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VIA EMAIL: **CMM.Taskforce@ontario.ca**

September 04, 2020

Mr. Walied Soliman
Chair, Capital Markets Modernization Taskforce

Dear Mr. Soliman,

RE: CONSULTATION – MODERNIZING ONTARIO'S CAPITAL MARKETS

British Columbia Investment Management Corporation (BCI) is an investment manager with over CAD $170 billion in assets under management, and one of the largest institutional investors in Canada. Our investment activities help finance the pensions of approximately 500,000 people in our province, including university and college instructors, teachers, health care workers, firefighters, police officers, municipal and other public sector workers. On behalf of these pension beneficiaries, we provide long term capital to companies around the world that we believe will deliver strong and stable financial returns.

BCI welcomes the opportunity to provide feedback to Ontario's Capital Markets Modernization Taskforce ("the Taskforce"). We appreciate the effort that has already gone into putting together the draft policy proposals which cover a broad set of issues and concerns. We believe that this is a valuable exercise that ultimately will serve to reduce regulatory burden and benefit Ontario's capital markets. We are pleased to provide our views as an institutional investor on certain proposals that we feel have the largest impact on institutional investors like ourselves.

Recommendation #5 - Mandate that securities issued by a reporting issuer using the accredited investor prospectus exemption should be subject to only a seasoning period

BCI is supportive of eliminating the four-month hold period currently imposed on securities issued under the accredited investor prospectus exemption and agrees that due to the sophistication and knowledge of accredited investors, including pension funds, it is an unnecessary rule that impacts market liquidity.

Recommendation #6 – Streamlining the timing of disclosure

The core benefits of quarterly reporting for reporting issuers is in providing their investors with timely disclosure of key data required for ongoing investment analysis, as well as the confidence-building such transparency provides for investors, suppliers and regulators.

Specifically, investment analysis requires frequent financial and operational disclosures as they enable systematic and timely tracking of emerging trends in a company's operations. Without a quarterly pace, nuanced trend analysis of, for example, seasonal effects in a business becomes difficult. Quarterly public reporting provides transparency and puts all investors on equal footing.

We acknowledge that one commonly cited problem, especially for smaller issuers, is the cost of maintaining and providing quarterly reporting; however, we believe that such a cost is the price for access to the capital markets.

While some point to quarterly reporting as fostering a short-term focus, we would see incentive structures as having more influence over management's behaviour when it comes to time horizons. As a result, we see an opportunity for the OSC to provide a feedback mechanism between investors and issuers on whether their compensation plans are appropriately balancing short- and long-term objectives.

By analyzing compensation practices and engaging with issuers, we have learned how compensation plans have become powerful tools in steering management's focus. We believe annual investor feedback on an issuer's executive compensation plan provides a concrete and effective mechanism to ensure compensation is designed to balance management's focus between addressing short-term demands and providing long-term value creation. Hence, we strongly encourage the adoption of annual advisory votes on executive compensation modeled on those used in many markets around the world (see recommendation #23).

Smaller reporting issuers, in less stable sectors, need to sustain quarterly reporting to maintain confidence among investors. We are concerned that a move to semi-annual reporting could compromise transparency in the market as well as potentially create an information deficit for average investors.

Recommendation #8: Greater flexibility for communicating potential prospective offering

BCI believes that there might be benefits to market participants of an expanded "testing the waters" exemption for prospectus filings, as has been recently adopted in the United States, however the regulator should be cautious about rule changes that could negatively impact current market practices. It is paramount to ensure that issuers stay cognizant of their obligations to not disclose insider information. Confidentiality and standstill agreements could be used when information is questionable. We note that the OSC disclosed in their report "Reducing Regulatory Burden in Ontario's Capital Markets"[1] published in November 2019 that they had received recommendations for further changes to current prospectus rules including this one contemplated by the Taskforce. As the OSC has signalled that this is a consideration in their ongoing work, among other suggestions, BCI expects the regulator will revisit this in due course.

