

December 22, 2022

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Sent by email to kroyal@osc.gov.on.ca

Re: OSC Notice 11-797 – Statement of Priorities Request for Comments Regarding
Statement of Priorities for Financial Year to End March 31, 2024

Dear Ms. Royal,

Thank you for the opportunity to comment on the OSC's 2023-2024 Statement of Priorities (SoP). We are incredibly fortunate to be living in a democratic society that encourages the public to participate in the consultation processes with regulatory bodies such as the OSC. As a citizen, a conscious consumer, a professional in the industry and an investor, I strongly feel that my enclosed comments provide meaningful insights for opportunities to shape specific goals under the SoP. Specifically, my remarks are directed to address the following objectives:

- **GOAL 1** – Building Trust and Fairness in Ontario's Capital Markets
 - 1.3 - Consider Broader Diversity on Boards and in Executive Roles at Reporting Issuers;
- **GOAL 4** – Enabling the Organization to Deliver Effective Regulation
 - 4.2 – Execute OSC's Inclusion and Diversity (I&D) Strategy.

According to the **OSC Notice 11-797 – Statement of Priorities**, the SoP supports the OSC's commitment to be both effective and accountable in delivering on its mandate:

- i. to provide protection to investors from unfair, improper or fraudulent practices;
- ii. **to foster fair, efficient and competitive capital markets and confidence in capital markets;**
- iii. to foster capital formation; and
- iv. to contribute to the stability of the financial system and the reduction of systemic risk.¹

Goals 1.3 & 4.2 can be directly linked to the second mandate listed above; to foster fair, efficient and competitive capital markets and confidence in capital markets. These goals acknowledge the importance and application of diverse perspectives on boards, executive officer positions of reporting issuers, and within OSC's workforce. However, any considerations made under OSC's work on diversity should also inform their own governance structure so that they operate under the same principles.

At the virtual roundtable in October 2021, it was refreshing to hear OSC's opening remarks welcoming its panellists, indicating that their insights and "lived experiences" will be valuable in helping them build on the work completed by the Canadian securities regulators and determine their next steps. "Lived experiences" are the things someone has experienced themselves, especially when they give knowledge

¹ https://www.osc.ca/sites/default/files/2022-11/20221122_11-797_statement-of-priorities-2023-2024_EN.pdf

to the person or understanding that people who have only heard about such experiences do not have.² It has become an essential aspect of qualitative research³, especially in policy design.

Although the OSC is of the position that the considerations of Broader Diversity and any subsequent changes to the existing regime are a governance issue, the "G" in ESG, the underpinnings of Board Diversity, is also a social issue, the "S" in ESG, especially as it relates to the "pipeline problem"⁴. The social factor is critical in recruiting talent for reporting issuers and understanding the diverse needs of their consumer base and the communities in which they operate.

The OSC's efforts are based on the disclosure of material information for stakeholders, including employees and investors, but their efforts need to expand beyond diversity reporting to incorporate other aspects of information that disclose risks and opportunities around corporate culture. For example, in the Financial Sector, the Office of the Superintendent of Financial Institutions (OSFI) supervises Federally Regulated Financial Institutions (FRFIs) and federally registered pension plans (FRPPs), including the cultural practices of FRFIs and how different aspects of an FRFI's culture can create, perpetuate, or amplify risks which can impact stability. However, OSFI's work around culture is a work-in-progress and currently focuses more on cognitive diversity and the risks associated with complacency and groupthink. They intend to publish a principles-based, outcomes-focused culture risk management guideline for consultation in the first quarter of 2023.⁵

I have structured my comments to propose ideas under the following topics:

1. Broader Diversity beyond the Employment Equity Act (EEA) identifiers
2. Beyond Diversity to include Equity, Inclusion and Accessibility
3. Factor Workforce Diversity to manage the pipeline problem
4. Creation of an Inclusion, Diversity, Equity and Accessibility (IDEA) Task Force for the Capital Markets
5. Organizational structures approach to Diversity and why it's important

1. Broader Diversity beyond the Employment Equity Act (EEA) identifiers

While the OSC acknowledges the issue that Board Diversity needs to go beyond gender, the question is whether the Canadian securities regulators will go beyond the representation of the four designated groups as defined in the EEA that is currently being referenced by the Canadian Business Corporations Act (CBCA) and are as follow:

- Women;
- Indigenous peoples (First Nations, Inuit, and Métis);
- Persons with disabilities; and
- Members of visible minorities.

