



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

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Chair
Capital Markets Modernization Taskforce
Via Email: CMM.Taskforce@ontario.ca

Re: Consultation – Modernizing Ontario’s Capital Markets

The purpose of this letter is to provide feedback from the Pension Investment Association of Canada (PIAC) on the draft recommendations published by Ontario’s Capital Markets Modernization Taskforce (“the Taskforce”) in its paper published in June of this year.

PIAC has been the national voice for Canadian private and public pension funds since 1977 in matters related to pension investment and governance. Senior investment professionals employed by PIAC’s member funds are responsible for the oversight and management of over \$2 trillion in assets on behalf of millions of Canadians. PIAC’s mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries. PIAC’s positions on public policy reflect the fiduciary framework in which member funds operate and its commitment to work in the best interests of plan members.

PIAC commends the Taskforce’s efforts to put together a broad set of recommendations addressing a wide range of issues and opportunities to benefit Ontario’s capital markets. We are pleased to have the opportunity to comment on these recommendations. Please note this letter does not address all 47 recommendations, rather we are focussed on those relevant to PIAC’s mandate and that of our organization’s Investor Stewardship Committee.

Recommendations for streamlining and consolidating disclosure (#6 and #10)

PIAC is very mindful of the impact of regulatory burden on market participants. PIAC is generally supportive of regulatory changes that streamline disclosure requirements, provided our interests as investors are adequately fully protected without compromising

transparency or access to material information required for thoughtful, effective decision-making. PIAC's members represent pension plans with a focus on delivering returns over the long term; therefore, we are particularly interested in the proposal to allow issuers to move to semi-annual reporting, in an effort reduce their reporting burden while fostering a longer-term view by management. PIAC is of the belief that providing quarterly reporting and guidance may lead some issuers to focus on short-term thinking and to make decisions that are short-term oriented to meet the demands of the market and lead to less than optimal outcomes for shareholders and the beneficiaries of the pension plans that PIAC represents. However, we are also cognizant that investors require regular and consistent disclosure to analyze and track ongoing changes in an issuer's financial and operational performance, and we are cautious about the potential impact on transparency from this proposal. Therefore, PIAC suggests that if a semi-annual reporting requirement is to be implemented, that there must be sufficient reporting to disclose on a timely basis any material changes to the issuers' business activities and business plans.

Recommendations #9 and #15: Access equals delivery model for dissemination of information; expediting SEDAR+

PIAC is generally supportive of allowing the use of electronic or delivery of documents that are required to be published under securities law requirements. We see benefits for both our members and for issuers in facilitating convenient and timely delivery of documents to a wider audience at lower costs. The framework currently contemplated by the CSA is reasonable in that it ensures proper notification to the market that documents are available and provides alternatives for investors who wish to obtain hard copies.¹

In some cases, where immediate shareholder attention to a document or notification is required, the notice-and-access approach set out in National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer and National Instrument 51-102 Continuous Disclosure Obligations is more appropriate. Proxy voting materials would be a prime example.

Recommendation #19 – Improve corporate board diversity

PIAC believes that board members should have the necessary experience, skills, competency, integrity, diversity attributes and overarching commitment to represent the long-term interests of shareholders. PIAC expects boards to adopt diversity policies with specific consideration of gender, race and ethnicity, inclusive of Black and Indigenous persons and People of Colour (BIPOC), to inform their search for highly competent directors. Likewise, boards should ensure their organizations have anti-discrimination policies and practices in place with respect to factors including but not limited to sexual orientation, age, disability, religion and socio-economic status. A diverse board of directors strengthens board performance. Boards should adopt targets and timelines to improve board diversity that specifically considers the representation of underrepresented groups and develop and disclose a system for identifying diverse

^{11 1} https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20200109_51-405_fund-reporting-issuers.htm

candidates. Age and tenure are also relevant factors to ensure a balanced board and to facilitate board refreshment and diversity. PIAC encourages the board of directors and senior/executive management to take intentional steps to promote diversity and inclusion, and to annually report against any goals the board has set for itself in this regard. Investors rely on the timely disclosure of such information when making both voting and investment-making decisions.

As such, PIAC supports the Taskforce's recommendations for enhanced diversity disclosures on an annual basis and to require target-setting by issuers at the board and executive levels. However, PIAC would refrain from prescribing a specific target to issuers in favour of allowing companies to set their own targets which are appropriate for their business. PIAC believes the 5-year time frame proposed is reasonable.

Recommendation #20: Introduce a regulatory framework for proxy advisory firms

Exercising voting rights to ensure effective governance of the companies we hold shares of is an integral part of our investment processes and necessary to fulfilling our fiduciary duties to our plan members. Because PIAC members often hold hundreds or even thousands of different equities, the services of proxy advisors are vital in enabling them to carry out these tasks. Given the important service proxy advisors provide investors, PIAC does have concerns with this recommendation.

