

Ontario Capital Markets Modernization Task Force

Consultation — Modernizing Ontario’s Capital Markets

Submission by the Global Risk Institute in Financial Services (GRI)

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The Global Risk Institute in Financial Services (GRI) commends the Ontario Capital Markets Modernization Taskforce on its *Consultation Report* published in July 2020. We recognize this as a key milestone in the modernization of securities regulation in order to encourage innovation and keep pace with a rapidly evolving marketplace.

We offer our comments and support for several of the recommendations that we find particularly relevant as Ontario’s capital market aims to make significant advancements in market efficacy in the post-COVID-19 era.

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

- Recommendation 25 – Enhanced disclosure of material ESG information, including forward looking information

We are pleased to see that some of our recommendations from our May 2020 submission were adopted by the Task Force related to required ESG and – more specifically – material climate change risk-related disclosures. We would reiterate our support for a short-term safe haven to help promote and accelerate the uptake of this sort of reporting – in fact this is a necessity.

In terms of time frames, we recommend a phased uptake approach differentiating between smaller and larger companies. GRI’s recent review of TCFD-aligned reporting among 58 financial firms in Canada shows that most large financial firms are disclosing in alignment with the TCFD Framework, and that disclosure has been improving in scope and quality year-on-year since the TCFD was released in 2017. Most larger financial firms are on track for full disclosure within the coming three years. Only two smaller financial firms in Canada are presently disclosing in alignment with TCFD so there will need to be support and incentives to ensure uptake begins among smaller listed firms in the coming 3-5 years, with a 10-year outlook for full uptake. We are happy to share this research with the Task Force if of interest.

We would not propose any specific additional disclosures/indicators beyond the TCFD framework, but would support some flexibility for firms to identify material topics through a robust materiality process upon which they need to report – this could result in location or sector specific information unique to the company.

The SASB framework is well positioned as meeting the needs of investors in terms of data and disclosure, and may experience a policy boost in November if there is a democratic win in the US elections. On the other hand, there are some downsides to referencing it solely and specifically. It is very United States and SEC-centric, it is prescriptive, and most importantly, SASB uptake significantly lags its more mature counterparts such as CDP and GRI Standards in the Canadian and international markets. The Task Force may consider referencing all of these major global reporting standards and frameworks as the basis for ESG reporting. These major global ESG standards are working together toward a more harmonized framework. More information can be found here:

<https://corporatereportingdialogue.com/better-alignment-project/>

The Task Force may consider recommending a voluntary framework for a company that explicitly declares – in a prescribed form – what its "purpose" or "mission" is, a "company with a mission" based on France's legislative framework for an "entreprise à mission."

Introduced in France in 2019 under the "PACTE" law, an "entreprise à mission" is a company whose purpose – including its social, societal and environmental objectives aligned with this purpose – is set out in its Articles of Association. It is not a new legal form. The intention is to ensure that the company's purpose is to focus on long-term sustainability objectives described in the company's articles.

Section 2.3 Ensuring a Level Playing Field

- Recommendation 19 – Improve Board Diversity.

Ontario has the opportunity to make significant improvements with respect to diversity of corporate boards and of the OSC as proposed by the Task Force. We see this as a risk issue. Diversity and inclusion are necessary imperatives that are good for business and demanded by stakeholders. In the competition for capital, Ontario should continue to show leadership and have the broad perspectives at the leadership levels that will help us address the issues we are facing today and in the future.

We see Board diversity as broader than that which is outlined in the Task Force's report. It is imperative that corporate boards reflect the diversity of the people they serve. This includes not just gender and racial diversity as proposed in the report but broader diversity that includes, and is not limited to, demographic, ethnic, geographic, and religious diversity as well as diversity of sexual orientation, gender identity and gender expression.

With respect to the setting of targets and timelines for greater representation of women and Black, Indigenous and People of Colour (BIPOC) as outlined in your report, we espouse clear and purposeful timelines to accelerate implementation.

