



May 25, 2019

Mr. Robert Day  
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Ontario Securities Commission  
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Dear Mr. Day:

**Re: OSC Notice 11-785 – Statement of Priorities**

We are writing in response to the request for comments on the Ontario Securities Commission (OSC) *Notice 11-785 – Statement of Priorities*.<sup>1</sup> We commend the OSC for continuing to provide stakeholders with the opportunity to comment on its priorities.

With approximately C\$7.6 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 appreciate the broad array of important initiatives the OSC has laid out in its Statement of Priorities, and support the OSC in its efforts to implement them. Our following comments reflect the key investor priorities we have that would benefit tremendously from the OSC's attention.

**Systemic Risk and Financial Stability**

We note that in the discussion of systemic risk and financial stability in the Statement of Priorities (p6), the OSC mentions that regulators are increasingly examining the need for enhanced disclosure of economic, environmental and social sustainability risks, including climate change. The Task Force on Climate-Related Financial Disclosures (TCFD) is also mentioned as a key development in this regard and is specifically referenced as an initiative the OSC will continue to monitor. We believe that both of these topics merit enhanced profile in the OSC's priorities.

Addressing the need for enhanced ESG disclosure, and specifically enhanced climate-related disclosure, is critical if the OSC is to meet its mandate to foster "confidence in capital markets and to contribute to the stability of the financial system and the reduction of systemic risk."<sup>2</sup> There is currently an information asymmetry in the market when it comes to this kind of disclosure that could be mitigated by securities

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<sup>1</sup> [https://www.osc.gov.on.ca/documents/en/Securities-Category1/sn\\_20190328\\_11-785\\_rfc-sop-end-2020.pdf](https://www.osc.gov.on.ca/documents/en/Securities-Category1/sn_20190328_11-785_rfc-sop-end-2020.pdf)

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regulators. As climate change has been identified by the Financial Stability Board as a systemic risk to the financial system, we think it germane to the OSC's mandate.

The Canadian Securities Administrators (CSA) have already commissioned work that outlines the possible priority actions for the OSC. We were much encouraged when the CSA announced its climate change-related disclosure project in 2017, and we have studied Staff Notice 51-354 with interest.<sup>3</sup> We believe the report contains suggested next steps that should inform the OSC's priorities. Namely, the recommendations to:

- (i) Develop guidance and educational initiatives for issuers with respect to the business risks and opportunities and potential financial impacts of climate change, and
- (ii) Consider new disclosure requirements regarding corporate governance in relation to risks, including climate change-related risks, and risk oversight and management.<sup>4</sup>

We believe that both of these recommendations will bring material benefits to issuers and investors and as such they should be included in the Statement of Priorities. Specifically, we would encourage the OSC to actively consider how it can work with issuers and investors to further the adoption and use of the TCFD framework. As we detailed in our May 2018 submission to the OSC,<sup>5</sup> we support the universal adoption of the governance and risk oversight recommendations of the TCFD,<sup>6</sup> and we continue to hold the view expressed in our earlier submission<sup>7</sup> to the CSA climate project that all issuers should be required to disclose on a comply-or-explain basis if they have undertaken a materiality assessment of climate-related risks specifically, and whether or not climate risk has emerged as a material issue in that assessment.

### Diversity: Women on Boards and in Executive Officer Positions

We note that diversity, specifically the issue of women on boards and in executive officer positions, was not mentioned in the Statement of Priorities. While we realize that the omission of diversity from the Statement of Priorities might not necessarily mean that the OSC will not be pursuing further work in this area, we are concerned by its absence. Board and executive officer diversity continues to be a key priority for investors and we believe that the level of concern from investors at the slow pace of change is only intensifying. The OSC has done fantastic work in this area in recent years and we strongly encourage it to continue making it a key priority of the organization. As the CSA's own research has shown, while progress has been made it is still not nearly good enough.<sup>8</sup>

<sup>3</sup> [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20180405\\_51-354\\_disclosure-project.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20180405_51-354_disclosure-project.htm)

<sup>4</sup> Recommendation (ii) proposes new disclosure requirements on issuers' governance processes in relation to material risks and opportunities, including board and management oversight and responsibility; and disclosure of how the issuer identifies, assesses and manages material risks.

