

September 7, 2020



Mr. Walied Soliman, Chair
Ontario Capital Markets Modernization Taskforce
Submitted via email to: CMM.Taskforce@ontario.ca

Re: Consultation — “Modernizing Ontario’s Capital Markets”

Dear Mr. Soliman,

The Responsible Investment Association (RIA) is pleased to comment on the draft recommendations of Ontario’s Capital Markets Modernization Taskforce. The RIA is a network of over 130 institutions and 300 individuals who support our mandate to drive Canada’s adoption of responsible investment, which refers to investments that incorporate environmental, social and governance (ESG) factors.

Our individual members include financial advisors, consultants and others, while our institutional members are mainly asset management firms and asset owners who collectively manage over \$20 trillion in assets. Our comments represent the Association as a whole, including our membership and stakeholders who are impacted by our work, rather than any particular member firm who may have their own unique position.

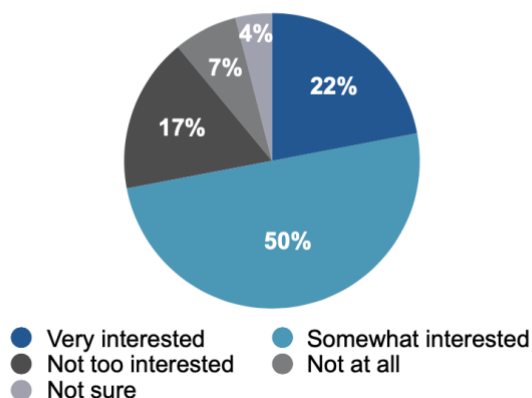
Our comments relate primarily to the Taskforce recommendations 19, 20, 23, 24 and 25, and thus our submission is organized accordingly. Our comments begin, however, with a different recommendation for the Taskforce to consider with respect to ESG and retail investors.

Modernizing Ontario’s capital markets also means connecting the dots between ESG and retail investors

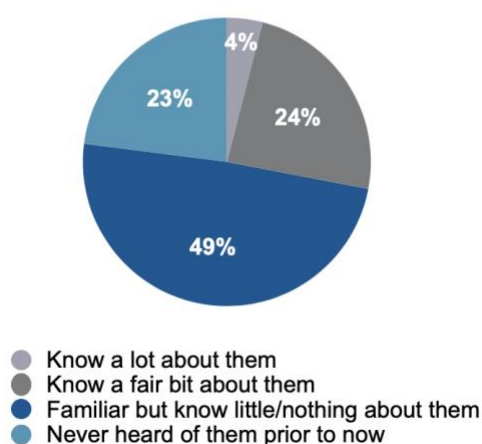
The Taskforce’s consultation report includes recommendations to enhance corporate ESG disclosures and to make more investment options available to retail investors. However, the Taskforce report is missing an important opportunity to connect these issues in a way that benefits retail investors.

Survey data from 1,004 retail investors collected by Ipsos in 2019 shows that Canadian retail investors are interested in ESG, but they lack the knowledge to navigate ESG investment options.¹ As shown in the charts below, the vast majority (72%) of retail investors surveyed are somewhat to very interested in ESG, while the same proportion (72%) know very little or nothing about it.

To what extent are you interested in responsible investments that incorporate environmental, social and governance issues?



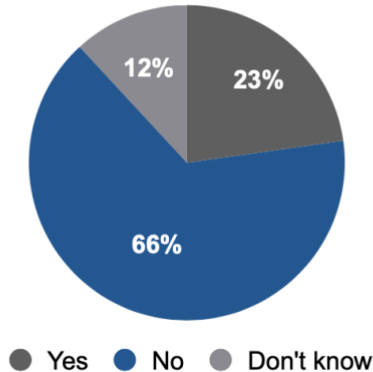
To what extent are you knowledgeable about responsible investments that incorporate environmental, social and governance issues?



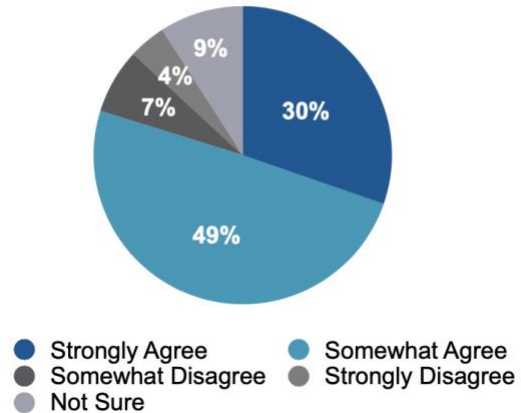
¹ 2019 RIA Investor Opinion Survey. Data collected by Ipsos from 1,004 retail investors. Available online [here](#).

