



September 7th, 2020

Capital Markets Modernization Taskforce

Via email: CMM.Taskforce@ontario.ca

RE: Consultation – Modernizing Ontario’s Capital Markets

Dear Capital Markets Modernization Taskforce,

Alberta Investment Management Corporation (AIMCo) welcomes this opportunity to provide commentary to the Ontario Capital Markets Modernization Taskforce’s Consultation Report.

AIMCo is a Crown Corporation in the province of Alberta responsible for the investment of \$119 billion on behalf of 32 clients, including Albertan public sector pension plans, an endowment fund, and government funds. AIMCo is an active participant in Canada’s equity markets and regularly advocates for corporate governance best practices at public companies in our portfolios. We thank the Taskforce for its efforts in identifying over forty high impact policy proposals. AIMCo has chosen to respond to several priority recommendations in support of the consultation’s overarching themes to foster innovation in capital markets, reduce regulatory burden, improve investor protection and ensure a level playing field for small and large market players to facilitate a globally competitive economy.

Please find our considered responses to select questions posed within each recommendation topic below:

2.3 ENSURING A LEVEL PLAYING FIELD

Recommendation # 19. Improve corporate board diversity

Broadly to require TSX-listed companies to set targets, and annually report on the representation of women, black people, indigenous people, and people of colour (BIPOC), on boards and in executive officer positions, with timelines, accountability measures and refreshment protocols revisited.

Questions posed:

- What should be the appropriate target for women and BIPOC’s on TSX-listed company boards? One suggestion is 40% women and 20% BIPOC.
- What timeline should be prescribed for these targets to be achieved, for example, within 3-5 years?
- What ...(are) ways to increase compliance for companies who do not meet these targets?
- Require TSX-listed companies to adopt a written policy on the director nomination process that addresses the identification of candidates who are women and BIPOC during the nomination process.



- Set a 10-year maximum tenure limit for directors, allowing 10% of the board to exceed the 10-year maximum for up to two years. This is aimed to encourage an appropriate level of board renewal.
- Should this requirement be extended to all reporting issuers?

AIMCo RESPONSE:

Diversity is a key ESG focus area at AIMCo, and we actively encourage diversity on boards and senior officer positions in our voting, engagement and advocacy activities. AIMCo is a member of The 30% club which advocates for a minimum threshold of 30% women on boards and C-Suites in Canada by 2022, and we are a co-founder of the G7 Investor Leadership Network (ILN) which aims, amongst other ILN initiatives to advance diversity and inclusion in the finance sector. We support annual disclosure of a company's processes to ensure diversity on the board and senior executive positions.

With respect to targets for women, the 30% club target is not a final goal, as 30% is seen as a meaningful threshold to effect gender balance. With respect to BIPOC, it is likely too early to prescribe a hard target; however, issuers should be requested to track and monitor their progress and disclose their approach. AIMCo is of the opinion that issuers should be encouraged to adopt an aspirational BIPOC target that aligns with the racial demography of Canada as a whole, and ensure non-discrimination for handicapped persons, LGBTQ persons, and persons with certain religious or cultural affiliations. In the near term, we believe that the Taskforce should recommend that issuers set targets of their choosing for the representation of BIPOC.

We recommend that after a 3-5 year period, the OSC should review issuers' progress, and if insufficient movement occurs, year over year, then other options such as a review of issuer's strategy towards minimum thresholds should be considered. To ensure women and BIPOC are included in the nomination process, we suggest that issuers adopt a written diversity policy that specifically addresses how these groups are included in the nomination process.

Encouraging board renewal processes is certainly fundamental to ensuring a sufficiently diverse, independent, and well governed board. However, proscribing a limit of 10% of directors with 10+ years of experience could potentially be detrimental to the efficient functioning of the board, depending on the quantum of experience and subject matter experts on the board. We suggest the Taskforce pursue a balanced matrix approach, for instance, considering the total and mean number of years served by all board directors and director age, to introduce another criterion, with no more than 20%, 25% or a maximum of 33% of the current board with over 10 years of service. Alternatively, the Taskforce could also revisit the definition of director independence, such that a member of the Board of Directors of an issuer who has been a director of the issuer for a specified number of years from the date of their first appointment is no longer considered independent. This approach is followed by the UK and some proxy service advisors.



