

December 22, 2022

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

We thank you for the opportunity to provide feedback on the OSC’s draft 2023-2024 Statement of Priorities and to highlight suggestions for potential priority areas of consideration for the fiscal year 2023- 2024.

CCGG’s members are Canadian institutional investors that together manage approximately \$6 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 submission.

General Comments

CCGG acknowledges that the OSC’s 2023-2024 Statement of Priorities has been published during, and is in part responsive to, a time of internal change within the OSC, a tumultuous global economy and a rapidly changing global regulatory landscape. This dynamic makes the investor protection focus of the OSC’s mandate increasingly more important. In furtherance of this objective, there are three specific areas where we would like to provide general feedback: the impact on investors of the integration of capital formation into the OSC’s mandate, the role of investors in the further development of the Capital Markets Act, and the importance to investors of the integration of Indigenous Peoples’ perspectives into the OSC’s regulatory work.

Integration of capital formation mandate continues to be opaque

CCGG continues to have questions with respect to the integration of the capital formation and competitiveness mandates into the organization and priorities of the OSC. Overall, we remain

concerned that the addition of capital formation and competitiveness to the mandate of the OSC has the potential to create conflicts within the regulator. There is an inherent regulatory tension between the measures used to implement a mandate focused on fostering capital formation and competitiveness, usually linked to reducing regulation and oversight requirements, and a mandate focused on protecting investors. For example, measures that typically form the core of investor protections focus on requiring disclosures and regulatory monitoring.

While the Statement of Priorities strives to provide comfort that investor protection remains at the “forefront” of the OSC’s initiatives and decision-making, we continue to have questions as to how this will be integrated into the specific-priorities and related actions articulated in support of capital formation. We urge the OSC to be as transparent as possible with investors as to what steps it will practically take to ensure that “investor protection and fostering confidence in capital markets remain at the forefront to ensure that high standards of fitness and business conduct are in place and observed” as it pursues its identified multi-year initiatives in support of promoting capital formation and fostering competitiveness.¹

In our view, the Statement of Priorities remains unclear with respect to how the Commission is expected to, or intends to, balance these new obligations against its existing investor protection mandate as it moves forward with its key priorities.

Stakeholders should be further engaged in development of the Capital Markets Act

The draft Statement of Priorities indicates that the “OSC will continue to support the Ontario government with the ongoing work related to stakeholder consultation on the draft Capital Markets Act (CMA).”²

CCGG participated in the Ministry of Finance’s initial consultation on the draft Capital Markets Act originally published in the fall of 2021.³ We urge the OSC to engage and to encourage the Ontario Ministry of Finance to meaningfully engage with stakeholders, including institutional investors, as this important piece of legislation evolves. Efficient capital markets require stability and predictability and market participant support and buy-in will be paramount for a successful transition to a new Capital Markets Act.

Integration of Indigenous Peoples’ perspectives on regulatory work is essential

CCGG is pleased to see that the OSC is prioritizing incorporating Indigenous Peoples’ issues and perspectives into its policy and regulatory priorities and its related actions. The OSC identifies specific priorities such as priority 1.4 (Incorporating Indigenous Peoples’ Issues and Perspectives in

¹ 2023-2024 Statement of Priorities, Section 3.6 Further Initiatives the Promote Capital Formation and Foster Competition, at pg. 20-21. We note that investor protection is not referenced directly in the planned outcomes of the identified initiatives, there is only a general reference that outcomes will be consistent with “other components of the OSC’s mandate”, this does not provide comfort that investor protection is at the “forefront”.

² 2023-2024 Statement of Priorities, at pg. 2.

³ CCGG, [February 17, 2022](#): Submission to Ontario Ministry of Finance re: draft Capital Markets Act consultation.

CSA Policy Work).⁴ The OSC also appears to be seeking to integrate Indigenous Peoples' perspectives into its operations more holistically through the actions identified in support of other initiatives. For example, the OSC has indicated it intends to engage in targeted consultations, including with Indigenous organizations to inform its work on ESG disclosures for reporting issuers (Key Priority 1.1)⁵. In addition, the OSC states its intention to develop a Reconciliation Plan in consultation with Indigenous communities and to respond to Truth and Reconciliation Calls to Action 57 (Professional Development and Training for Public Servants) and 92 (Business and Reconciliation) in its development and execution of the OSC's own inclusion and diversity strategy (Key Priority 4.2).⁶ CCGG supports this important work and the consultative approach proposed by the OSC.

