Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

September 7, 2020

Taskforce to Review Capital Markets, Government of Ontario
E-mail: CMM.Taskforce@ontario.ca

Dear Members of the Capital Markets Modernization Taskforce,

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments on the Ontario Securities Act. CIRI membership represents over 230 non-investment fund reporting issuers with a combined market capitalization of $1.9 trillion. More information about CIRI is provided in Appendix 1.

CIRI welcomes the opportunity to provide its comments on the Consultation Report on the Ontario Securities Act issued by the Capital Markets Modernization Taskforce. We strongly support this initiative and congratulate the Government of Ontario and the Taskforce for putting forward such a comprehensive report in an effort to transform the regulatory landscape.

While we have reviewed the entire Consultation Report, we have chosen to comment on the proposals that have the greatest impact on issuers and their investor relations professionals. For clarity and ease of review we have included the Taskforce Discussion related to each proposal that we address prior to providing our commentary for that proposal.

2.2 Regulation as a Competitive Advantage

6. Streamlining the timing of disclosure (e.g., semi-annual reporting)

To minimize regulatory burden, the Taskforce is considering changing the requirement for quarterly financial statements to allow for an option for issuers to file semi-annual reporting.

Based on a survey conducted with members, CIRI and the majority of survey respondents (74%) agree that reporting semi-annually instead of quarterly should be an option available to all issuers. This would allow management to determine whether semi-annual reporting was appropriate for their business, taking into account their global peers' reporting frequency. Semi-annual reporting would allow management to focus more resources on the business by eliminating the effort and cost involved in preparing quarterly reports. This also allows issuers to focus increasingly on long-term strategy and performance rather than allocating scarce resources to reporting of short-term results.

Short-termism, cited as an issue by Focusing Capital on the Long Term (FCLT) Global among others, found that 61% of executives and directors say that they would cut discretionary spending to avoid risking an earnings miss, and a further 47% would delay starting a new project in such a situation, even if doing so led to a potential sacrifice in value.[1] Moving to semi-annual reporting would free up more issuer resources, time and capital, to deliver sustainable value creation for shareholders over the longer term.

Semi-annual reporting has existed or been adopted successfully in a number of other jurisdictions such as Australia, Germany and the UK and they should be looked at as examples.

[1] *Finally, Evidence That Managing for the Long Term Pays Off*, Dominic Barton, James Manyika and Sarah Keohane Williamson

To read more on CIRI's position on semi-annual reporting, including data from other countries who have semi-annual reporting in place, refer to CIRI's submission on CSA Consultation Paper 51-404 – *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

7. Introduce an alternative offering model for reporting issuers

The Taskforce proposes introducing an alternative offering model prospectus exemption for all reporting issuers, with securities listed on an exchange that are in full compliance with their continuous disclosure requirements, to offer freely tradeable securities to the public.

The exemption would include conditions such as the issuer must have been a reporting issuer for 12 months; and be up to date with its continuous disclosure and not be in default; securities offered under this prospectus exemption must be of a class that is listed on an exchange; the offering must be subject to an annual maximum; and issuers must file a short disclosure document with the OSC to update the continuous disclosure record for recent events (including information regarding the use of proceeds) and certify its accuracy. Both the disclosure document and certificate would be required to be filed on System for Electronic Document Analysis and Retrieval (SEDAR).

This exemption allows issuers to raise capital based on their continuous disclosure record and a short offering document, rather than a prospectus filing. Investors would assume the same level of risk as purchases of the same securities in the secondary market. The civil and statutory protections associated with prospectuses would not be available to investors under this model.

However, because of the maximum limit, significant transactions will continue to require a prospectus.

CIRI is supportive of introducing an alternative offering model prospectus exemption and further agrees that this exemption should be available to all qualified reporting issuers. However, CIRI believes that this proposal is significantly more relevant and therefore more important for smaller reporting issuers where the ongoing need for frequent infusions of capital is often a hallmark of their growth.