In the same survey, retail investors were asked if their financial service providers had *ever* brought up the topic of ESG or responsible investing with them. As shown in the chart below on the left, a staggering 66% of retail investors said their financial advisors/institutions had *never* asked them if they're interested in responsible or ESG investments. Furthermore, as shown in the chart below on the right, **a staggering 79% of retail investors somewhat or strongly agreed that they would like their financial advisor/institution to inform them about responsible investments.**

Has your financial advisor or financial institution¹ ever asked if you are interested in responsible investments that are aligned with your values?



Do you agree or disagree with this statement: "I would like my financial advisor or financial institution to inform me about responsible investments that are aligned with my values."



These data clearly indicate two significant gaps in the market:

1. **A gap between interest and knowledge of ESG/responsible investments:** Retail investors are interested in ESG, but they lack the knowledge to navigate options available to them.
2. **A gap between the actions of financial advisors and the wishes of their retail clients:** Retail investors want their advisors to inform them about ESG or responsible investments, but the vast majority of advisors are not doing so.

We therefore urge the Taskforce to propose that financial advisors in Ontario be required to assess their clients' interest in responsible or ESG investment options as part of the Know Your Client process. The data clearly show that there are legitimate grounds for a question about clients' ESG preferences to be added to the same client questionnaire that covers risk tolerance, financial goals, etc. We recognize this recommendation is outside the scope of the Taskforce's report, but it is certainly well within the scope of modernizing capital markets. The RIA strongly encourages the Taskforce to consider these huge gaps in the market and the many investors who are underserved by the existing KYC requirements.

Recommendation 19: Improve corporate board diversity

The RIA supports the Taskforce's aim of improving diversity in corporate leadership, and we provide some related suggestions below. We also recommend that the Taskforce widens the scope of diversity indicators under consideration to be aligned with the "designated groups" as defined by the Canada Business Corporations Act, while further considering groups not specified in the Act such as the LGBTQ+ community.

Importantly, since the outcomes of diversity policies are most material to underrepresented groups, we also urge the Taskforce to carefully consider the comments submitted by *Women in Capital Markets (WCM)*, the *Canadian Association of Urban Financial Professionals (CAUFP)*, and any other associations commenting on behalf of underrepresented groups with respect to diversity. If anyone has a say in how underrepresented groups are treated in policy, surely it should be the underrepresented groups.

The RIA supports the Taskforce's recommendation to require TSX-listed companies to set targets and provide data annually with respect to the representation of women, Black people, Indigenous people, and People of Colour on boards and in executive officer positions. The Taskforce's report includes suggested targets of 40% for women and 20% for Black, Indigenous and People of Colour. Achieving these targets would be a sign of progress but would inevitably lead to questions about what comes next as goals are achieved and demographics evolve. Companies could therefore consider aligning their targets with the demographics of the region in which they operate or serve, whether it be the demography of Ontario, Canada, or another appropriate region as explained by them. Five years would be an appropriate timeline to start, with issuers being required to report annually on progress towards the targets and disclosing their strategies for achieving them.

Since gender comply or explain policies have yielded slow and incremental results for the advancement of women on boards, the RIA supports a comply or explain model that is paired with meaningful incentives and penalties for noncompliance. A survey conducted by WCM and the CAUFP, which is provided in their joint letter to the Taskforce, indicates that there is strong support among these groups for legislation that would require companies who fail to comply to provide a written explanation to the regulator as to why they failed, and that this letter should be included in the company's annual report and any ESG reports. The RIA supports this position since responsible or 'ESG' investors view corporate diversity as a material issue for making informed investment decisions, and therefore diversity information, or failure to comply with diversity policies and targets, should be presented in a clear and accessible format to investors.

The RIA supports the Taskforce's proposal to amend securities legislation to require TSX-listed companies to adopt a written policy with respect to the director nomination process that expressly addresses the identification of candidates who are women and Black, Indigenous, and People of Colour during the nomination process. As noted above, the RIA recommends that the Taskforce considers widening the scope of diversity indicators.

The RIA also supports the Taskforce's proposal to amend securities legislation to set a maximum tenure limit for directors, as refreshment creates more space and opportunities for underrepresented groups.

The RIA also supports the Taskforce's recommendation that diversity, including racial and ethnic diversity, be represented at the board and executive level of the OSC.

Recommendation 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

Recommendation 20(a): The RIA strongly opposes the Task Force's recommendation 20(a) to provide issuers with a right to rebut PAF reports. The proposal seems to be based on anecdotal concerns from some issuers, while there is no evidence of errors or faulty advice from PAFs in the Canadian market. Moreover, introducing a new regulatory framework for PAFs would impose costs that would flow to investors and ultimately to retirees and other beneficiaries with no quantifiable benefit.

