will have a significant role to play in the economic recovery required by Ontario and Canada. Implementation of foundational principles of governance as reflected in the following policy priorities would align Ontario's capital markets with governance best practices, enhancing its attractiveness as a place to do business for institutional investors.

Majority Voting

The May 2018 amendments to the *Canada Business Corporations Act* (CBCA) under Bill C-25 will, once they come into force, 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 regime 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 take advantage of the federal momentum in this area and publicly lend its voice in support of including similar majority voting provisions into Ontario corporate statutes.

The Taskforce recommended that Ontario implement majority voting in uncontested director elections⁸. We would encourage the OSC to move forward with implementing this recommendation although we do not agree with the Taskforce's supplementary recommendation that would allow issuers to apply to the OSC for relief for the majority voting requirements.

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.

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

⁸ See recommendation #48 of the Taskforce [online: [Capital Markets Modernization Taskforce: Final Report January 2021: 2.4 Proxy system, corporate governance and mergers and acquisitions | Ontario.ca](#)]

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. The Taskforce recommended that the OSC provide guidance on its intention to use its public interest authority in relation to empty voting at public shareholder meetings and remind participants of their existing disclosure obligations under securities law⁹. This recommendation is consistent with CCGG's stated policies and we agree with this as an important first step.

Conclusion

We thank you again for the opportunity to provide you with our comments. Please do not hesitate 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 truly,

Marcia Moffat

Marcia Moffat
Chair, Canadian Coalition for Good Governance

⁹ See recommendation #45 of the Taskforce [online: [Capital Markets Modernization Taskforce: Final Report January 2021: 2.4 Proxy system, corporate governance and mergers and acquisitions | Ontario.ca](#)]

CCGG MEMBERS 2021

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt 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
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- 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)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- TD Asset Management Inc.
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund