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September 4, 2020

Capital Markets Modernization Taskforce

By email: CMM.Taskforce@ontario.ca

Dear Madam/Sir,

Consultation – Modernizing Ontario's Capital Markets

Computershare (ASX: CPU) is a global market leader in share registration and transfer agency, employee equity plans, mortgage servicing, proxy solicitation and stakeholder communications. We also specialize in corporate trust, bankruptcy, class action and a range of other diversified financial and governance services.

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We refer to the Consultation Report from the Capital Markets Modernization Taskforce and appreciate the opportunity to provide feedback on the policy proposals formulated by the Taskforce. Our comments are largely focused on those aspects of the proposals that would be relevant to the services that we provide to issuers, particularly relating to the proxy system and corporate governance.

Improving Regulatory Structure & Regulation as a Competitive Advantage

Computershare supports the goal of reconsidering and refining the Ontario regulatory structure to better facilitate capital formation and market competition. The Taskforce references the work undertaken to establish the Cooperative Capital Markets Regulatory system and we appreciate the relevance of a harmonized approach. Several of the specific proposals also interact with collaborative national discussions on similar topics and it will be equally relevant to consider that broader context as the Ontario Securities Commission (OSC) considers next steps in progressing the Taskforce recommendations.

We support efforts to ensure that the regulatory obligations and associated time and cost demands on issuers are proportionate and fair, and the reduction of regulatory burdens where possible while maintaining the integrity and transparency of capital markets. Improved flexibility in reporting requirements, such as providing an option for issuers to file semi-annually instead of quarterly can allow companies to determine the most effective timing to keep the market informed, balancing factors such as the cost impact and the market benefit based on their company profile.

We agree with the principle of proposal 9, transitioning to an 'access equals delivery' model for communications and progressing digitization. As you would be aware, this topic was also addressed early this year in the Canadian Securities Administrators' (CSA) Consultation Paper 51-405 "*Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers".* The Securities Transfer Association of Canada (STAC), of which we are a member, issued a response to the CSA consultation which addressed the potential benefits of access equals delivery as well as highlighting certain complexities that would need to be addressed (available here). The STAC response also highlighted various forms of investor communication that, in our joint experience as transfer agents, would benefit from this approach.

Subsequent to that consultation, we have of course all experienced significant disruption arising from the COVID-19 pandemic. While the Canadian market overall has managed to continue operations successfully, and mail services have not been significantly disrupted, this experience further highlights the benefit of improving digitized communications and creating effective new mechanisms for issuers to reach their shareholders. We agree with the comments submitted by STAC and would respectfully suggest their consideration by OSC with regard to this Ontario-specific proposal. We trust that the OSC will also continue its coordination efforts with the CSA overall on this topic, as such initiatives will be most effectively implemented through a consistent national approach.

Proxy System, Corporate Governance and Mergers & Acquisitions

Transparency of ownership for issuers

The Canadian equity market in its current form provides significantly less transparency for issuers than others throughout Europe, Australia and Asia, and even in some regards the US. Computershare is pleased to see the range of proposed initiatives that would enhance issuers' visibility of their beneficial owners. In an environment of increasing demand for shareholder engagement, these proposed measures would collectively provide a material increase in issuers' ability to identify and communicate with their investors and potentially improve the attractiveness of the Canadian market to issuers.

We therefore support:

1. Reducing the ownership threshold for early warning reporting disclosure from 10% to 5% (proposal 21).

2. Adopting new periodic filing requirements for institutional investors of Canadian companies (proposal 22).
   US companies have benefited from access to US institutional investor filings under Form 13F since 1975 and, in the experience of our Computershare US transfer agent business, consider it an invaluable tool to gain transparency into their institutional investor population and support shareholder engagement efforts. In considering appropriate parameters for reporting, we recommend consideration of these critical factors:

   a. Reporting threshold: You may be aware that the Securities & Exchange Commission is currently consulting on a revision to the US reporting threshold, which would drastically increase the threshold and has prompted concern amongst issuers and their industry bodies. Our analysis in the US has indicated that this particularly disadvantages small to mid-cap

issuers and closed end funds, who stand to lose significant visibility based on their investor profile. We therefore urge careful consideration of the appropriate threshold for the Canadian market, in light of the nature and profile of Canadian issuers (notably in view of the significance of small and mid-cap issuers to the market). We would be pleased to further contribute our experience and insight into that analysis as the proposals progress.

b. Timing: We note that the current US deadline of 45 days after end of the calendar quarter is archaic and in need of reform, having not changed since 1975, and would urge the OSC to consider a more effective time period which reflects the efficiencies of current reporting technologies. This aspect has been contested in the US for several years, with proposals ranging from 2 days after the end of the quarter to 15 days after the end of the month[1]. While quarterly reporting, with an additional 45-day lag, would be an improvement on the current level of transparency obtained by Canadian issuers, the data is nonetheless stale. We suggest that modern record-keeping systems for investors and reporting technologies should enable more timely reporting. Discussions with key stakeholders should determine the appropriate timing for Canada, to ensure relevance and usability of the data for issuers without unduly burdening investors.

3. Elimination of the NOBO & OBO Status, allowing issuers to access the list of all their beneficial owners and facilitate electronic delivery of proxy materials to securityholders (proposal 30)

   Computershare welcomes the purpose of these proposed changes, which would deliver material benefits to issuers in terms of a significant improvement in ownership transparency and the potential to directly communicate proxy materials to all securityholders. As you are aware, the NOBO/OBO rule and ability for issuers to directly facilitate delivery of proxy materials to all beneficial owners have been the subject of discussion amongst industry stakeholders and with the CSA for many years. We applaud the Taskforce's recommendations to the OSC, and hope that this will be influential in progressing reform nationally. Issuers must be entitled to know their beneficial owners. For any investor that has a particular concern with disclosure, existing mechanisms such as use of nominees are a viable option.

   In considering the implementation of these proposals, the experience in adoption of National Instrument 54-101 should be instructive. NI 54-101 allows issuers to directly appoint the distribution of proxy materials to NOBO investors and the tabulation of NOBO investor's votes. In principle, this delivered a valuable right to issuers, compared to the existing intermediated system which precludes issuers from any direct control over mailings to their beneficial owners. In this regard, Canada took the lead in reform of the longstanding NOBO/OBO concept in North America. However, continuing structural barriers in the Canadian proxy system that were not addressed in NI 54-101 have inhibited the emergence of a fully competitive market for NOBO mailings. In particular, the arrangements for access to the underlying data on beneficial owners and the cost of such data are critical, bearing in mind that issuers will require provision of the data twice – at

[1] For example, please refer to the National Investor Relations Institute "Case for 13F Reform" at https://www.niri.org/NIRI/media/NIRI/Advocacy/NIRI-Case-for-13F-Reform-2019-final.pdf

record date for confirmation of entitlement and mailing purposes, and prior to record date for the early search to identify the number of materials sets to be produced.

We appreciate that the recommendations address inclusion of investors' email addresses in the data to be provided to issuers. In NOBO mailings under NI 54-101, one concern has been that the consent granted by investors to intermediaries to receive e-communications was not considered to encompass the issuer, and thus issuers could not rely on this to e-delivery proxy materials to NOBOs. Implementing measures must include ensuring that email addresses are included and are capable of being used for e-delivery by issuers. As with NI 54 101, such measures can specify that email addresses (as with other investor contact data) can only be used for approved purposes, allaying data protection concerns.

We urge the OSC to not only progress these significant recommendations of the Taskforce but also to address the underlying structural barriers which concentrate access to beneficial owner data in the hands of one service provider to the intermediaries, which at present results in monopoly control over price-setting for data access. Cost-effective, timely and automated access to beneficial owner data will determine success in delivering practical benefit to issuers and their investors from these enlightened proposals.

