

Open Letter from the CSA in Response to the Capital Markets Modernization Taskforce final report

The CSA members, except for the Ontario Securities Commission (“we”), have reviewed the Capital Markets Modernization Taskforce (“Taskforce”) final report released and delivered to the Ontario Minister of Finance on January 22, 2021 (the “Report”). We commend the expeditious work completed by the Taskforce and believe it will be very useful to bolster our collective reflection on how to advance the Canadian securities regulatory regime.

Over the last two decades, CSA members, including the OSC, have collectively developed a modern and responsive Canadian securities regulatory regime. Today, the CSA is working diligently to deliver over forty initiatives identified in its 2019-2022 Business Plan, while effectively addressing the pressing issues stemming from the COVID-19 pandemic. It is fundamental to keep in mind that a highly harmonized securities regulatory system ensures the best possible outcomes for the Canadian capital markets and adhering to this foundational principle is critical to ensure our regulatory system remains efficient and responsive. Attempting to implement many of the recommendations included in the Report outside of CSA mechanisms and processes would risk creating inter-jurisdictional friction and adding regulatory burden on market participants across Canada.

Noticeably absent from the Report, was the CSA’s strong recommendation for Ontario (and the OSC) to adopt passport. By joining passport, Ontario would significantly reduce the regulatory burden for the benefit of all Canadian market participants by introducing speed in regulatory decision-making, including financings, and eliminating the additional costs of dealing with multiple regulators. This can be achieved quickly and easily as the passport rule is already in place in all jurisdictions, except Ontario. Hence, we urge the Ontario Finance Minister to act in the best interest of all Canadian market participants and adopt the passport rule.

In connection with the Taskforce’s Recommendation #2, all securities regulators in Canada have, in some form, a mission to foster fair, efficient and vibrant capital markets. The emphasis of this Recommendation and the commentary surrounding it in the Report without commensurate attention to investor protection, is of concern and should be approached with caution. This harmful imbalance could also jeopardize CSA’s sound policy-making approach and introduce risk of disharmonization.

We also strongly encourage the Ontario Finance Minister to empower the OSC to prioritize the sixteen Taskforce recommendations¹ that already align with some key CSA projects that are active and well advanced. In particular, the CSA has made significant progress on a number of initiatives aimed at streamlining regulation and reducing regulatory burden, such as the introduction of an alternative offering model for reporting issuers, the development of a well-known seasoned issuer model, the transition towards access equals delivery model and the consolidation of reporting requirements for non-investment fund reporting issuers and investment funds. In addition, we welcome the support to: (i) foster innovation, which coincides with CSA’s objective of enhancing and expanding its existing Regulatory Sandbox; (ii) review and optimize Canada’s Self Regulatory Organization (SRO) structure, including through stronger CSA oversight; and (iii) strengthen

¹ The following 16 recommendations fall within the scope of existing or planned CSA policy initiatives: R9, R10, R11, R14, R16, R17, R20, R21, R22, R23, R24, R36, R49, R50, R54, R71

OBSI. The successful and timely completion of these projects will be best achieved through Ontario's continued participation and focus.

Twenty-six initiatives² proposed by the Taskforce raise important policy issues that CSA members are interested in considering. CSA should collectively assess these on their merits. They could either become short-term projects if market conditions warrant an expedited regulatory response or be considered for inclusion in the CSA 2022-2025 Business Plan.

It is imperative that all policy-development work, current and future, be subject to a robust process which not only includes countrywide public consultations with all stakeholders (both market participants and investors as well as their advocates), but also includes appropriate research and cost-benefit analysis.

With respect to enforcement, the Report contains recommendations aimed at changing some enforcement mechanisms that we believe could risk reducing the efficacy of the Canadian securities regulatory system. Some of these recommendations, if implemented, would narrow the discretion of enforcement to engage in appropriate and necessary oversight of capital market interactions and create additional processes that may decelerate timely enforcement action and undermine both investor protection and investor confidence.

In conclusion, we are fully supportive of cooperative efforts to modernize and streamline the regulation of the Canadian capital markets while delivering robust investor protection through the CSA. To achieve these goals, Ontario should join the passport system and the Taskforce's recommendations that have policy implications across Canada should be integrated into the CSA's robust and well-established process for the benefit of all Canadian market participants.

² R12, R15, R18, R19, R25, R26, R27, R28, R29, R33, R34, R35, R37, R38, R39, R41, R42, R43, R44, R45, R46, R47, R48, R51, R52 and R53.