It is AIMCo's view that any requirements for board diversity, refreshment and disclosure protocols should apply to all established issuers, with consideration granted for newer, venture capital issuers and issuers facing highly unusual, special circumstances such as bankruptcy and acquisitions.

2.4 PROXY SYSTEM, CORPORATE GOVERNANCE AND MERGERS AND ACQUISITIONS (M&AS)

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

- The recommendation provides an issuer with a statutory right to rebut (at no cost) the reports published by PAFs with respect to each of the issuer's resolutions, 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.
- Issuers and stakeholders have expressed concerns about the influence of PAFs, errors in the reports produced by PAFs, and conflicts of interest arising from PAFs' provision of voting recommendations in respect of issuers to which PAFs also provide consulting services

AIMCo RESPONSE:

AIMCo is a minority owner of Glass Lewis, a proxy advisory firm, which is a Private Equity holding for us. The below represents AIMCo's view as a significant Canadian institutional investor only and is independent from its views as a minority owner of Glass Lewis.

AIMCo invests in the shares of many issuers globally and procures independent proxy analysis from the only two proxy service providers with a global reach, namely, Glass Lewis and ISS, to inform our voting processes, which we consider to be highly robust. As a global investor we are of the view that the PAF space should be competitive and allow for multiple players to conduct independent analysis and recommendations. As such we are of the view that PAFs should not be subject to excessive regulation, causing potential backlogs and resource issues for PAFs and investors alike during the busy proxy season. A key consideration in contemplating the right of rebuttal is that issuers be offered an opportunity to factcheck, correct any errors or omissions made by the PAF and submit their corrections to the PAF. The PAF can then decide if the new information requires a change in their voting analysis and/or voting recommendations.

AIMCo is of the view that PAF's should allow for issuers to verify factual data and that the exchange of information between PAF's and issuers should be conducted in a timely fashion that neither interrupts the flow of information nor impedes the independence of the PAF's voting analysis and recommendations which investors pay for. Today, Canadian issuers do not receive the PAF's recommendations until the publication of the proxy report.



We believe this approach maintains the independence of PAF's, and of their research and recommendations, which is a fundamental tenet of the proxy voting process. Given the issuers' existing ability to make their own recommendations in proxy materials, their existing right/practice in communicating factual errors to the PAFs, and their option of issuing additional communications (e.g. press releases, investor emails, etc.) to rebut any recommendations from PAFs, AIMCo is of the view that mandating an additional statutory right of rebuttal is unnecessary and would not be beneficial to the overall voting process.

AIMCo is of the view that conflicts of interest arising from PAF's provision of voting and consulting services should be avoided to ensure PAF independence and objectivity. While it is possible for the PAFs to provide unconflicted, value-additive voting and consulting services, clearly defined barriers in the form of checks and controls should be established between the entities who provide consulting services and those providing voting recommendations. This can be accomplished in a variety of ways, for instance by creating separate legal entities or by creating physical and virtual separations between the consulting and voting arms. The PAF's policies and procedures used to identify and address conflicts of interest should be clearly disclosed to clients and issuers alike.

SHAREHOLDER RIGHTS

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

- CBCA requires advisory say on pay (SoP) for CBCA companies
- Should the proposal be expanded to all reporting issuers?

AIMCo RESPONSE:

AIMCo fully supports the right of shareholders to vote on executive compensation packages on an annual, advisory basis (Say-on-Pay). The proposed recommendation would be in line with recent CBCA amendments (Bill C-97) which require CBCA corporations to provide Say-on-Pay for shareholders' approval on annual general meetings.