Recommendation 20(b): The RIA supports the Task Force's recommendation to restrict PAFs from providing consulting services to corporate issuers if they also provide voting recommendations on those issuers. Investors rely on independent, third party research in order to make informed voting decisions. If PAFs are providing consulting services to issuers while also providing voting recommendations to investors on said clients, the independence of the research may be compromised which undermines an important part of the proxy voting process. Proposal 20(b) would reduce conflicts of interest and increase transparency for investors.

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

The RIA supports the Task Force's recommendation to require an annual advisory shareholders' vote on the board's approach to executive compensation. While executive compensation is a core responsibility of a corporation's board of directors, shareholders should have the right to express their support or opposition to

the board's approach to executive compensation through an advisory, non-binding vote for several reasons noted below.

A 'say on pay' vote:

- i. Promotes transparency and accountability, ensuring that compensation practices are clearly and transparently explained to shareholders;
- ii. Enhances communication between corporate issuers and investors on a material issue;
- iii. Gives long term investors such as pension funds an opportunity to reject compensation practices that are not conducive to sustainability and long-term performance;
- iv. Does not create an additional regulatory burden for corporate issuers.

Non-binding "say on pay" votes are already mandatory in many other countries including the United States, Australia, and the United Kingdom, among others.² While the Canada Business Corporations Act was amended in 2019 to require "say on pay" votes for companies governed under that legislation, many Canadian companies are not incorporated under the CBCA and thus are not governed by it.

Recommendation 24. Empower the OSC to provide its views to an issuer with respect to the exclusion by an issuer of shareholder proposals in the issuer's proxy materials (no-action letter)

The RIA opposes the Task Force's recommendation to allow the OSC to provide its views to an issuer with respect to the exclusion by an issuer of shareholder proposals in the issuer's proxy materials (no-action letter). The RIA is concerned that the Taskforce is trying to find a solution to a problem that does not exist in Canada. On September 3rd, 2020, the Canadian Securities Administrators stated publicly that it has not received complaints about the exclusion of shareholder proposals,³ which supports our view that there is no market problem to solve.

Creating a new apparatus would be time-consuming and costly for all parties while we see no discernable benefits. The pursuit of an apparatus or procedure to exclude shareholder proposals in Ontario is unnecessary and would only add to the regulatory burden that the Ministry of Finance and the Ontario Securities Commission are trying to reduce.

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

The RIA strongly supports the Task Force's proposal for mandated, enhanced disclosures of material ESG information from corporate issuers. Empirical evidence has shown that firms with strong performance on material ESG issues significantly outperform firms with poor performance on these issues,⁴ which means it is imprudent and arguably negligent for investors and companies to ignore ESG factors. Incorporating ESG factors into business and investment decisions can help to identify risks and opportunities that are simply not visible with traditional financial metrics alone.

But ESG factors can only be analyzed and considered in a meaningful way when there is transparency and disclosure around ESG issues. Moreover, disclosures must be comparable and consistent in order to be decision-useful, which is why the RIA recommends mandatory disclosures in alignment with the frameworks developed by the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) and the Sustainability Accounting Standards Board (SASB).

² 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>.

³ Canadian Securities Administrators' Comments on the Ontario Capital Markets Modernization Taskforce Report. September 3, 2020. [Available online here.](#)

⁴ Khan, Mozaffar and Serafeim, George and Yoon, Aaron, Corporate Sustainability: First Evidence on Materiality (November 9, 2016). The Accounting Review, Vol. 91, No. 6, pp. 1697-1724., Available at SSRN: <https://ssrn.com/abstract=2575912>.

The TCFD is already being adopted by leading companies and investors worldwide. As of early 2020, there were 1,027 organizations with a market capitalization of \$12 trillion supporting the TCFD.⁵ In addition, annual TCFD reporting is now required for over 3,000 investor signatories to the United-Nations Supported Principles for Responsible Investment (PRI) who collectively manage over US\$100 trillion in assets.

The SASB framework is also widely used by leading institutions worldwide, counting many of Canada's largest institutional investors as public supporters, including but not limited to BCI, CDPQ, CPPIB, HOOPP, OMERS OTPP, PSP, and RBC.⁶

It is important to note that these frameworks should be used together since the TCFD covers climate-related financial information while SASB covers a broader range of material ESG factors across sectors.

Conclusion

We are pleased that the Taskforce has undertaken this work to modernize Ontario's capital markets, and our positions on your proposals are outlined above. We urge the Taskforce to also consider our recommendation to require financial advisors to assess their clients' interest in responsible or ESG investment options as part of the Know Your Client process. We recognize this recommendation is outside the scope of the Taskforce's report, but it is certainly well within the scope of modernizing capital markets. The Taskforce has already acknowledged the need for ESG disclosures, so it's just a matter of taking that idea further downstream to the retail investor.

Sincerely,



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⁵ TCFD Supporters, list available online [here](#).

⁶ SASB Alliance Organizational Members, list available online [here](#).