[1] https://www.osc.gov.on.ca/documents/en/20191119_reducing-regulatory-burden-in-ontario-capital-markets.pdf

Recommendation #9 – Access equals delivery model for dissemination of information

BCI is supportive of adopting full use of electronic or digital delivery of documents that are published and mandated under securities law requirements. Electronic delivery of documents provides benefits to investors and issuers in facilitating convenient and timely delivery of documents to a wider audience with lower costs.

The Canadian Securities Administrators ("CSA") are currently contemplating this as described in their consultation paper published in January of this year. BCI supports the notion that documents issuers are required to deliver to investors could be considered delivered when "a) the document has been filed on SEDAR; (b) the document has been posted on the issuer's website; and (c) the issuer has issued a news release (filed on SEDAR and posted on its website) indicating that the document is available electronically on SEDAR and the issuer's website and that a paper copy can be obtained from the issuer upon request."[2]

However, BCI notes that there are additional considerations for documents that require immediate shareholder attention and participation, such as proxy-related materials, take-over bid and issuer bid circulars. For these, 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.

BCI does wish to stress that this creates an urgency to implement recommendation #15, expediting the SEDAR+ project.

Recommendation #10 – Consolidating reporting and regulatory requirements

BCI is supportive of eliminating duplicative reporting. Information that is repeated in several regulatory submissions is not useful to issuers or investors. Examples of this would include boilerplate risk factors that are repeated in several filings as well as governance-related information that is in both the Annual Information Form and the Management Information Circular. This proposal has the potential to both reduce compliance costs while protecting investors.

Recommendation #13 – Prohibit short-selling in connection with prospectus offerings and private placements

BCI is generally supportive of the proposal to adopt a rule that would curb short selling in connection with public offerings and private placements. Short selling is not problematic in and of itself, but when market participants can aggressively short a security prior to the offering while also benefiting from acquiring a position, it can be viewed as manipulation of the market. BCI prefers the simple requirement laid out by the Taskforce that would prevent those who previously sold short securities offered under a prospectus or private placement from acquiring securities.

[2] https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20200109_51-405_fund-reporting-issuers.htm

Recommendation #15 – Expediting the SEDAR+ project

BCI is very supportive of this proposal as an attempt to modernize the filing and reporting systems has been in progress for almost five years and is long overdue. The current system comprised of multiple platforms with minimal functionality is in serious need of an overhaul to remain useful for investors. Further, if the Taskforce aspires to encourage an access equals delivery model for the distribution of required documents, an enhanced SEDAR platform is absolutely crucial.

Recommendation #19 – Improve corporate board diversity

BCI supports the Taskforce's proposal to recommend enhanced diversity disclosure from issuers as well as the proposals to require target-setting by issuers at the board and executive levels. The Taskforce can leverage the current disclosure requirements prescribed by the OSC and the Canada Business Corporation Act ("CBCA").

BCI has provided long standing support to voluntary, market-based efforts to address the lack of diversity on corporate boards in Canada. However, in 2013, after observing a lack of real progress resulting from voluntary efforts, BCI started advocating for the establishment of gender diversity targets by issuers. BCI is a member of the 30% Club of Canada and chairs the investor group of this campaign (**link to Statement of Intent**). Investors supporting this initiative supported a target of 30% by 2022 in relation to gender diversity and committed to engaging corporate issuers on this topic and considering gender diversity in their proxy voting activities

A weakness of the current disclosure regime regarding diversity is that it does not mandate that issuers have a diversity policy or related targets. Therefore, we are supportive of requiring issuers to have a diversity policy and accompanying targets appropriate for their business, combined with a term limit to encourage board refreshment. Ideally, there will be flexibility around target-setting as some TSX-listed companies are already at 40 percent females on the board while others are at less than 10 percent. With respect to gender diversity, rather than setting a common target for all companies, we suggest the Taskforce recommend that companies be required to set their own target. The timeline to achieve the target also must have some flexibility but should be no longer than five years.

