

February 18, 2022

Capital Markets Act Consultation  
 Capital Markets and Agency Transformation Branch  
 Ministry of Finance  
 Frost Building North  
 95 Grosvenor Street, 4th Floor  
 Toronto, ON M7A 1Z1

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Re: NEI Investments' Submission in relation to the Capital Markets Act Consultation

Dear Sir/Madam,

With approximately C\$11 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best Environmental, Social and Governance (ESG) practices into their strategies and operations. We are a Canadian firm, with a long history in responsible investment.

We firstly want to thank the Ministry of Finance for the opportunity to comment on the legislative draft of the *Capital Markets Act (CMA)*. Our comments in this correspondence are specifically related to how the *CMA* reflects proper consideration of ESG issues and facilitates timely review and stakeholder input.

## **Questions 9 and 10**

### **Q9. Is the scope of periodic reviews appropriate? Should the proposed draft legislation include further details about how the review would be conducted?**

The scope of the periodic reviews is appropriate. Capital Markets legislation needs to be regularly tested against innovations in capital formation, emerging threats to investor protections and global regulatory developments in order to stay relevant and globally competitive. Regular reviews every five years will permit the regulator and regulatory framework to be nimble and responsive while providing the predictability and stability that capital markets crave. Reviews would facilitate more incremental enhancements or "tweaks", in contrast to the current review which is the first in more than 15 years and is more sweeping in nature (and therefore significantly more complex for stakeholders and the market to digest).

The proposed legislation should include further details about how the review would be conducted. We recommend the inclusion of process guardrails with respect to the selection and membership of the individuals appointed to conduct the review. In particular, the individuals put forward to the Minister for potential appointment should be determined through a transparent process. The appointees should be independent from government and the regulator and should include representatives from all major stakeholder groups with a view to ensuring there is sufficient representation of stakeholders with potentially divergent viewpoints. We agree that any review should include public consultation and publication of the recommendations. We further recommend that the legislation require transparency

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through timely publication of written comments received from stakeholders through the public consultation process and disclosure of which stakeholders the appointed reviewers met with during the development of its recommendations.

Additionally, the wording of S. 276(1) would prescribe the review every five years after the Section comes into force – not the Act. This could create a situation where the Act, or significant portions of it are in force, but the section is not proclaimed thus delaying review. We recommend that this be amended to ensure that the five-year time period begins to run from the proclamation of the Act itself.

**Q10. Are there circumstances where a minimum consultation period of 60 days would be inappropriate? If so, please explain. Are there particular factors the OSC should consider when determining when a consultation period should be longer than 60 days?**

In our view the public consultation period should remain at 90 days for a proposed rule. Stakeholders would be challenged to provide meaningful and thorough responses in a shorter timeframe given the complex nature of many of the issues for which the OSC seeks public comment. We are also mindful of the prevalence of multiple overlapping requests for comment which often rely on the same resources within a stakeholder for response.

If the draft *CMA* does not retain the current 90 day consultation period, we would recommend that the following be considered as factors for which a longer consultation period should be considered: multi-issue or structural consultations; new or novel areas of rulemaking or an area that could be considered to be relatively contentious; where there are significant substantive changes to existing rules; where there are overlapping multiple consultations.

**Feedback on Specific Provisions of the CMA**

**Section 65(a) – Disclosure requirements, reporting issuers and others:** This section should expressly provide for non-financial reports to facilitate enhanced disclosure on environmental and social issues

We support periodic disclosure on key issues as identified in section 65(a). We note however that this section explicitly notes disclosure on financial reports. Given the increased consideration of environmental, social and governance issues by investors, and stakeholders, we believe that periodic disclosure of non-financial issues should also be explicitly incorporated into the language of section 65(a). We note that this could be implicitly considered under section 65(c). However, given the increased prominence of ESG issues for investors, we believe it would be important, timely, and aligned with investors' expectations to explicitly raise non-financial reporting, which would include reporting on ESG issues. This would send a signal around the importance of non-financial reporting as decision useful information, complementary to financial reporting.

As such, we recommend the following amendment be made to the draft CMA S.(65)(a):

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**Disclosure requirements, reporting issuers and others**

65. A reporting issuer or any other issuer within a prescribed class shall, in accordance with the rules, provide,

- (a) prescribed periodic disclosure about its business and affairs, including financial reports [*and non-financial reports*];
- (b) disclosure of a material change; and
- (c) any other disclosure required by the rules.

**Section 69 – Governance of reporting issuers, etc.:** Our support of governance related conditions and in particular, a focus on diversity

We are supportive of the inclusion of specific governance related conditions and requirements in accordance with S. 69. We are especially pleased at the addition of ss. 69(a) which explicitly provides the OSC with the ability to promulgate rules in respect of board composition, including with respect to the independence of directors, and the diversity of officers and directors. These issues have been central to our approach on proxy voting for years now. We would encourage the OSC to prioritize rulemaking on these issues.

**Section 74(1) Issuer’s Meetings with Security Holders:** Our support for an implementation mechanism for Say on Pay

Section 74(1) of the draft *CMA* provides that issuers must comply with such requirements as may be prescribed in OSC rules for meetings of issuers with security holders. This establishes a clear statutory authority for the OSC to move forward with implementation of non-binding advisory shareholder votes on the board’s approach to executive compensation. Say on pay is an important accountability mechanism for investors to signal their approval or disapproval with reporting issuers and to facilitate engagement on executive pay. This has been an especially important means for us to share our insights with companies around sustainable, long-term value creation. We encourage the OSC to move forward to implement say on pay rulemaking in this area as a priority.

We also note that this section is broad and allows for other requirements of meetings between issuers and shareholders. While it is unclear at this time what rules may be initiated pursuant to this authority, investors will be watching closely to ensure that any rules take into account and promote investor access and experience at such meetings.

**Section 273 Request by Minister:** Transparency should be built back into this provision

We would echo the concerns of the [Canadian Coalition for Good Governance](#) in that the proposed section 273 does not provide the public with any visibility into the nature of the requests made by the Minister and the Commission’s related response, or seemingly even the fact that a request was made. The existing *Securities Act (Ontario)* seemingly incorporates a higher level of transparency with respect to requests received from the Minister including a requirement that such requests be in writing and that the OSC publishes such requirements received from the Minister. It is essential that there is full transparency for capital markets stakeholders with respect to requests from the Minister.

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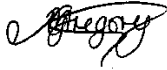
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Thank you again for the opportunity to comment on the legislative draft of the *CMA*. Please do not hesitate to contact us if you believe further dialogue on any of the issues raised within this letter would be helpful.

Sincerely,



Michela Gregory | Director, ESG Services, NEI Investments

cc.

Jamie Bonham | Director, Corporate Engagement, NEI Investments

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