The proposed conditions that the issuer would be required to meet in order to qualify for the exemption are reasonable and provide significant protection for existing and new investors. The condition regarding an annual maximum offering amount is appropriate but the amount of that maximum could perhaps be established in categories based on a reasonable dollar value or a variable such as percentage of market capitalization. Clearly transactions above the defined annual maximum would best be offered under a prospectus as stated in the proposal.

8. Introduce greater flexibility to permit reporting issuers, and their registered advisors, to gauge interest from institutional investors for participation in a potential prospectus offering prior to filing a preliminary prospectus

To facilitate the greater use of the prospectus system, the Taskforce is proposing liberalizing the ability for reporting issuers to pre-market transactions to institutional accredited investors prior to the filing of a preliminary prospectus. The Taskforce believes that a greater ability to communicate with potential investors to gauge the demand for a public offering would minimize the risk of failed transactions. The greater flexibility should be accompanied by increased monitoring and compliance examinations by regulators of the trading by those who have advance information concerning an offering in order to deter insider trading and tipping. The Taskforce does not propose to make any changes to the bought deal exemption.

CIRI is generally in agreement with permitting reporting issuers, and their registered advisors, to engage in the pre-marketing of a potential prospectus offering in advance of filing a preliminary prospectus. The ability to communicate in advance with institutional accredited investors will clearly impact the success rate for prospectus offerings. This proposed revision would particularly impact smaller reporting issuers who may, through pre-marketing communications, be able to determine if there is a significant probability for a transaction failure prior to the costly prospectus process.

Key feedback from potential professional investors in advance of a prospectus offering may also afford reporting issuers the opportunity to not only 'test the waters' but also to refine the terms and conditions of the offering at the prospectus drafting stage to better suit current market conditions as well as the perceived needs of potential investors.

Clearly there is a need to ensure appropriate monitoring and compliance examinations of the trading patterns of all market participants who have access to confidential advance information regarding a potential offering in order to detect and deter insider trading and tipping, activities which could potentially impact both the impending transaction as well as the market value of the issuer involved.

9. Transitioning towards an access equals delivery model of dissemination of information in the capital markets, and digitization of capital markets

The Taskforce supports adopting full use of electronic or digital delivery in relation to documents mandated under securities law requirements (i.e., access equals delivery model) and reducing duplicative and unnecessary regulatory burden.

The Taskforce suggests that an access equals delivery model could be used for the delivery of documents, including: a prospectus under prospectus offerings by reporting issuers, annual and interim financial statements and related Management Discussion and Analysis (MD&A) of reporting issuers, and the management report of fund performance (MRFP).

Earlier this year, CIRI expressed support for the access equals delivery model. It advances the Notice and Access procedures adopted in 2013 that, while valuable, are complicated and somewhat restrictive to implement.

Under access equals delivery, the Notice and Access card mailing to all shareholders would be replaced by notification through a news release and posting of materials to SEDAR and the issuer's website. This notification should be done as a one-time verification for all materials, after which the shareholder should monitor the issuer's website or SEDAR filings. This simplifies procedures significantly and reduces printing and mailing costs substantially. In addition, this e-delivery approach is more sustainable and eco-friendlier.

From the investor perspective, access equals delivery would allow shareholders to access materials more quickly. With internet usage in Canada being extremely high[2], we do not believe that moving to this delivery model will negatively impact shareholders. This has been demonstrated in other jurisdictions that have successfully adopted a similar approach despite having estimated lower internet usage.

We believe that one fiscal quarter would allow sufficient time for issuers and investors to adjust to this new process. This transition could take place one full quarter after the publishing of the Taskforce's final report.

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[2] *"In 2018, the share of Canadians aged 15 and older who used the Internet was 91%, with more seniors reporting Internet use (71%). Results from the previous survey cycle indicated that 83% of Canadians had used the Internet in 2012, with the proportion of seniors online at 48%. Overall, 94% of Canadians had home Internet access.",* https://www150.statcan.gc.ca/n1/daily-quotidien/191029/dq191029a-eng.htm

To further support this initiative, the SEDAR replacement project should be given higher priority to make it easier for investors to access issuer materials in a central location rather than on multiple issuer websites.