Furthermore, in July 2021, the federal government appointed a Task Force to conduct a detailed review of the EEA. The Task Force is expected to produce a final report including recommendations to modernize and improve the employment equity framework for the federal jurisdiction in the coming weeks.

² <https://dictionary.cambridge.org/dictionary/english/lived-experience>

³ <https://journals.sagepub.com/doi/full/10.1177/1609406920907254>

⁴ <https://www.codio.com/blog/taking-a-closer-look-at-the-pipeline-problem>

⁵ https://www.osfi-bsif.gc.ca/Eng/fi-if/in-ai/Pages/crmg_let.aspx

The concern in following the steps of CBCA by referencing the identity groups in the EEA is whether it will capture the nuances of diversity that would be helpful to stakeholders, especially investors and employees, in their decision-making process. For example, the CFA DEI Code⁶ is currently tracking sixteen dimensions of diversity in its voluntary initiative for the asset management industry in North America, including Socioeconomic status, Mental well-being, Intersectionality, Veteran status and Neurodiversity.

Also, the reliance on people to self-disclose personal identity data continues to be the greatest challenge in collecting this information, especially from the most marginalized communities. Therefore, other considerations are needed to measure diversity outcomes other than reporting on representation.

2. Beyond Diversity to include Equity, Inclusion and Accessibility

As it is exciting that the Canadian securities regulators are seriously considering Diversity beyond women, most of the work in this space has grown beyond Diversity to factor in Equity, Inclusion and Accessibility so much that they have significant catching up to do. However, there are also benefits to being late movers in that there is the opportunity to see how well these approaches work in other jurisdictions, which helps mitigate any future challenges, such as the formalization of definitions when creating or amending any regulations. Although all efforts are to ultimately create a culture of Inclusion, from a systems perspective, it is imperative to promote and develop Equity and Accessibility in parallel to achieve Inclusion; Equity and Accessibility are related.

Equity is the fairness of access, opportunities, and advancement for all, which requires eliminating barriers and root causes that have prevented underrepresented groups from full participation.⁷ Accessibility can be sourced from the Accessible Canada Act (ACA), which came into effect in December 2021, impacts federally regulated private-sector employers, and references the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)⁸. The UN CRPD follows the social model of disability⁹; disability is caused by how society is organized rather than by a person's impairment or difference, and looks at ways of **removing barriers to access for all persons**, including those with disabilities.

There are two significant outcomes of the ACA. The first is the creation of Accessibility Standards Canada, the government agency primarily responsible for developing accessibility standards which are also working with provincial governments, including the Ontario government, to ensure consistency in accessibility standards.¹⁰ The second outcome is the requirement of triennial reporting of accessibility plans accompanied by feedback processes and progress reports. Also, although not a requirement and only a recommendation under ACA, organizations need to give a sense of how accessibility fits into one's organizational internal "culture," and how they intend to promote it. This information would be helpful to stakeholders, especially employees and investors, to determine organizations' accessibility efforts and their influence on culture.

⁶ <https://www.cfainstitute.org/en/ethics-standards/codes/diversity-equity-inclusion>

⁷ https://www.cfainstitute.org/-/media/documents/code/dei/DEI-Code-Implementation-Guidance_2022.pdf

⁸ <https://laws-lois.justice.gc.ca/PDF/A-0.6.pdf>

⁹ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

¹⁰ <https://www.newswire.ca/news-releases/accessibility-standards-canada-and-the-government-of-ontario-moving-toward-a-barrier-free-canada-843514259.html>