AIMCo is of the view that mandatory, advisory votes on executive compensation should become standard market practice for all Canadian issuers. Our experience as investors demonstrates that SoP is an effective driver of engagement between issuers and investors which allows company boards and management to better understand the views of shareholders and proactively address any concerns before they become acute. At the same time, the improved disclosure that often comes with SoP provides investors an opportunity to better understand a company's approach to compensation. Effective communication can reduce the incidence of negative vote results for directors where compensation concerns exist. Shareholders have the choice to appropriately express their concerns with a SoP vote rather than having to vote against members of the compensation committee. The lack of securities regulation in this area places Canada's capital markets behind markets which require some form of mandatory vote on executive compensation such as Britain, The Netherlands, Australia, Sweden, Norway, Switzerland, Denmark, and the United States. For all of these reasons, we believe the time is right to create a level regulatory playing field and require all issuers to provide an annual



advisory vote on executive compensation. It is our view that this is entirely consistent with the regulators' role to maintain the integrity of the capital markets and protect investors' interests.

Recommendation #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.

- What specific material ESG information is needed beyond what is currently captured by existing disclosure requirements?
- Should there be a phased approach to implementation, including a comply-or-explain model?
- Is there a need for a short term 'safe haven' regarding ESG disclosures?
- Should ESG disclosures be subject to the forward-looking information requirements set out in National Instrument 51-102 Continuous Disclosure Obligations, or what, if any, different considerations should apply?

AIMCo RESPONSE:

AIMCo fully supports the disclosure of material ESG information to inform investment decision-making and integration of ESG in investment processes. AIMCo has publicly supported both SASB and TCFD as good models for issuers to use for ESG disclosure- however, ESG reporting frameworks continue to evolve. SASB is focused on developing and disseminating sustainability accounting standards across 77 industry sectors, employing US issuers' 10K disclosures to help issuers identify and disclose material, decision useful ESG information to investors. It has both confirmatory, historical value and predictive value, particularly because market value typically captures the value of intangibles, much of which is ESG related. By contrast, climate change has emerged as a systemic risk and TCFD is solely focused on climate disclosure. TCFD reporting is helpful to investors to assess whether a company has adopted a climate resilient strategy, whether it is assessing climate related risks and opportunities, and which decarbonization pathway it is on track for in the future.

Considering that each issuer may have its own interpretation of what is considered reasonable, likely, and therefore material, it may be advisable, if the OSC is to mandate disclosure of material ESG information, that it clearly outline to issuer's and investors a definition of materiality appropriate for the rapidly evolving ESG reporting landscape. Reporting of material ESG information to the investment world should be subject to the same rigour as financially-material information, with respect to underlying methodological assessments, verification and assurance protocols and related disclosure requirements. AIMCo specifically seeks firm's disclosure on key metrics such as its Scope 1 and 2 carbon emissions- if these are not disclosed, we will proxy them using a data waterfall approach. Even where disclosed where unverified they are subject to error.

AIMCo supports the recommendations of the Expert Panel on Sustainable Finance with respect to endorsement of a phased comply or explain approach to entities' adoption of the TCFD recommendations, beginning with



large companies and Crown corporations and eventually extending to smaller entities. It is reasonable that implementation of mandated ESG disclosure be done in a phased approach to allow time for the further development of standardized, integrated ESG reporting and verification protocols. Investors seek consistent, comparable, and relevant information on ESG risks that are industry-specific and financially material to a company's operations. The reporting framework a company chooses to follow (GRI, SASB etc.) should be described in the company's disclosure records.

NI 51-102 may require amendments with respect to what considerations should apply in disclosure of material, forward looking information. While each company's specific circumstances may differ, the board of directors and management are accountable for assessing any long-term impacts, and therefore material ESG risks and opportunities on the company's operations. A safe harbour provision, especially when considering the evolving nature of the data landscape for climate-related data may serve to encourage issuers to provide more robust and authentic forward looking, fuller climate related disclosures as opposed to boilerplate disclosure which is less useful to investors. Issuers should be advised to include caveats that caution users of forward-looking data that actual results may vary.

Thank-you again for the opportunity to provide commentary, and we hope it is useful to the Taskforce. We understand that the submission may be publicly posted

Sincerely,

[Original signed by Dale MacMaster]

Dale MacMaster
Chief Investment Officer

Sincerely,

[Original signed by Alison Schneider]

Alison Schneider
Vice President, Responsible Investment