To read more on CIRI's position on access equals delivery, refer to CIRI's submission on CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*.

10. Consolidating reporting and regulatory requirements

The Taskforce supports reducing regulatory burden for companies' reporting requirements to reduce compliance costs where possible, while maintaining investor protection and an appropriate level of disclosure. The Taskforce is considering streamlined reporting and regulatory requirements, including but not limited to:

a. *Combining the form requirements for the Annual Information Form (AIF), Management's Discussion & Analysis (MD&A) and financial statements*
b. *Simplifying the content of the Business Acquisition Report or revising the significance tests so that BAR requirements apply to fewer significant acquisitions*

CIRI believes in high quality reporting and feels that duplicative and unnecessary reporting requirements contribute to lengthy, less meaningful disclosure. The emphasis should be on the quality of reporting, not the quantity, and how good disclosure can contribute to efficient and transparent capital markets. A reduction in reporting requirements, particularly moving from interim reporting to semi-annual reporting, moves markets towards a longer-term view, one that allows management to focus on delivering sustainable value creation for investors over the longer term.

CIRI supports reducing the volume of information required in annual and interim filings to focus on key information that the reporting issuer's investors and analysts use and need. Specifically, CIRI is in favour of removing the detailed discussion of prior period results from the MD&A given that this information is readily available in the MD&A for the prior period. This view is supported by CIRI survey respondents with the majority (67%) indicating that detailed discussion of the prior eight quarters should be eliminated from interim reporting. CIRI realizes that this detailed discussion would however be warranted in the case of a material change.

To further reduce the regulatory burden on issuers, CIRI survey respondents strongly agreed (91%) that the MD&A, AIF and financial statements should be consolidated into one reporting document. Consolidation would eliminate a great deal of the redundancy that exists under current reporting requirements. In addition, it would eliminate duplication of effort at the issuer where multiple teams often gather the information required in these overlapping documents. The resulting document would be a concise, cohesive information source for the issuers' stakeholders, making it easier to find desired information.

In addition to eliminating duplication, perhaps a more thorough review would help to assess the value of some of the information currently requested in the AIF; information that investors and stakeholders may not find to be truly helpful with regard to their investment decisions.

To read more about CIRI's position on reducing regulatory burden, refer to CIRI's submission on *CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

14. Introduce additional Accredited Investor (AI) categories

The Taskforce proposes to expand the AI definition to those individuals who have completed relevant proficiency requirements, such as the Canadian Securities Course Exam; the Exempt Market Products Exam; the

CFA Charter or; who have passed the Series 7 Exam and the New Entrants Course Exam (as defined in NI 31-103). If an individual meets the requisite proficiency standard in order to be able to recommend an investment product to other investors, the individual should be able to make a similar investment decision for himself or herself. Adding criteria based on existing educational proficiency would provide greater investment opportunities for individuals who already have the sophistication required for investment decisions and can adequately quantify the risk of potential investments.

CIRI is supportive of the AI definition being expanded as proposed and further proposes that it also extend to Certified Professionals in Investor Relations (CPIRs), a designation awarded to IROs who have completed the CIRI/Rotman Investor Relations Program and have passed the related exam. The 10-month Program covers all relevant areas of this multi-disciplinary role including capital markets, ESG, securities law, finance and communications enabling IROs to meet the evolving demands of the role in today's environment. This enhanced knowledge allows them to understand the risks associated with potential investments.

15. Expediting the SEDAR+ project

The Taskforce supports the goal of the SEDAR+ project, which would enable greater burden reduction and efficiency, and proposes that it be accelerated. SEDAR+ would modernize the way in which market participants use the centralized system, making it easier to file and access documentation. Given the importance and impact SEDAR+ would have on market participants and their operations, the Taskforce recognizes the need to expedite this project.

CIRI has been an advocate for modernizing the national records filing system for years and is strongly in agreement with the Taskforce that the SEDAR+ project needs to be given a higher priority with Phase 1 being completed earlier in 2021. The current system reflects poorly on Canadian capital markets when non-Canadian market participants use it and it needs to be modernized and implemented as soon as possible.

