

June 1, 2015

Robert Day
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Ontario Securities Commission
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Dear Mr. Day,

Thank you for the opportunity to comment on the Ontario Securities Commission's (OSC) *2015-16 Draft Statement of Priorities*. We are pleased to see a well-articulated plan for the coming year that includes critical investor priorities as well as prioritizing efficient access to capital for issuers. Fostering fair and efficient capital markets and maintaining confidence of market participants are essential to a sustainable Canadian economy.

The Shareholder Association for Research and Education (SHARE) advises Canadian institutional investors with assets under management of more than \$14 billion, with a particular focus on the environmental, social and governance (ESG) issues that can affect the value of their portfolios and the functioning of capital markets. Since its creation in 2000, SHARE has provided proxy voting and shareholder engagement services as well as education, policy advocacy and practical research on emerging responsible investment issues. Our offices are located in Toronto and Vancouver.

We would like to offer feedback on the following matters:

Women on Boards and in Executive and Senior Management Positions

Among the priorities identified by the OSC for 2015-16 is a continued focus on women on Boards and executive diversity. This is a positive and necessary follow-up to the disclosure requirements introduced last year.

As we commented when this rule was considered, we believe that its scope should be broadened to address other types of diversity as well. We also support a fixed review period of no more than three years and believe progress in implementation should be measured and reported annually.

As this is the first year of disclosure under the new rule, it is appropriate that the OSC study the results and consult with stakeholders through its proposed roundtable. We suggest that, as part of the consultation process, the OSC ask:

- Whether, based on the initial data, particular sectors require additional measures to improve board and executive diversity;
- Whether the OSC should express expectations for performance improvements in year two; and
- whether additional diversity measures should form part of future disclosure requirements.

Instituting Say-on-Pay provisions for all issuers

Consistent with the OSC goal of delivering responsive regulation and “achiev[ing] better corporate decision-making”, we propose that the OSC take steps to develop new regulations requiring issuers to institute an annual shareholder advisory vote on executive compensation (“Say on Pay”). This would be a logical extension of the work begun under OSC Staff Notice 54-701 *Regulatory Developments Regarding Shareholder Democracy Issues*.

This proxy season has clearly indicated the value of Say on Pay votes. As of the date of this letter, a majority of shareholders have used this opportunity to oppose unsatisfactory compensation plans at CIBC, Barrick Gold, and Yamana Gold. Since SHARE assisted with filing of the first shareholder proposals on the subject in 2007, the voluntary uptake of Say on Pay votes by issuers has increased every year, with at least 140 Canadian issuers now holding advisory votes. However many companies still have not instituted advisory votes, nor are all votes held on an annual basis.

Regulators in other jurisdictions, notably the United States, United Kingdom, Australia and Switzerland, require Say on Pay votes for publicly-traded companies, with varying provisions.

We now have several years of experience with firms holding pay votes, making this an appropriate time to draw on our collective experience with the vote at home and abroad to formulate regulations for a mandatory annual advisory vote on executive pay in the Canadian market.

Therefore we propose that the OSC include consultation on the development of mandatory Say on Pay regulations in its *2015-16 Statement of Priorities*.

Environmental, Social and Governance Disclosure by Issuers

As the number of market participants pledging to integrate environmental, social and governance criteria into the selection and ownership of securities increases, the demand

for reliable and consistent information grows. To date, twenty-four Canadian asset owners and 30 Canadian asset managers are among global investors with \$45 trillion (USD) in assets that have endorsed the United Nations-supported Principles for Responsible Investment pledging to apply such criteria. The 2014 European Union directive on non-financial reporting (“Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups”) and CSA Staff Notice 51-333 *Environmental Reporting Guidance* are examples of steps securities commissions can take to increase confidence in environmental and social disclosure in the market. Disclosure of relevant social information is an area of particular interest to many investors, particularly in areas such as health and safety at work, community relations and human rights.

Two initiatives we recommend the OSC include in its 2015-2016 priorities to address this issue are:

- Production of a guidance document for reporting issuers on continuous disclosure requirements related to social considerations; and
- Undertake a study of the application of mandatory environmental, social and governance reporting by reporting issuers.

Expanding investor education to small institutional investors

The OSC goal of delivering strong investor protection includes important commitments to improving investor education. Many program actions and outcomes focus on improving education for retail investors. SHARE’s fifteen-year experience with providing education to trustees of small trusts, foundations, endowments and pension funds leads us to recommend that the OSC consider extending the focus of its activities in this area, including its plan to establish and implement the OSC’s investor education strategy, to target the education needs of small institutional investors, particularly those with trustee boards composed primarily of laypersons.