With regard to broader aspects of diversity, BCI supports the Taskforce's recommendation that issuers also be required to set and disclose time-bound targets for enhancing representation of persons who are Black, Indigenous and persons of colour (BIPOC). Issuers should be afforded the flexibility to adopt targets of their own choosing and to assess the best strategies and approaches for achieving those goals. Like in the case of gender diversity, BCI would encourage the OSC to review progress at the end of a 5-year period to determine if minimum targets are needed.

With respect to all aspects of diversity, BCI believes that companies should be encouraged to adopt interim targets to facilitate momentum and monitor progress.

BCI also supports the Taskforce's proposal regarding term limits. BCI agrees that board renewal must be encouraged to allow for increased diversity but to also bring fresh perspectives and sustain independence from management. BCI's proxy voting policy considers average tenure when making voting decisions. When a board's average tenure exceeds ten years, we scrutinize the longer-tenured directors and often vote against ones that occupy influential positions (**link to guidelines**). Average tenure is another approach that could be supported by the Taskforce to facilitate orderly yet appropriate board refreshment.

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

It is important to BCI that the Taskforce fully understand and appreciate why and how we use proxy advisory firms. Without the efficiency that the research providers create, institutional investors like ourselves would not be able to effectively research and vote thousands of proxies each year. The independence of the research that we purchase is paramount. Our investment and stewardship teams have ample opportunity to engage directly with company management and directors over the course of the year to understand how they view the business and how they are positioned to grow long term shareholder value. The Annual General Meeting is our opportunity to think critically about the composition of the board, how it is structured, and how management is compensated. The issuers' views and recommendations regarding these topics are provided in the proxy statement and other communications that are easily accessible.

The independent research provided by proxy advisory firms supplements our own research and understanding of a company and allows us to make informed decisions regarding our votes. It is our duty to hold the proxy advisors accountable for the quality of the research that we pay for. Allowing issuers the statutory right to have a rebuttal included would compromise this independence and subject proxy voting advisors to additional pressure from issuers. Any involvement of the issuer in this research should be limited to correcting factual errors only.

It does not seem appropriate to BCI that the government mandate a private business to include commentary from another private business in its product that is paid for by institutional investors. This essentially is asking a proxy advisory business to carry out the responsibilities of an issuer's investor relations function.

BCI receives communications from issuers in response to reports issued by proxy advisory firms and we have no issues incorporating these into our analysis and taking into consideration factual errors if they exist. Requiring proxy voting advisors to incorporate a response from issuers would allow issuers to avoid building strong investor relations programs and relationships with their top shareholders.

Regarding conflicts of interest, BCI shares the Taskforce's concern about conflicts and we can see value in making disclosures consistent in this regard. While we are generally comfortable with the current level of disclosure provided by proxy advisory firms, we are not opposed to having material relationships disclosed within the reports that we consume. This would be comparable to those we see in sell-side research reports that identify relationships with business units outside of capital markets research and is

justifiable. Going as far as restricting conflicts of interest, would be unusual. Conflicts of interest exist in many places in the capital markets and they are generally dealt with through proper disclosure rather than an outright restriction on certain services.

Recommendation #21 and #22 – Ownership Transparency

BCI does not support the Taskforce's recommendations to decrease the ownership threshold for early warning reporting disclosure or to require institutional investors to disclose their holdings on a quarterly basis. As investors in the United States, BCI files US SEC Form 13F as required. We are of the belief that this level of public disclosure of our securities holdings is not necessary and feel that our voluntary annual disclosure is sufficient. We are concerned that public disclosure of this nature is prone to abuse by certain market participants and news agencies. To increase ownership transparency, BCI prefers consideration of recommendation #30 regarding NOBO/OBO status.

Recommendation #23 – Require annual advisory vote on compensation

BCI has been a long-time advocate for this proposal so we would very much like to see this become a requirement for TSX-listed issuers. A large majority of the TSX Composite already includes an advisory vote on compensation on its ballot each year so this would not be a significant regulatory burden. Even the companies that have not voluntarily adopted the practice, already publish a Compensation Discussion & Analysis, so this proposal will have little impact overall on reporting issuers.