3. Factor Workforce Diversity to manage the pipeline problem

The lack of diversity at the board and executive level can be put into perspective for investors by analyzing diversity throughout the organization, every level down, including issuers' workforces. Trends data can also provide invaluable insights if the information is collected over an extended period to determine where diverse talent enters and leaves the organization. However, this type of data is not disclosed by all corporations, only private-sector employers that fall under federal regulation covered by EEA, such as banks and telecommunications, as they are required to report on workforce equity data annually. This data includes an assessment of the underrepresentation of members in designated groups under each occupational classification of the respective workforce. But more importantly, these firms must develop an employment equity plan to eliminate the barriers and set targets for the representation of designated groups, essentially tackling the "pipeline problem" through a process-driven approach by identifying the employment barriers against members of the designated groups through reviews of their human resources systems, practices and policies that impact these groups.

4. Creation of an Inclusion, Diversity, Equity and Accessibility (IDEA) Task Force for the Capital Markets

As mentioned earlier, the most crucial IDEA is to expand the consultation to include other important aspects that impact organizational culture, pun intended. There is a need to facilitate the discussions around research, measuring and reporting outcomes by collaborating with organizations such as the Sustainable Finance Action Council¹¹ and the federal government's work on the 50/30 Challenge¹².

There are also standard-setting bodies such as the Independent Review Committee on Standard Setting in Canada (IRCSS) that conducted research on standards, including accounting, auditing, assurance and sustainability and identified Diversity, Equity and Inclusion (DEI) as one of the perspectives of focused areas for Canadian stakeholders in the development of standards.

Canadian securities regulators can use an IDEA Task Force for the Capital Markets for more targeted research to provide recommendations for policy development.

5. Organizational structures approach to Diversity and why it's important

I have researched several sources from a sustainability perspective on this topic within our industry, and I have listened to multiple DEI practitioners express their frustrations about the DEI-Industrial Complex, which is the "phenomenon that purports to end inequality but instead sustains it at great cost to marginalized populations."¹³

Some of the findings from my research indicate that organizational structures play an integral role in successful IDEA outcomes. The following are three models of organizational DEI that I have encountered in my research:

- DEI under Human Resources (HR) leadership; historically, this has been the approach, but DEI under HR needs to be more effective at achieving measurable outcomes. For example, DEI as a business strategy differs from an HR strategy and warrants its own resources with its own

¹¹ <https://www.canada.ca/en/department-finance/news/2021/05/canada-launches-sustainable-finance-action-council.html>

¹² <https://ised-isde.canada.ca/site/ised/en/50-30-challenge-your-diversity-advantage>

¹³ <https://hbr.org/2022/12/the-failure-of-the-dei-industrial-complex>

leadership reporting to the CEO. DEI and HR can work hand in hand, but DEI strategy must encompass the entire organization to make fundamental changes and succeed.¹⁴

- DEI having its own resources and direct reporting line to the CEO, such as a Chief Diversity Officer, is better equipped to work with Employee Resources Groups to determine suitable DEI KPIs to ensure accountability in DEI efforts. However, DEI professionals are experiencing a crisis and reporting severe burnout, primarily due to fighting against systems that have not adapted to societal shifts.
- DEI under Sustainability leadership is a relatively new space but has been making progress in research and collaboration with third parties to create reporting standards and frameworks for Human Capital, including DEI. For example, the Sustainability Accounting Standards Board (SASB), which recently transitioned to the International Sustainability Standards Board (ISSB), will be consulting in the first half of 2023 on Human Capital issues, including DEI, to develop investor-focused corporate disclosure standards on DEI. The DEI under the Sustainability group would be instrumental in helping to redesign the systems by tackling the challenges in the existing ones, such as inequities and providing relief to some of the frustrations being experienced by DEI practitioners.

Thank you again for the opportunity to comment on the OSC's 2023-2024 Statement of Priorities (SoP). If you have any questions regarding this submission, please do not hesitate to contact me at

[REDACTED]

Sincerely,
Kim Shah

¹⁴ <https://medium.com/swlh/dei-does-not-belong-under-hr-4ee25493fb66>