The CSA should be encouraged to seek input from various market participants, specifically reporting issuers, investors and capital market participants who will be the primary contributors and consumers of the system. This will ensure that SEDAR+ will be considerably easier to use for both filers (e.g. reporting issuers) and the public (e.g. investors, capital market participants, interested individuals) than the current system.

Filers should be provided with a simplified one-stop process (single portal access) for submitting required disclosure documentation to the various regulators across Canadian capital markets. This is expected to reduce the administrative burden and complexity faced by reporting issuers and others as they meet their commitment to fulsome continuous disclosure.

An area of particular concern is the subscription-based Data Distribution Service (DDS), which refreshes accessible filings every three minutes while the public access website refreshes every 15 minutes, thus providing DDS subscribers with potentially earlier access to filings. CIRI believes that having differential access levels to issuer filings is inconsistent with the intent of securities regulators to foster fair and efficient capital markets and that all individuals should be provided with equally timely public information on which to base investment decisions. This requires a level playing field, which is not provided under the current system. CIRI expects that SEDAR+ will provide all users (issuers, investors, capital market participants and interested individuals) simultaneous access to regulatory filings.

To read more about CIRI's position on the SEDAR+ project, refer to CIRI's submission on *Proposed National Systems Renewal Program Rule and Related Amendments*

2.3 Ensuring a Level Playing Field

19. Improve corporate board diversity
The Taskforce proposes amending securities legislation to require TSX-listed companies to set targets, and annually provide data in relation to the representation of women, black people, indigenous people, and people of colour (BIPOC), on boards and in executive officer positions. What should be the appropriate target for women and BIPOC on TSX-listed company boards? One suggestion we have heard is 40 per cent women and 20 per cent BIPOC. TSX-listed companies are already required to report on their progress towards achieving any targets, but they should also be required to review and assess the appropriateness of the targets on an annual basis.

The Taskforce also proposes to amend securities legislation to require TSX-listed companies to adopt a written policy respecting the director nomination process that expressly addresses the identification of candidates who are women and BIPOC during the nomination process.

The Taskforce further proposes to amend securities legislation to set a 10-year maximum tenure limit for directors, with an allowance that 10 per cent of the board can exceed the 10-year maximum for up to two years. This is aimed to encourage an appropriate level of board renewal. The issue of board entrenchment and board renewal is a concern from a governance perspective as continued refreshment of the board helps to ensure that fresh and diverse perspectives and skills are brought into the boardroom.

CIRI believes that Board renewal and diversity are important components of good corporate governance. While CIRI previously has not been supportive of regulated targets, progress on increasing diversity, specifically women on Boards, has been limited and so the issue of targets should be revisited. In the same vein, establishing targets to increase BIPOC participation on Boards should also be considered in order to effect change more quickly.

The challenge remains with Board turnover. CIRI believes that the composition of a Board should, to the greatest degree possible, be left in the hands of shareholders through a process that is both transparent and based on a majority voting policy. As such, we do not feel that term limits should be mandated. However, as in past submissions to the CSA, we recommend that there be a requirement for disclosure on diversity considerations in the candidate identification process rather than at the stage of nomination and selection of a director for the Board.

2.4 Proxy System, Corporate Governance and Mergers and Acquisitions (M&A)

Proxy Advisory Firms

20. Introduce a regulatory framework for proxy advisory firms (PAFs) to: (a) provide issuers with a right to "rebut" PAF reports, and (b) restrict PAFs from providing consulting services to issuers in respect of which PAFs also provide clients with voting recommendations
The Taskforce proposes to introduce a securities regulatory framework for PAFs to ensure that PAFs' institutional clients are provided with the issuer's perspective concurrent with the PAF's recommendation report. The Taskforce proposes providing an issuer with a statutory right to rebut (at no cost) the reports published by PAFs, provided that the issuer published the relevant materials (such as the Management Information Circular) within a specified time period prior to the meeting. This right of rebuttal would apply, with respect to each of the issuer's resolution, when the PAF is recommending to its clients to vote against management's recommendations. The PAF would be required to include the rebuttal in the report it provides to

its clients. The Taskforce also proposes a framework that ensures PAFs are not in a conflicted position when providing services to issuers and recommendations to clients by restricting PAFs from providing consulting services to issuers in respect of which PAFs also provide clients with voting recommendations.