We propose that the OSC consult with pension, foundation, trustee and investor organizations about needs and opportunities for enhanced education.

Understanding market-level risks from climate change

We support the OSC’s goal of promoting financial stability through effective oversight, and we appreciate the Commission’s acknowledgement of the many challenges and issues that affect the Commission’s work outlined in this year’s *Draft Statement of Priorities*.

One challenge not currently reflected in the *Draft Statement* may have very serious implications for capital markets in Canada, and steps should be taken now to understand and address this challenge. That issue is climate change.

With the Ontario government's recent announcement of its intention to institute a carbon emissions trading program, the issue of climate change and carbon emissions has taken on added importance for issuers listed in Ontario. As the US Securities Exchange Commission noted five years ago, regulatory and other developments have the potential to impact a wide range of financial decisions, with consequent implications for investors in those entities.¹

Notwithstanding the potential impacts of climate change and climate-related regulation on individual issuers, Canadian capital markets as a whole may face risks associated with both potential physical and policy-related changes.

The Bank of England's Financial Policy Committee is currently examining the potential risks to financial stability caused by climate change and fossil-fuel dependence. They are reportedly examining two interrelated risks: physical risks such as weather-related events and transitional risks such as changes to energy pricing.²

Bank of England Governor Mark Carney has publicly raised the question of "carbon bubble" or "stranded assets" risks, i.e. carbon assets that would be "unburnable" if global temperature increases are to be limited to 2 degrees Celsius.³

These risks may be even more acute in Canadian markets, which are highly energy-dependent and overweight in fossil-fuel industry issuers. Many energy companies trading in Canada depend on mobile foreign capital, which means Canadian policy-makers on their own cannot control the potential financial fallout if markets react to climate change regulation. For these reasons, climate change risks may pose a broader market-level risk as well as risks to individual issuers and investors.

We propose that the OSC examine the market-level risks created by climate change scenarios as policy makers act to limit global warming to two degrees Celsius, and develop appropriate regulatory measures to help issuers and investors understand and mitigate these risks.

We also urge the OSC to study adopting greenhouse gas (GHG) emissions disclosure requirements for issuers as part of its 2015-16 priorities.

¹ SEC Guidance 33-9106, p. 5-7

² <http://www.bankofengland.co.uk/publications/Documents/records/fpc/pdf/2015/record1504.pdf>

³ <http://www.parliament.uk/documents/commons-committees/environmental-audit/Letter-from-Mark-Carney-on-Stranded-Assets.pdf>

The UK became the first jurisdiction to require GHG emissions reporting by companies listed on the Main Market at the London Stock Exchange in April 2013. As Deputy Prime Minister Nick Clegg said at the time, “British companies need to reduce their harmful emissions for the benefit of the planet, but many back our plans because being energy efficient makes good business sense too.”

The lessons learned about reporting GHG emissions as a result of the UK disclosure requirement as well as the substantial voluntary experience from CDP (formerly Carbon Disclosure Project) reporting regime provide the OSC with an opportunity to learn from and improve on reporting requirement elsewhere. CDP currently receives GHG emissions and intensity information annually from 109 of the 200 largest TSX-listed companies (by market cap). This is an impressive endeavour, but still leaves a substantial reporting gap for investors.

In addition to market-wide disclosure requirements for all issuers related to GHG emissions, *National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities* could be amended to require oil and gas companies to disclose the carbon content of their reserves, as well as the carbon price forecasts they use in determining capital expenditure decisions. Given that carbon pricing is a reality in many jurisdictions, information about the potential carbon risks already present in the company’s valuation as well as an energy company’s assumptions about carbon pricing both provide critical information for investors about the company’s valuation, forecasting and management of carbon risks.

The specific mechanisms, instruments, inclusions/exclusions and design of disclosure requirements should be the subject of additional consultations and discussion initiated by the OSC, and therefore we will not propose additional details here.

We recommend that climate risks be included as a distinct item in the OSC’s *2015-16 Statement of Priorities* and that the appropriate plan and resources be allocated to deliver relevant regulatory proposals during the 2015-16 fiscal year.

If you have any questions or would like to discuss our recommendations, please feel free to contact me at any time. I can be reached by phone at 604-695-2020 or by email at pchapman@share.ca.

Sincerely,


Peter Chapman
Executive Director