Computershare has been actively engaged in the discussions around proxy reform for many years, extending back prior to the introduction of NI 54-101, and would welcome the opportunity to continue to discuss mechanisms for implementation of these new measures with the OSC as they progress.

Universal Proxy

Proposal 26 would require the use of universal proxy ballots for contested meetings and mandate voting disclosure to each side in a dispute where universal proxies are used. We agree with the principle of this proposal, however note that the rules and guidance would need to be carefully crafted to minimize to the greatest extent possible the risk of investor confusion, and the consequential return of invalidly completed proxies or 'lost' ballots that cannot be properly counted. We note that the STAC Proxy Protocols address certain scenarios and vote handling recommendations for universal proxies that should be considered in this regard.

While we appreciate the aim of increasing transparency by requiring ongoing disclosure of voting tallies to management and dissidents, we note that this will likely have significant impact on tabulation processes for contested elections and also query the potential strategic impacts for each party with such disclosure. We therefore suggest further discussion before progressing such a recommendation to ensure any unintended consequences are minimized.

Rules to prevent over-voting

Finally, we note the Taskforce's proposal to introduce rules to prevent over-voting (proposal 29). As a matter of longstanding principle, we are very supportive of efforts to address over-voting and to improve

integrity in the processes for proxy voting. We note that the rules proposed would establish over-arching principles, and that there would need to be discussion of the implementation mechanics to give effect to these, including where Proposal 30 is implemented and issuers directly disseminate proxy materials to all investors and solicit their votes. These principles will need to be implemented in an environment where intermediaries do not directly administer proxy voting for their clients but rather predominantly outsource it to one major proxy service provider, and thus intermediaries' direct visibility of voting entitlements is minimal. We also urge inclusion of a record-date reconciliation requirement for intermediaries. With respect to the specific proposed rules:

- Subject to our above comments on implementation and context, we agree with the principles espoused in proposed rules 1 & 2;

- We have a number of queries regarding proposed rule 3:
    - We assume the intent is to state that the issuer/tabulator must notify the submitting intermediary of rejected or pro-rated proxies, rather than the reporting issuer as stated? On that assumption, we agree with the high-level principle of notifying the intermediary with the caveat that such notification is on a reasonable efforts basis, where the issuer/tabulator has contact details for the intermediary, and within a reasonable time period. Presumably this principle is intended to operate in the current intermediated proxy system.
    - We note the additional statement in the rule to notify 'any person that submits proxy votes'. While it is not clear, our working assumption is that this considers an environment per Proposal 30 where the issuer directly solicits and receives back proxies from beneficial owners. In that event, the beneficial owner's vote entitlement would be crystallized on the record date data provided to the issuer for mailing purposes, and their proxy materials would specify that vote entitlement position, similar to the process for registered shareholders. The tabulator would only adjust any entitlement on receipt of appropriate supplemental omnibus proxies re-assigning voting rights. We therefore query the scenario in which the directly solicited beneficial owner could over-vote and whether this principle therefore applies. If our working assumptions are not accurate and the Taskforce has some other intent in this aspect of rule 3, we would appreciate clarification before we can confirm our view.

- On rule 4, while we appreciate the intent in requiring that issuers obtain the DTC omnibus proxy, with the clarification that this should in any event occur only where the CDS omnibus proxy issued on record date shows a position for CEDE & Co, we are concerned that this will create a risk of inadvertent non-compliance for issuers, particularly smaller companies that may be less aware of the nature and arrangements of voting entitlements for US intermediaries. A review of the handling of the omnibus proxy and appropriate issuer education would be merited before any requirement is codified. One concern is that when an issuer requests the DTC omnibus proxy, DTC sends the proxy document, establishing to the voting authority of US intermediaries, directly to the issuer rather than to the tabulator. Ensuring that this reaches the tabulator in time for tabulation is critical.

We appreciate the opportunity to submit our comments on the above matters and look forward to engaging with the OSC as these proposals are progressed into rulemaking. In the meantime, please direct any questions on the details of our comments to Claire.Corney@Computershare.com.

Yours sincerely,

Claire Corney
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