CCGG Response to OSC draft 2023-2024 priorities

In addition to the general comments noted above, CCGG has additional comments on some specific priorities identified in the OSC draft 2023-2024 Statement of Priorities. CCGG's comments focus on those goals, priorities and action items the OSC has identified that are relevant to CCGG's corporate governance focused mandate and priority policy areas. Therefore, our comments are focused on Goal 1: Building Trust and Fairness in Ontario's Capital Markets, notably with respect to the stated priorities of enhancing ESG disclosures and diversity; and Goal 3: Adapting Regulation to Align with Innovation in Evolving Markets, specifically those on-going "burden reduction" initiatives such as access equals delivery and streamlining continuous disclosures, about which CCGG has been vocal in the past. In respect of these goals and priorities, CCGG has the following feedback:

Goal 1: Building Trust and Fairness in Ontario's Capital Markets

1.1: Advance Work on Environmental, Social, and Governance (ESG) Disclosures for Reporting Issuers

CCGG strongly supports the OSC's work on advancing ESG disclosure standards.

In 2022, CCGG provided a [detailed submission](#) in response to the CSA's proposed National Instrument 51-107 *Disclosure of Climate-related Matters* (NI 51-107).⁷ CCGG also responded to the climate-related consultations conducted by the US [Securities Exchange Commission](#) and the [IFRS International Sustainability Standards Board](#) (Exposure Draft S2).⁸

We note that the CSA has indicated it will be reviewing and taking into account these international developments as it moves forward with developing a Canadian climate-related disclosure regime.⁹

⁴ 2023-2024 Statement of Priorities, Section 1.4 at pg. 9-10.

⁵ 2023-2024 Statement of Priorities, Section 1.1, under Actions, second bullet at pg. 7.

⁶ 2023-2024 Statement of Priorities, Section 4.2, under Actions, last two bullets at pg. 23.

⁷ See CCGG, [Jan. 31, 2022](#) CCGG Letter to CSA Re: *CSA Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters*.

⁸ See CCGG, [June 9, 2021](#) CCGG Submission to SEC – Public Input on Climate Change Related Disclosures; and CCGG, [July 26, 2022](#) CCGG_IFRS ISSB Re S2 -Climate-related Disclosures.

⁹ See [October 12, 2022](#), CSA Canadian securities regulators consider impact of international developments on proposed climate-related disclosure rule.

CCGG [supports](#) this approach but strongly encourages the OSC to lead the CSA in moving forward with climate-related disclosures in a timely fashion.¹⁰

While we recognize that the CSA is taking a climate first approach with the proposed National Instrument 51-107 and the OSC's priorities are informed by this initiative, CCGG continues to call for material ESG disclosures beyond climate change. We have mentioned this in both past submissions and in response to earlier draft OSC Statements of Priorities.¹¹ CCGG is of the view that a regulatory response on broader ESG disclosure is supportive of the OSC's priority focus on building trust and fairness in Ontario's capital markets because such disclosures reduce risk and uncertainty for issuers while simultaneously beginning to drive consistency in disclosures. In furtherance of this concept, in July of this year, CCGG [responded](#) to the ISSB's request for comment on general requirements for sustainability related disclosure standards (Exposure Draft S1).¹² In our view, it is important for the OSC to remain abreast of international developments in respect of ESG disclosure standards beyond climate, and notably the ISSB's work on general sustainability standards¹³. Work on ESG disclosures beyond climate should be added as an OSC action area for 2023-2024.

1.3: Consider Broader Diversity on Boards and in Executive Roles at Reporting Issuers

CCGG is pleased that in the first fiscal quarter of 2023-2024, the OSC intends to conduct a consultation on proposed changes to the disclosure requirements on diversity, board renewal and the director nomination process and related corporate governance guidelines. This consultation is a natural next step following the final recommendations of the Ontario Capital Markets Modernization Taskforce in respect of diversity on boards and senior management and the related CSA consultations that took place in 2020-2021. CCGG was an active participant in both the Taskforce and CSA processes.

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". Our thinking continues to be guided by the principle that "[w]hile the quality of individual directors is paramount, we also expect boards as a whole to be diverse" and that

¹⁰ See CCGG, [December 15, 2022](#) CCGG Letter to CSA Re: CSA's Climate change-related disclosures update.

