Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

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Dear Mr. Soliman,

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 Ontario Securities Act to the Taskforce to Review Capital Markets. We strongly support this initiative and congratulate the Government of Ontario for reviewing the Act in an effort to not only modernize and streamline it, but to improve it.

CIRI believes that transparency and market efficiency can be best enhanced through regulatory simplification. We have made several recommendations to this end and realize that some of the changes we are proposing may have an impact on other securities laws and regulations. We ask that the Task Force consider the recommendations with a view to improving the Act despite misalignment with other laws and regulations to ensure it is as current and relevant as possible, particularly since it is not frequently updated.

General Comments

Given that the Act was last updated more than 15 years ago, there is an opportunity to modernize it through the adoption of current technology and plain language. Business practices have evolved and there is increased reliance on technology for information and communications, confirmed by an October 29, 2019 release by Statistics Canada:

"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."[1]

Allowing for electronic communications and using plain language will make the Act more accessible and relevant in today's environment. That said, the Act should be reviewed and updated more regularly as technologies and business practices continue to evolve.

Just as technology has evolved, so have shareholder expectations. Today's shareholders demand increased issuer accountability and engagement. CIRI sees value in issuers engaging with shareholders as a means to

[1] https://www150.statcan.gc.ca/n1/daily-quotidien/191029/dq191029a-eng.htm

enhance governance practices and performance. To that end, it is difficult for issuers to truly know who their shareholders are. Enhanced disclosure of shareholder ownership, whether publicly or directly to the issuer, would go a long way to further facilitate engagement and uphold best practices in governance.

Lastly, there is tremendous short-term pressure within the capital markets, whether on the issuer or the investment professional. In some cases, issuers may not make optimal decisions for the organization in an effort to meet earnings estimates, while investors continue to focus on these quarterly metrics since their compensation is tied to it. The Act should be reviewed with this in mind, with an eye to shifting focus to the longer term for the benefit of all stakeholders.

Summary of Recommendations

In summary, CIRI presents the following recommendations:

1. That, in the spirit of transparency and disclosure, some effort be expended to re-write the Act in plain language.

2. That rules differentiating beneficial shareholders as either OBO or NOBO, whether associated with corporate laws or securities laws, be reviewed with a view to being discontinued.

3. That the Act emphasize the quality of reporting, not the quantity, and that issuers be given the option to report semi-annually. By reducing the frequency of reporting, shareholders' need to periodically evaluate issuer performance may be better balanced with management's responsibility to focus on delivering sustainable value creation for shareholders over the long term.

4. That the Act be revised to remove any impediments to the use of technology available to communicate electronically. Specifically, that the Act adopt the proposed access equals delivery model proposed by the CSA earlier this year.

5. That the Act allow for virtual only AGMs and align the processes for virtual AGMs with those for in-person AGMs.

6. That the Act allow for issuers to access a list of their shareholders in an effort to improve issuer-shareholder engagement and, ultimately, corporate governance practices.

In the table below, CIRI has identified specific sections within the Act that should be updated. For each section identified, we have outlined the concerns along with potential solutions.

Section of Ontario Securities Act that Requires Updating	IRO/Issuer Concerns & Potential Solutions
<u>**Interpretation, other general matters**</u> **Beneficial ownership of securities** (5) A person shall be deemed to own beneficially securities beneficially owned by a company	Historically the OBO/NOBO distinction was introduced in 1986 in the United States following the recommendations of an SEC Advisory Committee on Shareholder Communications[2] as a way to fix the broken lines of communication between issuers and

[2] 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)

controlled by the person or by an affiliate of such company.	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[3] 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[4] 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 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[5] makes the case that increased transparency in the form of greater disclosure of shareholder ownership positions contributes to greater market efficiency as follows:

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

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

[5] 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

	"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 recommends that rules differentiating beneficial shareholders as either OBO or NOBO, whether associated with corporate laws or securities laws, be reviewed with a view to being discontinued. 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*.
PART XVIII – Continuous Disclosure **Interim financial reports** 77 (1) Every reporting issuer that is not a mutual fund shall file within sixty days of the date to which it is made up an interim financial report, (a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months respectively before the date on which that year ends, but no interim financial report is required to be filed for any period that is less than three months in length; (b) where the reporting issuer has completed its first financial year, to the end of each of the three-month, six-month and nine-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year, made up and certified as required by the regulations and in accordance with generally accepted accounting principles.	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 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.[6] 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

