

February 19, 2019

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

Dear Ms. Jensen:

Thank you for the opportunity to comment on the Ontario Securities Commission's (OSC) *Staff Notice 11-784: Burden Reduction*.

The Shareholder Association for Research and Education (SHARE) is **a Canadian leader in responsible investment services, research and education for institutional investors**. Since its creation in 2000, SHARE has carried out this mandate by providing active ownership services, including proxy voting and engagement, education and training, policy advocacy, and practical research on issues related to responsible investment and the promotion of a sustainable, inclusive and productive economy. Our clients include pension funds, asset managers, foundations, endowments, and faith-based organizations with more than \$22 billion in assets under management.

We would like to offer the following comments regarding *Staff Notice 11-784*.

Reducing regulation does not necessarily reduce the regulatory burden

The common presumption regarding regulatory burden is that additional regulation automatically adds to the burden of compliance for issuers. We disagree with this presumption.

Efficient and productive markets are seldom created by dismantling institutions and rules, but by thoughtful construction and oversight of rules and institutions that facilitate market interactions. A simplistic approach to regulatory reform – such as the overly-simplistic idea of removing two regulations for every one that is created – generates uncertainty rather than efficient markets and sustainable, inclusive and productive economies.

For this reason we suggest that any decisions to eliminate or alter existing regulations should be based on a review of concrete evidence of the regulation's effects. This review should also assess whether eliminating a regulation currently applied to issuers might simply shift the burden to other parties, for example by requiring investors to create their own instruments and processes to obtain information previously provided by issuers.

Regulations that provide clarity and consistency reduce burden

In 2018 our organization engaged with 87 TSX-listed issuers on behalf of our institutional investor clients, and we were also approached by additional issuers seeking our guidance on appropriate decision-relevant disclosure of environmental, social and governance (ESG) information. Due to the nature of our stewardship work for institutional investors, we are often at the intersection between issuer and investor views on ESG oversight, policy, performance, and disclosure.

A message we have heard far too often in those exchanges is one of confusion and uncertainty: issuers are being asked to respond to too many disparate systems and requests for information, and investors are receiving contradictory and incomparable information from issuers that is unusable for efficient decision-making on their part.¹ Multiple and sometimes contradictory voluntary frameworks for reporting of ESG information have sprung up, either developed by investors and investor-focused institutions or service providers, or by issuers, trade associations, and other institutions.

These initiatives and approaches have arisen because there is no regulated framework for reporting ESG information in Canada. Absent a comprehensive, consistent, comparable, and cost-effective reporting framework, the accountability of issuers to their share owners for corporate performance and good governance is undermined, and each Canadian issuer is left with the burden of navigating this maze of standards.

In order to reduce the real burden for Canadian issuers the Ontario Securities Commission should therefore take steps to develop new regulations that answer the need for a comprehensive, consistent, comparable, and cost-effective ESG disclosure regime.

This regime should build on the precedent of disclosures established in recent years in *National Instrument 58-101: Disclosure of Corporate Governance Practices* regarding the representation of women on boards and executive officer positions of TSX-listed issuers. *NI 58-101* should be expanded to require disclosure of the board's processes for identifying, assessing and managing salient environmental, social and systemic risks, management's role in assessing and managing risks, and how these processes are integrated into overall risk management. Salient ESG risks and opportunities would include climate change, social inclusion, gender representation and pay gaps, environmental and resource efficiency, and decent work and human capital management.

¹ According to a recent study by EY, while 97% of Canadian institutional investors report evaluating issuers' non-financial reporting, "more than half of respondents (56%) say that a company's nonfinancial disclosures are either not available or inadequate for meaningful comparison with those of other companies." See <https://www.ey.com/ca/en/newsroom/news-releases/2019-investors-seek-better-accounting-standards-for-nonfinancial-information>

According to the recent review of climate-related financial disclosures by the Canadian Securities Administrators,

Most of the issuers we consulted indicated that they do, in fact, have processes in place for the management and oversight of risk, including climate change-related risk, which they consider to be reliable. They further indicated that the preparation of disclosure providing investors with insight into these processes would not be burdensome. [emphasis added]²

Disclosure requirements could be accompanied by new or supplemental guidelines in *National Policy 58-201 Corporate Governance Guidelines* that address corporate governance of salient ESG risks and opportunities.

We believe that while these additions to disclosure rules will add to the regulatory requirements expected of issuers, they will effectively *reduce* the practical burden on issuers by creating a common and reliable disclosure framework rather than the piecemeal approach that dominates Canadian markets today.

Efficiency in information delivery reduces burden for market participants

Although the current SEDAR system allows filings in XML format for XBRL filings and XLSX format for certain exempt market filings, the vast majority of filings are in PDF format and therefore not machine-readable or searchable. While this may have been an appropriate approach to balance the needs of issuers and the public at the time that the system was established, it is our view that technological changes should allow for efficient disclosures by issuers in machine-readable and consistent formats that make usage of the information easier for investors. We urge the OSC to review the SEDAR system in light of technological advances and, if appropriate, revise National Instrument 13-101 and the SEDAR Filer Manual to make data more easily accessible for investors.

We would welcome further discussion of these issues in whatever forum is best suited. If you have any questions or would like to discuss these proposals further, please feel free to contact me at any time. I can be reached at 416-306-6453 or by email at kthomas@share.ca.

Sincerely,



Kevin Thomas
Executive Director
Shareholder Association for Research & Education

² CSA Staff Notice 51-354: Report on Climate change-related Disclosure Project, p. 37. Available at http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20180405_51-354_disclosure-project.htm