¹¹ See CCGG, [Dec. 21, 2021](#) Letter to OSC Re: Ontario Securities Commission ("OSC") Notice 11-794: Draft 2022-2023 Statement of Priorities 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.

¹² See CCGG, [July 26, 2022](#) CCGG_IFRS ISSB Re S1 General Sustainability Requirements.

¹³ The ISSB's deliberation of the General Requirements Sustainability Standard (S1) is currently ongoing: <https://www.ifrs.org/projects/work-plan/general-sustainability-related-disclosures/>

diversity is contextualized by a company's geography, surrounding communities, the customers it serves and the people it employees.¹⁴

Goal 3: Adapting Regulation to Align with Innovation and Evolving Markets

3.2 Streamline Periodic Disclosure Requirements for Corporate Finance and Investment Fund Reporting Issuers

The OSC has identified reviewing feedback and considering next steps for amendments to *National Instrument 51-102 Continuous Disclosure Obligations and Other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting* as an action item in respect of this priority. CCGG participated in the CSA's consultation on this initiative and our [response](#) is available on our website. Of note, CCGG did not support the proposed semi-annual reporting framework for venture issuers included in this consultation.¹⁵

3.3: Modernize Delivery Options of Regulatory and Continuous Disclosure Filings for Issuers

In April 2022, the CSA published its proposed final amendments to implement an access equals delivery model (AED) for reporting issuers. The OSC has identified considering stakeholder feedback in the development of final amendments to implement an AED model for certain disclosure documents of corporate finance reporting issuers as an action item in 2023-2024. CCGG also participated in the CSA's consultation on this initiative and our [response](#) is available on our website. CCGG does not support proxy circulars or any voting related information being subject to AED and does support investors retaining the ability to receive paper copies of these documents on request or pursuant to standing instructions.¹⁶

3.4: Complete Transition to SEDAR+

CCGG continues to agree with the priority of completing the implementation of the SEDAR + project, especially in advance of any potential implementation of an AED model for any investor documents. We note that this priority has tended to be rolled over from prior years and while progress has been made the launch date has now been pushed further back to June 2023.¹⁷

¹⁴ For the most recent articulation of CCGG's evolving position on diversity beyond gender please refer to CCGG, [Sept. 23, 2022](#), Submission to Department of Finance Canada Re: Corporate Governance Consultation; also, 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](#);

¹⁵ See CCGG, [Sept. 17, 2021](#), Submission to CSA Re: Proposed amendments to National Instrument 51-102 Continuous Disclosure Obligations and Other Amendments and Changes Relating to Annual and Interim Filings for Non-Investment Fund Reporting Issuers and Seeking Feedback on a Proposed Framework for Semi-Annual Reporting – Venture Issuers on a Voluntary Basis

¹⁶ See CCGG, [June 29, 2022](#), Submission to CSA re: CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment fund Reporting Issuer

¹⁷ [SEDAR+ Frequently Asked Questions - Canadian Securities Administrators \(securities-administrators.ca\)](#)

3.6: Further Initiatives that Promote Capital Formation and Foster Competition

As noted in the general comments section above, CCGG has specific concerns regarding how investor protection considerations are substantively integrated into the action items identified under this priority.

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 over the next few years. 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.

Say on pay

Although not specifically mentioned in the 2023-2024 Statement of Priorities, CCGG is highly supportive of several of the Ontario Capital Markets Modernization Task Force'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 priority.¹⁸

Universal proxies

Similarly, CCGG was pleased to note that the Taskforce recommended amendments that would mandate universal proxies in contested elections.¹⁹ 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 beneficial.²⁰

Majority Voting

In addition, on August 31, 2022, majority voting came into force for all distributing corporations under the *Canada Business Corporations Act* (CBCA).²¹ 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

¹⁸ Ministry of Finance (Ontario), *Capital Markets Act – Consultation Commentary*, October 2021, at 25 [online: [Capital Markets Act - Consultation Draft \(ontariocanada.com\)](#)]

¹⁹ 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](#)]

²⁰ 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](#)]

²¹ [CBCA Amendments Take Effect August 31, 2022 | Stikeman Elliott](#)

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 elections.²² 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 from the majority voting requirements.

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.

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,

'Bruce Cooper'

Chair
Canadian Coalition for Good Governance

²² 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](#)]

CCGG MEMBERS 2022

- 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
- Capital Group Canada
- 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)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Provident10
- 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
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- TD Asset Management
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- York University Pension Fun