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

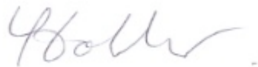
	Australia, Germany and the UK and they should be looked at as examples. CIRI recommends that semi-annual reporting be an option for issuers to allow management to focus on delivering sustainable value creation for shareholders over the long term. To read more on CIRI's position on semi-annual reporting, 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*.
PART XVIII – Continuous Disclosure **Delivery of financial statements to security holders** 79 (1) Every reporting issuer or mutual fund in Ontario that is required to file a financial statement under section 77 or 78 shall send a true copy of the financial statement to every holder of its securities whose latest address, as shown on its books, is in Ontario. **PART XIX – Proxies and Proxy Solicitation** **Mandatory solicitation of proxies** 85 Subject to section 88, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in Ontario, send to each such security holder who is entitled to notice of meeting, at the security holder's latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations. **PART XIX – Proxies and Proxy Solicitation** **Information circular** 86 (1) Subject to subsection (2) and section 88, no person or company shall solicit proxies from holders of its voting securities whose latest address as shown on the books of the reporting issuer is in Ontario unless,	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 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, 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. CIRI recommends the Act be modernized to account for advances in technology and to align with the proposed access equals delivery regulations. 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*.

(a) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent to each such security holder of the reporting issuer whose proxy is solicited at the security holder's latest address as shown on the books of the reporting issuer; or (b) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each such security holder whose proxy is solicited.	
PART XIX – Proxies and Proxy Solicitation **Voting where proxies** 87 The chair at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person or company whose proxy is solicited may specify how such person or company wishes the securities registered in his, her or its name to be voted unless, (a) a ballot is demanded by any security holder present at the meeting in person or represented thereat by proxy; (b) proxies requiring that the securities represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matters or group of matters total more than 5 per cent of all the voting rights attached to all the securities entitled to be voted and be represented at the meeting; or (c) the circumstances prescribed by the regulations exist. R.S.O. 1990, c. S.5, s. 87; 2017, c. 34. Sched. 37, s. 6.	With the shift from in-person AGMs to virtual AGMs amid COVID-19 and social distancing orders, this section of the Act should be updated to allow for virtual only AGMs and ensure consistent practices regardless of the format of the meeting. CIRI recommends that issuers be allowed to host virtual only AGMs, particularly during unprecedented times such as these, and that practices for virtual AGMs be consistent with those for in-person AGMs.
PART XXI – Insider Trading and Self-Dealing **"investment" defined** 110 (1) For the purposes of sections 111, 112, 113, 114 and 115, "investment" means a purchase of any security of any class of securities of an issuer including bonds, debentures, notes, or other evidences of indebtedness thereof, and a loan to persons or companies but does not include an advance or loan, whether secured or unsecured, that is made	One of the primary roles and responsibilities of the investor relations function in issuers, large and small, is to engage and communicate effectively with their shareholders on a wide range of issues, including corporate governance practices. However, such 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

by an investment fund, its management company or its distribution company that is merely ancillary to the main business of the investment fund, its management company or its distribution company. R.S.O. 1990, c. S.5, s. 110 (1); 2014, c. 7, Sched. 28, s. 6. Interpretation (2) For the purposes of sections 111, 112, 113, 114 and 115, (a) a person or company or a group of persons or companies has a significant interest in an issuer, if, (i) in the case of a person or company, he, she or it, as the case may be, owns beneficially, either directly or indirectly, more than 10 per cent, or (ii) in the case of a group of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent, of the outstanding shares or units of the issuer;	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. CIRI recommends that the Act be updated to require disclosure of shareholders owning 5% or more of an issuer's outstanding shares. To read more on CIRI's position on shareholder disclosure, refer to a past CIRI news release and submission.

CIRI is pleased to provide the Taskforce to Review Capital Markets with its comments regarding the Ontario Securities Act. Should you wish to discuss this submission further, please let me know.

Sincerely yours,



Yvette Lokker
President & Chief Executive Officer
Canadian Investor Relations Institute

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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.