Shareholder votes on compensation are mandatory in various countries around the world, including the USA, Australia, the United Kingdom, France, Germany, the Netherlands and Belgium[3]. In Canada, the *Canada Business Corporations Act* (CBCA) was amended in 2019 to require mandatory annual advisory compensation votes for companies incorporated under that statute. However, investors are still awaiting regulations to implement this amendment. Canada continues to be an outlier in developed countries in not providing shareholders with a regulated avenue to routinely express their views on a company's approach to compensation. Notwithstanding the recent development on the CBCA, the large number of Canadian companies not incorporated under the CBCA will still not be required to hold such votes once implemented.

Recommendation #24 – Exclusion of Shareholder Proposals

The pursuit of an informal procedure to exclude shareholder proposals in Ontario is unnecessary and would only add to the regulatory burden that the OSC is trying to reduce. While this mechanism exists in the United States, the number of shareholder proposals received by companies in that jurisdiction is much higher than for Ontario companies. According to SHARE, an organization that maintains a public database of proposals, only three proposals were filed with companies under the jurisdiction of the

[3]Thomas, Randall S. and Van der Elst, Christoph, Say on Pay Around the World (June 1, 2015). Vanderbilt Law and Economics Research Paper 14-10, Washington University Law Review, Vol. 92, No. 653, 2015, Available at SSRN: **https://ssrn.com/abstract=2401761** or **http://dx.doi.org/10.2139/ssrn.2401761**

Ontario Business Corporations Act (OBCA) to date in 2020. In 2019, there were only six. These very low numbers illustrate the lack of necessity for a no-action type process in Ontario.

Furthermore, based on our interactions with companies and other investors in the U.S., the no-action process has become expensive and time-consuming for all parties. Companies and shareholders spend time and resources seeking internal and external legal advice and the regulator has become completely overwhelmed. This is time better spent engaging with one another on substantive matters rather than on an administrative process. If the Taskforce wants to encourage constructive dialogue between issuers and shareholders, the current system does a better job as the focus of any shareholder proposal is on the substantive matters being raised. Any attempt to replicate the no action process in the U.S. is not necessary based on the minimal activity currently taking place under the OBCA and would in fact, work against the principle of constructive engagement.

While the consultation report cites a benefit of this proposal being 'reducing litigation in court', we are unaware of any such burden on the courts currently. Therefore, we encourage the Taskforce not to pursue this proposal.

Recommendation #25 – Require enhanced disclosure of material ESG information

BCI strongly supports the proposal to mandate enhanced disclosure of material ESG information in line with both SASB and TCFD recommendations through the regulatory filing requirements of the OSC. BCI has been advocating for and explaining why investors need consistent and comparable data and metrics for material ESG factors for many years. Globally, we are seeing an increase in regulatory requirements for standardized ESG reporting, particularly in Europe. There is however, no such requirement currently in Canada, and the result is a lack of standardized, decision-useful reporting. We believe that standardized ESG reporting will be important for Canada to remain an attractive market for global investors. The SASB and TCFD frameworks have global support and recognition and meet investor needs for concise, standardized metrics on material issues.

SASB[4] has developed 77 industry-specific standards that outline and provide guidance for each industry on the minimum set of likely financially-material sustainability topics and metrics that companies ought to regularly disclose. Their rapid and global adoption is due in part to their emphasis on financial materiality and industry-specific information related to risks and opportunities most likely to affect a company's financial condition (*i.e.*, its balance sheet), operating performance (*i.e.*, its income statement), or risk profile (*i.e.*, its market valuation and costs of capital) in the near, medium or long term. The SASB framework also allows for the issuer to determine the material industry-specific metrics, given its unique circumstances. This is why we are very supportive of the recommendation to align mandated disclosure of material ESG information with the SASB framework.

