

May 8, 2017

Ms. Maureen Jensen, Chair  
Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

Dear Ms. Jensen:

Thank you for the opportunity to comment on the Ontario Securities Commission's (OSC) *2017-18 Draft Statement of Priorities*. We are pleased to see a well-articulated plan for the coming year which includes critical investor priorities as well as prioritizing efficient access to capital for issuers.

The Shareholder Association for Research and Education (SHARE) is a Canadian leader in responsible investment services, research and education for institutional investors. Since its creation in 2000, SHARE has carried out this mandate by providing active ownership services, including proxy voting and engagement, education, policy advocacy, and practical research on issues related to responsible investment. Our clients include pension funds, mutual funds, foundations, faith-based organizations and asset managers across Canada with more than \$14 billion in assets under management.

We would like to offer the following comments and recommendations regarding the draft *Statement of Priorities*

**Mandatory annual shareholder advisory vote on executive compensation**

We once again propose that the Ontario Securities Commission take the lead in developing a new regulation requiring issuers to institute an annual shareholder advisory vote on executive compensation. Specifically, we ask that consultation on a new rule be included in the OSC's Final *2017-18 Statement of Priorities*.

Institutional shareholders have made adoption of "Say on Pay" votes a priority in discussions with issuers, including through the filing of shareholder resolutions asking the company to voluntarily adopt an annual "Say on Pay" vote. Shareholders have also made effective use of the vote where available to improve communication between investors and issuers on appropriate incentives and priorities for the company and its executive leadership. Adoption of advisory "Say on Pay" votes is mandatory in the UK and the USA.

While we would prefer coordinated action between all Canadian Securities Administrators (CSA) on this issue, if coordinated action is not possible at this moment, the OSC should

advance the dialogue between CSA colleagues, issuers and investors by commencing a consultation process as one of its Priorities in the coming year.

### **Regulatory burden**

We will be responding separately to the CSA's Consultation Paper 51-404 regarding investor concerns with reducing any regulatory burden while ensuring investor protection and systemic risk oversight.

### **Systemic risk and financial stability**

We are pleased that the OSC will continue to monitor efforts by financial system regulators to address emerging systemic risks, including economic, environmental and social sustainability risks such as climate change.

We also commend the OSC and CSA for their current effort to consult capital markets participants to review the disclosure of risks and financial impacts associated with climate change. While we intend to comment more fully on this matter as part of that consultation process, we believe that at minimum it is time for the OSC and CSA to update *CSA Staff Notice 51-333: Environmental Reporting Guidance* and *National Instrument 51-102: Continuous Disclosure Obligations* to incorporate guidance and regulations regarding environmental, social and governance (ESG) disclosures.

Institutional investors face their own due diligence challenges as outlined in the recent publication of the OECD's *Guidelines for Responsible Business Conduct for Institutional Investors*.<sup>1</sup> The OECD considers a relationship between an investor and investee company including a minority shareholding to be a "business relationship" under its *Guidelines*, and therefore "investors are expected to consider [responsible business conduct] risks throughout their investment process and to use their so-called "leverage" with companies they invest in to influence those investee companies to prevent or mitigate adverse impacts."

In order to meet this responsibility, investors need access to reliable and timely disclosures from publicly-traded companies on environmental and social impacts. Although the specific disclosures most salient to investors will vary by sector, the OSC can act to improve issuer understanding of the salience of ESG matters and their importance for investors, and can encourage the use of investor-friendly disclosure standards such as those promoted by the Sustainability Accounting Standards Board (SASB)<sup>2</sup>

Most ESG matters do not represent systemic risks, although this should not diminish their importance for either investors or regulators. Climate change and growing income inequality,

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<sup>1</sup> <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

<sup>2</sup> [www.sasb.org](http://www.sasb.org)

however, do have the capacity to negatively affect capital markets and the economy as a whole in ways that are not attributable to a single asset or investment, i.e. are “un-hedgeable”.

Most importantly, the implications of climate change on asset valuations are unknown, may be considerable, and may cascade across different asset classes. Therefore there is a role for regulators in both identifying the potential risks involved and improving issuer disclosures to better allow investors to incorporate these risks in their decision-making.

The implications of income inequality on capital markets may be reflected in terms of economic growth or stagnation, business opportunities and tax policies that may affect markets. While these impacts are still being analyzed, capital markets regulators and participants may contribute to addressing inequality and maintaining healthy markets through their decision-making.

For regulators, there may be opportunities in expanding disclosures by issuers as has been done recently in the UK (where new pay transparency regulations require companies with more than 250 employees to report on gender pay gaps across employment groups beginning in 2018 and publish this information on their websites), in Australia (where companies with more than 100 employees are required to conduct annual gender gap salary audits and report results to a federal agency since 2012) and in the USA (where the SEC will require a public company to disclose the ratio of the compensation of its chief executive officer (CEO) to the median compensation of its employees). In Ontario, the government’s Gender Wage Gap Strategy Steering Committee’s final report recommended provincial policy actions to address the gender wage gap including pay transparency policies and gender workplace analysis tools.

Some of these are developments within corporate law rather than securities regulation, but all bear consideration amongst a range of policy tools to increase investor awareness of the potential impacts of inequality on workforce recruitment, development and retention as well as long-term portfolio impacts of growing inequality. We recommend that OSC staff be instructed to study international securities and corporate law developments related to income inequality (including gender pay gap rules) to determine which, if any, are relevant to Canadian markets.

### **Delivering responsive regulation: women on boards and in executive and senior management positions**

We support the OSC’s intent to conduct targeted disclosure reviews to monitor the progress on corporate governance changes related to disclosure requirements for Women on Boards and in executive officer positions and determine the impact of those changes in our markets.

Since the adoption of “comply or explain” rules by the OSC and other securities regulators, progress on achieving greater diversity on boards and in executive management has been

slower than we may have hoped for. While we continue to hold out hope that the combination of regulatory guidance and shareholder engagement may improve that picture, we believe the OSC should signal its willingness to consider more stringent measures once the “comply or explain” regulations hit the three-year mark.

The Draft Statement of Priorities does say that the OSC will assess the effectiveness of disclosure and whether other regulatory action is needed. We suggest that, as part of the final Statement of Priorities, the OSC provide additional detail on this matter, for instance by suggesting that “other regulatory action” might include requirements to disclose board diversity targets. This may help signal to issuers that the current rate of change is insufficient and that in the absence of more timely action the regulator is willing to consider other actions.

We also urge the OSC to consider broadening the terms of its current board diversity requirements to ask issuers to indicate whether the board has adopted other diversity criteria, such as Aboriginal heritage.

Also, as noted above, we favour disclosure of gender pay gaps at companies over a certain threshold to assist in identifying potential mismatches in compensation practices that undermine talent development and retention, and contribute to gender inequality.

#### **Innovation, accountability and efficiency**

Although the current SEDAR system allows filings in XML format for XBRL filings and XLSX format for certain exempt market filings, the vast majority of filings are in PDF format and unsearchable. While this was decided earlier to balance the needs of issuers and the public, it is our view that technological changes (since the decision to use PDF formats was made) should allow for efficient disclosures by issuers in machine-readable and consistent formats that make usage of the information easier for investors. We urge the OSC to review the SEDAR system in light of technological advances and, if appropriate, revise National Instrument 13-101 and the SEDAR Filer Manual to make data more easily accessible for investors.

If you have any questions or would like to discuss these proposals further, please feel free to contact me at any time. I can be reached at 604-695-2020 or by email at [pchapman@share.ca](mailto:pchapman@share.ca).

Sincerely,



Peter Chapman  
Executive Director

Shareholder Association for Research & Education