We support the proposed targets of 40 per cent for women and 20 per cent for BIPOC for TSX-listed company boards as outlined in your report. In light of the slow uptake of gender diversity targets to-date, we advocate for implementation for greater representation of women on Boards within the 3-year timeframe; and, given the recent elevation of BIPOC as a top priority among all stakeholders, we encourage adoption within a 5-year timeframe.

Companies should have clear and definitive policies related to gender and other diversity.

We need to create a "diversity pipeline" of skilled and talented individuals from all backgrounds. This may require the reporting of diversity at lower management levels and at the entry hiring level, along with initiatives issuers have implemented to increase diversity throughout their entire business.

Board renewal is another important component of greater diversity. We support the proposed limits on Board tenure. By setting terms on how long members should serve, Boards can open the doors for new and a broader array of talent to bring fresh and varied perspectives to corporate governance.

Greater board diversity is an area that many of GRI's members have been making progress and clearly support.

Section 2.5 Fostering Innovation

The following recommendations will certainly encourage innovation in the Ontario Capital Markets.

- Recommendation 32 – Open Data.

The subject of open data and open banking is one that GRI has been actively engaged in and is of strong interest to our

members. We have engaged with our members through forums to understand their views on open banking and to consider how it could be implemented in Canada.

We also recently commissioned a study on open banking to provide members with additional insight into the potential for an open banking framework in Canada, and to identify the key regulatory, economic, security and technological challenges associated with it.

The report, written for GRI by Professor Markos Zachariadis of the Alliance Manchester Business School at the University of Manchester, is called "[Data-sharing frameworks in financial services: Discussing open banking regulation for Canada.](#)"

The report makes the case that at its core the financial services industry is predominantly an information business, and that as a result, access to and the sharing of data can provide significant advantages to players in the industry, change the shape of competition in financial services, and improve service for consumers.

Open data is rapidly becoming the norm in other jurisdictions and is seen as a key building block of the innovation economy. Access to capital is key for making the innovation economy a reality. Canada has an opportunity to assess other models and build a system that best suits our country.

Paramount to the implementation of a Canadian system for open data is consumer privacy and the safety and security of data.

- Recommendation 31 – creation of the “Super Sandbox” which allows innovators to test new products with a light regulatory touch.

We support the creation of a regulatory “Super Sandbox” in Ontario. Creating a Super Sandbox will strengthen Ontario’s position as an innovation hub. The Super Sandbox should include the following guardrails:

- Qualification for the Super Sandbox should be driven by the innovative nature of the product or service, and not by the characteristics of the innovator
- “Relaxation” of the regulatory rules in the Super Sandbox should not create a systemic risk
- The features of the Super Sandbox should be based on best practices of regulatory sandboxes established in other leading global jurisdictions

Section 2.2 Regulation as a Competitive Advantage

- Recommendation 9 – Transitioning towards electronic and digital delivery of statutorily mandated information.
- Recommendation 15 – Implementation of SEDAR+.

We support these two recommendations as they both advance and facilitate the disclosure of information and, potentially, reduce the cost of disclosure. We encourage the Task Force to consider the adoption of leading-edge technologies to improve quality, speed, accessibility and reduce the cost of reporting.

We support the introduction of an access equals delivery model into the market for the distribution of disclosure materials. Access equals delivery would allow investors to access materials more quickly and simply. The initial focus for this model should include prospectuses, financial statements and other reporting material. Once investors become more conversant with the model, it can be expanded to include other continuous disclosure documents.

This e-delivery approach would not only reduce printing and mailing costs, it is eco-friendly and more sustainable. We believe an access equals delivery model can be successfully implemented in Canada without undue harm to shareholders.

The Global Risk Institute brings together leaders from industry, academia and government to draw actionable insights on emerging risks globally. We support the recommendations outlined as above from your report.

We look forward to seeing the implementation of these initiatives over the near term to support greater competition for businesses, value for investors and effective risk management for financial and non-financial services.

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