CIRI supports the recommendation to introduce a regulatory framework for proxy advisory firms (PAFs) to address a reporting issuer's rights to provide its perspective (i.e. rebuttal) concurrent with a PAF's recommendation report. CIRI is also in agreement with the proposal to restrict PAFs from providing consulting services to issuers for which they also provide voting recommendations.

CIRI recognizes and understands that PAFs play a beneficial role in the capital markets by providing services that can improve institutional investors' ability to exercise their stewardship responsibilities. However, the reports and voting recommendations produced by PAFs have a direct impact on issuers. We contend that the existing practices of PAFs lack transparency, accuracy and engagement, all key drivers of market integrity and efficiency. Existing guidelines applying to the practices of PAFs do little to foster improved accuracy and engagement with issuers.

CIRI members have expressed concerns that PAF reports frequently contain factual errors which could be remedied by providing all issuers with a draft of the research report including voting recommendations together with sufficient time to review and respond (i.e. three days) before a final report is issued to institutional investor clients.

In addition, members have expressed the view that it is appropriate and valuable for the final report to contain a section whereby the issuer can potentially provide their own commentary or rebuttal of the research analyst's discussion regarding a specific issue in order to provide a more balanced view of potentially contentious issues.

With regard to conflicts of interest, CIRI has previously stated its concerns that existing policies and guidelines do not adequately address conflicts of interest whereby PAFs are able to recommend votes 'against' specific issues and then turn around and sell their services to issuers who may wish to ensure compliance with the policies of the PAF.

CIRI has recommended that PAFs prominently identify in their research reports and voting recommendations to institutional investor clients any specific potential conflicts of interest with regard to the issuer and analyst/reviewer ownership interests. CIRI and its members continue to stand by this recommendation but are also supportive of the proposal to require a framework that ensures PAFs are not in a conflicted position by restricting PAFs from providing consulting services to issuers for which they also provide voting recommendations. Reporting issuers and their directors are rightly required to disclose any and all conflicts in the interest of fairness and transparency among market participants. There is no reason that PAFs, given their acknowledged significant impact on the capital markets, should not be subject to the same requirements.

To read more about CIRI's position on proxy advisory firms, refer to CIRI's submission on *Proposed National Policy 25-201 Guidance for Proxy Advisory Firms*

Ownership Transparency

21. Decrease the ownership threshold for early warning reporting disclosure from 10 to 5 per cent
The Taskforce believes that, in an era of increased shareholder activism, the 10 per cent early warning reporting threshold is too high. The Taskforce proposes decreasing the shareholder reporting threshold in Ontario from 10

per cent to 5 per cent. The Taskforce suggests the threshold requirement be revisited to uphold harmonization if further changes are made under the U.S. regulatory framework.

The proposal will provide transparency of significant holdings starting at the 5 per cent level so that issuers can more proactively engage with their shareholder base and shareholders can benefit from increased awareness of sizable ownership interests.

One of the primary roles and responsibilities of the Investor Relations Officer (IRO) in issuers, large and small, is to engage and communicate effectively with their shareholders on a wide range of issues, including ESG practices. However, this engagement is significantly constrained in Canada where it is sometimes impossible to properly identify shareholders that have elected to be objecting beneficial owners (OBOs), unless their holdings exceed the current 10% Early Warning Reporting (EWR) threshold.

With a reporting threshold of 10% ownership, Canada finds itself in the company of smaller markets such as Latvia, Pakistan and Chile. Other developed countries, such as the United States, France, Germany, India, Japan and Australia each have a 5% disclosure threshold, while the United Kingdom is at 3% and Italy is at 2%.

CIRI has been, and continues to be, supportive of proposed regulatory initiatives to allow issuers to identify shareholders with 5% holdings or more. This change to 5% would provide additional opportunity for engagement and communication with identified shareholders not only during proxy season but continually throughout the year. We believe that the proposal should apply to all issuers and all investors, regardless of investment approach (i.e. active or passive).

