



September 6, 2020

Capital Markets Modernization Taskforce
Ministry of Finance
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Attention: Walied Soliman
Chair, Capital Markets Modernization Taskforce

Dear Sirs/Mesdames:

RE: Consultation – Modernizing Ontario’s Capital Markets

We are writing on behalf of the Canadian Exchange-Traded Fund Association (**CETFA**) in order to provide our comments and certain proposed changes that we believe would help modernize Ontario’s capital markets with respect to exchange-traded funds (each, an **ETF**).

Based in Toronto, Canada, CETFA is the only ETF association in Canada, and the first of its kind in the world. CETFA represents 97% of ETF assets under management in Canada with the mandate to support the growth, sustainability and integrity of Canada’s ETF industry.

We would like to address the topics outlined below.

1. Improving Regulatory Structure

Recommendation No. 1: Expand the mandate of the OSC to include fostering capital formation and competition in the markets

We agree with the proposal to expand the mandate of the Ontario Securities Commission (the **OSC**) to include fostering capital formation in the capital markets in order to encourage innovation and economic growth.

However, we have the following concerns with the proposed expanded mandate of the OSC:

- The expanded mandate as proposed may increase the tension between raising capital and protecting investors.
- The expanded mandate as proposed may require additional expertise within the OSC to regulate competition in the capital markets. It remains unclear how the expanded mandate will interact with the mandate of the Competition Bureau.
- The expanded mandate could invite greater intrusion into the market by regulators.

- We do not support regulating quantum of fees and profit margins.

We also urge the Taskforce to consider expanding the OSC’s mandate further, to include providing greater access to advice for market participants, and in particular, for smaller investors and the “mass market”. For example, we commend the Canadian Securities Administrators (the **CSA**) for the establishment of the CSA Regulatory Sandbox, allowing firms with innovative business models to directly access their local securities regulator to discuss their organization’s business model in a faster and more flexible process. We urge the Taskforce to recommend that access to advice be entrenched in the mandate of the OSC.

Recommendation No. 4: Move to a single SRO that covers all advisory firms, including investment dealers, mutual fund dealers, portfolio managers, exempt market dealers and scholarship plan dealers

Though we generally agree with the Taskforce’s proposal to move to a single SRO because we see the potential efficiencies, we will provide our fulsome comments on this topic in our response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*, which will be available on or about October 23, 2020.

2. Regulation as a Competitive Advantage

Recommendation No. 9: Transitioning towards an access equals delivery model of dissemination of information in the capital markets, and digitization of capital markets

We fully support the transition toward an access equals delivery model of dissemination of information in the capital markets and digitization of the capital markets, which would increase operational efficiency, and significantly reduce costs and administrative burden for issuers. Though we acknowledge that there may be concerns with respect to investor protection and the use and reliance on the Internet and technology to disseminate investment information, particularly as it relates to protecting senior and vulnerable investors, we believe these concerns can be addressed by continuing to make physical delivery of documents available upon request.

We think that all regulatory filings should be made available through an access equals delivery model including prospectuses and ETF facts for offerings of investment funds, annual and interim financial statements and management reports of fund performance, and other continuous disclosure documents and other documents required to be provided to investors under securities laws, such as proxy-related materials and information circulars.

We believe a transition period of at least 12 months would be most appropriate.

We remind the Taskforce that the current CSA proposal in connection with adopting the access equals delivery model for market participants in Consultation Paper 51-405 *Consideration of an*

Access Equals Delivery Model for Non-Investment Fund Reporting Issuers specifically excludes investment fund issuers. We urge the Taskforce to support full use of access equals delivery for all reporting issuers, including investment fund issuers.

Recommendation No. 10: Consolidating reporting and regulatory requirements

We fully support the effort to consolidate and streamline reporting and regulatory requirements for registrants in order to reduce the regulatory burden in the capital markets for registrants. We also fully support the continued effort among the CSA to reduce the regulatory burden for investment funds.

In particular, we ask the Taskforce to consider the recommendations we proposed in our comment letter to the OSC on OSC Staff Notice 11-784 *Burden Reduction*, which can be accessed at the following link: https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20190308_11-784_dunwoodyp.pdf.

Recommendation No. 15: Expediting the SEDAR+ project

We completely agree that the SEDAR+ project needs to be accelerated. Once more, the new SEDAR+ must be able to be fully accessible, viewable and user-friendly for all investors and market participants.

We suggest the Taskforce consider proposing a pilot SEDAR+ project prior to rolling out the SEDAR+ project to all market participants.

3. Ensuring a Level Playing Field

Recommendation 18: Introduce a retail investment fund structure to pursue investment objectives and strategies that involve investments in early stage businesses

We support the introduction of a new retail investment fund structure providing access to retail investors to invest in early stage businesses, as we recognize that closing the funding gap for smaller issuers wanting to raise capital for their businesses is imperative to fostering capital formation in Ontario's capital markets. However, we do not think that the new investment fund structure should be limited in its investment strategies to investing in early stage businesses in Ontario and Canada, and believe that these funds should be able to invest on a global basis. Any investor protection concerns could be addressed by limiting the amount invested in this type of fund, and could be offered both publicly and by private placement.

4. Proxy System, Corporate Governance and Mergers and Acquisitions

Recommendation No. 21: Decrease the ownership threshold for early warning reporting disclosure from 10 to 5 per cent

We do not support the proposal to decrease the ownership threshold for early warning reporting disclosure from 10 to 5 per cent. Requiring “passive” investors who hold securities of reporting issuers for investment purposes only and have no intention to exercise control or direction over such issuer to report ownership at the 5 per cent threshold would create unnecessary regulatory and administrative burden that would outweigh any potential benefits to this added disclosure.

Recommendation No. 22: Adopt quarterly filing requirements for institutional investors of Canadian companies

We support the proposal to adopt quarterly filing requirements for institutional investors of Canadian companies. We note the recent proposal by the United States Securities and Exchange Commission (the **SEC**), which recently announced on July 10, 2020 that it is amending the Form 13F in order to increase the market capitalization threshold for filing the Form 13F among institutional investment managers from \$100 million to \$3.5 billion in order to eliminate the Form 13F filing requirement and its related costs for nearly 90% of filers that are smaller managers.

We feel that establishing a similar requirement in Ontario would be appropriate, but encourage the Taskforce to ensure that the threshold triggering the filing requirement is appropriate for the size of the Canadian market and that the filing requirement only be intended to capture the largest investment fund managers, and provide exemptive relief to smaller investment fund managers that may otherwise be captured by the new requirement.

Thank you for giving us this opportunity to comment on your efforts to modernize Ontario’s capital markets. We welcome any further discussions regarding this initiative.

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