[4] The SASB standards were released in 2018 following six years of rigorous research and consultation with investors, companies and subject matter experts (**https://www.sasb.org/standards-overview/**)

The TCFD framework is distinct in how it focuses on climate-related risks and opportunities. This is in part because climate-related risk is distinct from most ESG risks, as it has been deemed a systemic risk to the financial system, and therefore requires a different lens to guide disclosure. Many investors and companies draw on the TCFD to inform their climate-related risk oversight, planning and disclosures. Most, if not all, major mandatory or voluntary corporate ESG disclosure frameworks have incorporated the TCFD[5] and from 2020 onward, annual TCFD-based reporting will be mandatory for all PRI signatories.[6]

It is for these reasons that BCI believes that mandatory ESG disclosure should be aligned with the SASB standards AND the TCFD recommendations. These frameworks are aligned with each other and should be viewed as complementary rather than mutually exclusive. However, following these frameworks should not absolve a company from the responsibility in identifying their material risks and reporting against them.

BCI believes that ESG disclosure should be mandated for all TSX Composite issuers, as each company, regardless of size, faces ESG risks that are material to their business. Further, following the SASB standards focuses the firms' efforts on only those ESG issues that are material. BCI is comfortable with a phased-in approach that would have issuers review their internal data against the SASB framework in the first year, building toward full disclosure by year three. We also believe it is acceptable to focus on certain TCFD recommendations such as Governance, Risk Management and Metrics and Targets from the outset and to work toward adding Strategy in year three allowing for more time to address recommendations such as scenario analysis. BCI does not believe that this will be overly burdensome for issuers as research shows that approximately 58 percent of TSX Composite issuers have already published a sustainability report, while 89 percent are providing ESG information in some form to the market.[7] Additionally, the use of the aforementioned frameworks is increasing. The proportion of constituents aligning to SASB has risen to 36% and those aligning to TCFD has increased to 30% according to the same source.

Recommendation #26 – Require the use of a universal ballot for contested meetings

BCI believes that the use of a universal ballot would have benefits for investors. In contested meetings, our preference is for a universal ballot in all cases so that shareholders can vote for their preferred nominees on either management's or the dissident's slate. This approach is preferable to having to choose one ballot over the other, rather than vote on the composition of the board as a whole.

[5] See for example:
https://www.tcfdhub.org/resource/?search_keyword=&order=ASC&orderby=relevance&resource_type%5B%5D=framework-standard&resource_type%5B%5D=guidance-tool&resource_type%5B%5D=legislation-regulation

[6] https://www.unpri.org/news-and-press/tcfd-based-reporting-to-become-mandatory-for-pri-signatories-in-2020/4116.article?adredir=1

[7] "Millani's Annual ESG Disclosure Study: A Canadian Perspective" published September 2020 by Millani

Recommendation #29 – Introduce rules to prevent over-voting

BCI supports the proposals to introduce rules to prevent over-voting in the proxy voting system. The options provided simplify codify existing best practices already outlined by the Canadian Securities Administrators (CSA) so should not be a burden to market participants. Overvoting is just one problem in the complicated proxy voting system that requires reform.

Recommendation #30 – Eliminate the NOBO and OBO status

BCI is supportive of the Taskforce's recommendation to eliminate the non-objecting beneficial owner (NOBO) and objecting beneficial owner (OBO) status to facilitate increased ownership transparency, with a few provisos. It is important to us that disclosure remained delayed by 30-90 days and that it is not publicly available. We remain concerned that the holdings information of institutional investors can be subject to abuses by certain market participants and news agencies.

Recommendations in Part 2.6 – Modernizing Enforcement and Enhancing Investor Protection

BCI is generally supportive of the proposals in Part 2.6 to give the OSC broader enforcement powers and to provide increased procedural fairness. Together, the proposals may increase the regulator's abilities and find efficiencies in their investigations addressing a perceived weakness of Canada's securities regulators.

Conclusion

BCI would like to thank the Taskforce for this opportunity to contribute to an important evolution of a market in a significant jurisdiction in Canada. The work of the Taskforce will have broad implications for the competitiveness of capital markets so we thank all of the individuals who have contributed to this work. Please reach out to Jennifer Coulson, Vice President ESG at **Jennifer.coulson@bci.ca** if you require clarification on any of the above comments.

Sincerely,

Daniel Garant
Executive Vice President & Global Head
Public Markets

cc Jennifer Coulson, VP, ESG