To read more on CIRI's position on shareholder disclosure, refer to a past CIRI news release and submission.

22. Adopt quarterly filing requirements for institutional investors of Canadian companies
The Taskforce proposes to adopt a regime that would require institutional investors (who own above a certain dollar threshold) to disclose their holdings in securities of Canadian reporting issuers (that have a market capitalization above a certain threshold) on a quarterly basis. The process currently in place in the U.S. provides a proven framework for similar disclosure that could work in Canada.

Given that IROs are responsible for engaging and communicating effectively with their shareholders on a wide range of issues, the adoption of a regime requiring institutional investors to disclose their holdings of Canadian reporting issuers on a quarterly basis is a cornerstone objective of CIRI and its members.

The information provided to issuers would go a long way to improving issuer-shareholder engagement and would enhance the ability of reporting issuers to provide improved communications to shareholders, essentially the owners of the issuer. Improved communication would benefit shareholders by allowing them to be better informed regarding the issues and performance of the reporting issuer and would allow shareholders better access to the information and details explaining the strategies and objectives of the issuer, which can lead to improved and enhanced investor decision-making.

CIRI believes this reporting requirement should apply to all institutional investors without exemptions. Given that the data required to fulfill the reporting requirement is already available to investors internally, a lag time of one fiscal quarter should be an appropriate period of time for reporting institutional holdings.

Shareholder Rights

23. Require TSX-listed issuers to have an annual advisory shareholders' vote on the board's approach to executive compensation

The Taskforce believes that developments in Canada, such as recently passed amendments to require advisory say on pay votes for CBCA companies, and other jurisdictions, such as the U.K., U.S. and Australia, support the adoption of mandatory annual advisory votes on executive compensation practices for all TSX-listed issuers.

The Taskforce recommends against binding votes because of the importance of preserving the board of directors' decision-making processes and to avoid the risk that shareholder proposal campaigns become too burdensome on issuers.

CIRI supports an annual mandatory advisory vote on executive compensation practices (say-on-pay vote) for all TSX-listed issuers. These votes are becoming common practice among forward thinking issuers and have proven to provide valuable feedback from shareholders. The adoption of mandatory advisory votes is a logical next step in the progression of shareholder engagement.

CIRI believes that the vote should continue to be non-binding on the reporting issuer and that final decisions regarding executive compensation plans should be left to the Board of Directors, so long as the Board does take into account the results of the say-on-pay vote by shareholders. Each issuer has specific and individual considerations, including industrial sector and peer considerations regarding compensation plans. The Board of Directors are most often in the best position to assess and evaluate the need to adopt an appropriate compensation plan for the best interest of the issuer and its stakeholders.

While CIRI supports the concept of the proposal it seems inappropriate to expand the proposal beyond TSX-listed issuers. TSX-V listed issuers have special considerations with regard to executive compensation plans. Generally, the Boards of Directors are smaller, include corporate executives and have compensation arrangements geared to fast growing and highly flexible organizations. These smaller issuers also are characterized by smaller shareholder bases which increases significantly the threat of resource-draining shareholder proposal campaigns.

25. Require enhanced disclosure of material environmental, social and governance (ESG) information, including forward-looking information, for TSX issuers

The Taskforce proposes to mandate disclosure of material ESG information which is compliant with either the TCFD or SASB recommendations for issuers through regulatory filing requirements of the OSC. Where feasible, the proposed enhanced disclosure will align with the global reporting standards of both TCFD and SASB.

Disclosure of ESG material information has become increasingly important to issuers and investors alike. While we understand the motivation to mandate consistent, comparable disclosure by selecting certain ESG reporting frameworks, this is not in the best interests of either party. Issuers need to identify the ESG factors that are most material to their business and to report meaningful information on these factors to investors. This is how investors better understand the risks and opportunities associated with that issuer. However, not all frameworks are appropriate for all issuers and so mandating the use of TCFD and SASB may restrict an issuers ability to report on the ESG factors that have the greatest impact on their business. As such, we feel the decision to use certain ESG framework(s) should be made by the issuer.