<sup>5</sup> <https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2018/Ontario%20Securities%20Commission%20-%20Notice%2011-780%20-%20Statement%20of%20Priorities.pdf>

<sup>6</sup> <https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf>

<sup>7</sup> <https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2017/Canadian%20Securities%20Administrators%20-%20Climate%20Change%20Disclosure%20Review%20Project.pdf>

<sup>8</sup> [https://www.osc.gov.on.ca/documents/en/Securities-Category5/sn\\_20180927\\_58-310\\_staff-review-women-on-boards.pdf](https://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20180927_58-310_staff-review-women-on-boards.pdf)

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As such, the topic of women on boards and in executive officer positions should be explicitly referenced in the Statement of Priorities and should be included in future priority setting exercises until such a time as the issue has seen dramatic improvement.<sup>9</sup>

## Cybersecurity resilience

We welcome the returning focus on cybersecurity resilience, which is approaching the status of a universal ESG concern. As well as promoting cybersecurity resilience through greater collaboration with market participants and other regulators (p6), we encourage the OSC to consider how corporate governance disclosure requirements and guidance relating to cybersecurity might advance investor protection.

Robust governance and management of cybersecurity is fundamental to long term business continuity. From an investor perspective the economic and social significance of cybersecurity is clear: data breaches can represent a material financial risk that can negatively affect a company's prospects and valuation, in addition to representing a social risk that can negatively affect a company's reputation and the privacy and security of customers and other stakeholders. There is also increasing regulatory risk which can result in potential financial liabilities and business disruptions. As such, investors are increasingly seeking to integrate risks and opportunities relating to cybersecurity into their company analysis and engagement. We are participating in the Principles for Responsible Investment (PRI) collaborative initiative on cybersecurity, which engages companies on the governance of cybersecurity issues, alongside investors representing some U.S.\$10 trillion in assets under management. The collaboration reviewed corporate disclosure on cyber security to determine how relevant current disclosures are to investors, and published the findings in the report 'Stepping up Governance on Cyber Security – What is Corporate Disclosure Telling Investors?'<sup>10</sup> The report notes that despite widespread acknowledgement by companies that cyber security poses a material risk to business, there are significant corporate disclosure gaps related to cyber governance and board oversight, senior management accountability, legal compliance, policies, corporate skills and resources.

We share below some key questions that we have been exploring in engagement with issuers on cybersecurity that may be relevant in the context of corporate governance guidance and disclosure requirements:

- Is there a board committee or full board responsibility for cybersecurity risk oversight?
- How are the company's cyber risks communicated to the board, by whom, and with what frequency?
- How does the board evaluate the effectiveness of the company's cybersecurity efforts? What information does it receive and how does it assess it?
- Do company directors have specific knowledge and expertise in cybersecurity – if not, does the company actively seek these skills when appointing directors, or provide ongoing director education on this issue?
- Does the company conduct a cyber risk assessment when it merges or acquires companies?

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<sup>9</sup> A more detailed discussion on the value of diversity to investors can be found in a previous submission to the OSC: <https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2018/Ontario%20Securities%20Commission%20-%20Notice%2011-780%20-%20Statement%20of%20Priorities.pdf>

<sup>10</sup> <https://www.unpri.org/download?ac=5134>

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- How does the board ensure that the company's reporting lines (from technical staff to management and board) support robust assessment and management of cybersecurity risks?
- Does the board have access to internal or external expertise on cybersecurity?
- Is there board approval of the company's high-level cybersecurity strategy and framework?
- How often does the board evaluate its existing security controls and protocols and the extent to which they are sufficient to meet its cybersecurity objectives and developments in this space?

We also draw attention to the key recommendations of the Ranking Digital Rights Corporate Accountability Index with respect to freedom of expression and privacy, issues that are closely allied to cybersecurity.<sup>11</sup> Although this initiative focuses on global digital companies, we believe the governance recommendations will become increasingly relevant to companies in all sectors that hold sensitive digital information. As such we encourage the OSC to consider these issues in forming its future priorities, as they are already a priority for many investors. Note that we are engaging companies on their performance on digital rights through the Investor Alliance for Human Rights.<sup>12</sup>

## Conclusion

We thank the OSC for allowing us the opportunity to provide our perspective on its Statement of Priorities. We reiterate our desire to see board and executive officer diversity, cybersecurity resilience, and enhanced ESG disclosure (climate-related disclosure specifically) enjoy a more prominent place in the OSC's important set of priorities. Please do not hesitate to contact me if you have any questions relating to this submission.

Sincerely,

**NEI Investments**



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<sup>11</sup> <https://rankingdigitalrights.org/>

<sup>12</sup> <https://investorsforhumanrights.org/>

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