It serves PIAC members well to understand the potential conflicts relating to proxy advice that they receive and pay for, and are supportive of robust disclosure of relationships, transactions, or other interests that might result in a conflict between the interests of a proxy advisor and those of shareholders. We do not believe it is necessary to restrict proxy advisors from providing consulting to services to issuers since we have found the disclosures already provided to be adequate and have not encountered significant conflict of interest problems.

With regard to the recommendation to provide issuers with a statutory right to rebut the advice of proxy advisory firms, PIAC has several reasons why we believe it is unnecessary and indeed undesirable to allow for this degree of issuer participation.

One of the primary reasons proxy advisors are used is to provide an analysis of shareholder votes independent from the opinions of issuers' management, which are inherently biased. Issuers already provide their views via proxy statements and other communications from management that are easily accessible should they be needed. Giving companies the opportunity for additional participation in the recommendations of proxy advisors would detract from, rather than contribute to, the objectivity of those recommendations.

The ability of investment analysts to exercise professional independent judgment is a critical principle of the investment community. Investment analysts are not required to provide opportunities for issuers to review and respond to their recommendations to buy, sell, or hold a security because to do so would directly violate an analyst's

independence. We believe this principle holds for proxy advisors as much as it does for other advisors in the investment industry.

Additionally, like most users of proxy voting advice, PIAC members are sophisticated institutional investors who make their own assessments of the utility of proxy recommendations and do not necessarily follow the advice provided. It is our responsibility, acting in the best interests of our pension plan members, to hold proxy advisors accountable for the recommendations we pay them for. Therefore, it is incumbent upon us, rather than issuers, to provide feedback to proxy advisors regarding the quality of their recommendations. Any opportunity given to issuers to provide feedback should be tightly constrained and limited to correcting factual errors rather than to allow for review of and responses to recommendations generally.

Finally, the proposal would significantly lengthen the amount of time taken to finalize recommendations from proxy advisors, consequently reducing the amount of time available for investors to analyze and decide how to exercise votes. Reducing the time available to investors to conduct an analysis of ballot items would negatively impact their ability to effectively apply their rights as shareholders.

It is for these reasons that PIAC strongly urges the Taskforce not to make this recommendation.

Recommendation #23: Require annual advisory vote on executive compensation

PIAC has consistently advocated for regulatory requirements that would have Canadian issuers provide investors with an annual advisory vote on executive compensation and is very supportive of this recommendation by the Taskforce.

PIAC regards the Say on Pay vote as an enormously useful tool for issuers and investors to assess shareholders' acceptance of the corporation's approach to executive compensation, and it offers an important means of communication between shareholders and issuers. We believe Say on Pay aligns with the OSC's mandate to foster fair and efficient capital markets, and its desire to be a modern securities regulator. Globally, Say on Pay is recognized as corporate governance best practice and Canadian investors should be able to benefit from this practice when investing in Canadian issuers. However, Canada remains the only G7 country not to require Say on Pay on the ballot, notwithstanding the recent amendments to the Canada Business Corporations Act (CBCA).

In offering shareholders the option to directly approve or disapprove executive compensation, Say on Pay provides a precise and transparent mechanism for shareholders to communicate their views and concerns, as opposed to the less transparent option of withholding votes for the election of directors who are members of the compensation committee. The level of shareholder support expressed through Say on Pay clearly communicates shareholder views, allowing boards of directors to respond more effectively and proactively to concerns. Say on Pay facilitates informed views regarding executive compensation structure, its quantum, the circumstances under which payments will be made, and the rationale underpinning compensation structure.

Recommendation #24 – Exclusion of Shareholder Proposals

PIAC does not believe that a pursuit of an informal procedure to exclude shareholder proposals in Ontario is necessary and could end up being the source of burden that the OSC wishes to reduce. We find little evidence of the need for a no-action process in Canada since there are very few shareholder proposals filed in Canada as compared with the United States and even fewer instances of companies refusing to accept them. According to SHARE, an organization that maintains a public database of shareholder proposals, only six proposals were filed with OBCA incorporated companies in 2019 and so far in 2020, only three have been filed. In Canada, the average number of proposals per year is about 75. Because we enjoy a culture of shareholder engagement and dialogue in Canada, many proposals are withdrawn after constructive conversation. PIAC feels that introducing a burdensome legal process could jeopardize this.

Recommendation #25: Require enhanced disclosure of material ESG information

PIAC strongly supports the proposal to mandate enhanced disclosure of material ESG information in line with the SASB standards and the TCFD recommendations through regulatory filings. These frameworks provide useful disclosure guidance for comparable and decision-useful information. PIAC believes a phased-in approach such as the one described by Canada's Expert Panel on Sustainable Finance would be appropriate, as would a transitional safe harbour provision to protect against legal liability.

PIAC would like to again thank the Taskforce for this opportunity to contribute our ideas to this important work. Please reach out to me or Susan Golyak, Chair of PIAC's Investor Stewardship Committee if you would like any clarification of these comments.

Yours truly,



Simon Fréchet
Chair