Proxy Voting System

29. Introduce rules to prevent over-voting

The Taskforce proposes the following rules be introduced to prevent over-voting:

1. *An intermediary must not submit proxy votes for a beneficial owner client unless it has confirmed that vote entitlement documentation has been provided to the reporting issuer's meeting tabulator.*
2. *An intermediary that holds securities on behalf of another intermediary must provide appropriate vote entitlement documentation to the reporting issuer's meeting tabulator to establish its client's vote entitlements.*
3. *A reporting issuer (or its meeting tabulator) must notify the reporting issuer and any person that submits proxy votes if it rejects or pro-rates those proxy votes because of insufficient vote entitlements.*
4. *A reporting issuer must obtain the DTC omnibus proxy so that its meeting tabulator can verify the vote entitlements of U.S. intermediaries.*

These proposals codify best practices found in CSA Staff Notice 54-305 Meeting Vote Reconciliation Protocols.

CIRI supports introducing rules to prevent over-voting, which occurs when proxy votes are improperly submitted to the meeting tabulator (i.e. unsupported by appropriate vote entitlement documentation) by an intermediary on behalf of a beneficial owner client.

Reporting issuers are significant stakeholders in the proxy voting infrastructure and CIRI takes the view that accurate and transparent shareholder voting is fundamental to the quality and integrity of the capital markets. Reporting issuers put forward important proposals for shareholders to vote on and both parties rely on the proxy voting system to ensure that those votes are counted accurately and efficiently. Accurate vote reconciliation can be significantly improved by introducing voting entitlement rules to eliminate over-voting.

Vote reconciliation is a key issue for CIRI's members, many of whom have expressed concerns regarding the accuracy of the shareholder vote. In a survey of members, one quarter of respondents indicated that they have in the past had an issue with over-voting/over-reporting where an intermediary has returned more votes than those reflected in the intermediary's CDA participant account. This, of course, reflects the concerns of those issuers who actually realized that the vote was inaccurate. In many instances the complexity of the process, the lack of transparency regarding reconciliation protocols and the compressed timeframe immediately preceding the vote (generally when the bulk of votes and voting instructions are submitted) leave issuers in the dark, not always knowing if the vote count was accurate.

It should also be noted that CIRI members and other stakeholders have indicated that reconciliation and vote count accuracy may also be negatively impacted as a result of share lending and the pooling of loaned shares by intermediaries and lending agents. This is a concern particularly in discretionary margin accounts where the ultimate beneficial owner of the shares is unaware that shares have been loaned and that the beneficial owner may no longer be entitled to vote all or a portion of the shares they originally purchased.

While the intermediary community has made some efforts to instill a degree of consistency in share lending transactions, the determination of who is the beneficial owner entitled to vote the shares seems to be inconsistent. The impact of share lending has become problematic due to the significant increase in this activity by investors who see this as an increasingly important source of revenue.

While we understand that, technically, the lender has no entitlement to vote the shares on loan, lenders who wish to vote can instruct their agent (or the borrower directly) to recall the loaned securities by the pre-

determined time (i.e. record date) in order to vote. This right to recall appears to be a standard feature of many securities lending contracts in most jurisdictions, but we believe there is no consistent practice nor is there a regulatory requirement for recall.

CIRI believes that there must be alignment between share voting and the economic interest in the shares. We would support the implementation of guidelines or regulations stipulating that the voting rights in share lending arrangements reside with the shareholder holding the economic interest, the lender.

To read more on CIRI's position on the proxy voting infrastructure, refer to CIRI's submission on *CSA Consultation Paper 54-401: Review of the Proxy Voting Infrastructure*

30. Eliminate the non-objecting beneficial owner (NOBO) and objecting beneficial owner (OBO) status, allow issuers to access the list of all owners of beneficial securities, regardless of where securityholders reside, and facilitate the electronic delivery of proxy-related materials to securityholders.
The Taskforce proposes the removal of the NOBO/OBO status in Canada and to allow issuers to access the list of all beneficial owners of their securities. This would enable reporting issuers to know more about the true beneficial owners of their securities, and allow issuers to solicit voting instructions directly from such owners.

The Taskforce also recommends that an intermediary must also provide the beneficial owners' email address along with the physical address information currently provided to a reporting issuer that wishes to deliver proxy-related materials electronically and solicit voting instructions from such owners as well. Currently, intermediaries provide NOBO/OBO client account address information to outsourced third party service providers; however, beneficial owners are required to separately consent to receive proxy materials electronically directly from reporting issuers (or their transfer agents), which has resulted in a slow adoption rate for electronic delivery of proxy-related materials.

Historically, the OBO/NOBO distinction was introduced in 1986 in the United States following the recommendations of an SEC Advisory Committee on Shareholder Communications[3] as a way to fix the broken lines of communication between issuers and their shareholders. It was seen as a compromise solution to provide issuers with an ability to identify their beneficial shareholders and communicate with them directly, while also providing one means by which shareholders with privacy concerns could elect to remain anonymous to other capital market participants.

A 2006 study[4] conducted for the New York Stock Exchange (NYSE) revealed that nearly half of respondent retail shareholders were not sure if their accounts were OBO or NOBO and, once the OBO/NOBO distinction was explained to them, these shareholders opted for NOBO status, by a 2-1 margin (64%). In addition, among those who stated a preference for OBO status, only 14% maintained that preference if there was a nominal ($25) cost associated with their OBO choice.

A 2010 report[5] prepared for the Council of Institutional Investors in the U.S. concluded that the interests of shareholders and issuers in improved communication would be more effectively served by decreased reliance on, or even the elimination of, the OBO/NOBO distinction. In essence the report suggested a relaxation on the

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[3] U.S. Securities and Exchange Commission. *Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities*. Report of the Advisory Committee on Shareholder Communications (June 1982)

[4] Opinion Research Corp., *Investor Attitudes Study: conducted for NYSE Group* (7 April 2006)

[5] Council of Institutional Investors, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareholder Communications and Voting* (Washington: Council of Institutional Investors, 2010)

restrictions facing issuers for the distribution of proxy materials and a streamlining of the process for both companies and shareowners to obtain shareholder lists.

CIRI understands the wishes for anonymity among certain shareholders and/or sectors of the capital markets. However, CIRI argues that greater transparency would instill increased confidence and engagement in our markets.

Research by Michael C. Schouten and Mathias M. Siems[6] makes the case that increased transparency in the form of greater disclosure of shareholder ownership positions contributes to greater market efficiency as follows:

"Ownership disclosure can improve market efficiency through several other mechanisms, namely by creating transparency of economic interests of major shareholders, of trading interest and of the size of the free float."

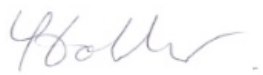
"The bottom line is that by promoting share price accuracy, ownership disclosure can contribute to market efficiency, and thus ultimately to an efficient allocation of resources in the economy."

CIRI supports the proposal that rules differentiating beneficial shareholders as either OBO or NOBO, whether associated with corporate laws or securities laws, be eliminated.

To read more on CIRI's position on NOBO/OBO, refer to CIRI's submission on the Business Law Agenda – *Priority Findings and Recommendations Report*.

CIRI is pleased to provide the Capital Markets Modernization Taskforce with its comments regarding the Consultation Paper. Should you wish to discuss this submission further, please let me know.

Sincerely yours,



Yvette Lokker
President & Chief Executive Officer
Canadian Investor Relations Institute

[6] Michael C. Schouten and Mathias M. Siems, *The Evolution of Ownership Disclosure Rules Across Countries* in the *Journal of Corporate Law Studies*, Vol. 10 (2010), pp. 451-483

Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

Appendix 1

The Canadian Investor Relations Institute
The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

Investor Relations Defined
Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to enable fair and efficient capital markets.

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include: Human Resource and Corporate Governance; Audit; Membership; and Issues.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 500 professionals serving as corporate investor relations officers in over 230 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of shareholders in capital markets beyond North America. The President and CEO of CIRI has been a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.