PAUL C. BOURQUE, Q.C., ICD.D / c.r. IAS.A
President and CEO *Président et chef de la direction*
pbourque@ific.ca 416 309 2300

September 11, 2020

Delivered By Email: CMM.Taskforce@ontario.ca

Capital Markets Modernization Taskforce

Dear Sirs and Mesdames:

RE: Capital Markets Modernization Taskforce Consultation Report

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on the Capital Markets Modernization Taskforce Consultation Report (**Report**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

We welcome the Capital Markets Modernization Taskforce's (**Taskforce**) initiative to modernize Ontario's capital markets to make them more vibrant and driven by innovation. We also commend the Taskforce on making recommendations that are transformative and forward looking.

In this letter we provide our comments on aspects of the Report that raise high-level themes applicable to Ontario's capital markets, and reiterate a suggestion we made in our meeting with the Taskforce in the spring. Our detailed responses to certain of the questions posed by the Taskforce are set out in Appendix A.

Reduce Regulatory Burden

We strongly support the Taskforce's efforts to reduce the regulatory burden on capital markets participants, including investment fund issuers. Investment funds make up 39% of Canadians' financial wealth[1]. As a result, regulatory burden reduction will help the industry in its efforts to serve the interests of investors. Regulatory requirements that are no longer necessary or no longer serve their intended purposes impose costs on firms and the economy in the form of reduced resources to allocate to growth opportunities, reduced competition and reduced efficiency. All of these costs are ultimately borne by investors.

Our specific recommendations for regulatory burden reduction initiatives applicable to the investment fund industry are found in our responses to proposals 9 and 10 in Appendix A. In addition, IFIC fully supports an access equals delivery model for delivery of all documents required to be delivered to investors under securities law. Electronic access to documents provides a more cost efficient, timely and environment--friendly method of communicating information to investors, while reducing duplicative and unnecessary burden. Further, the access equals delivery model preserves the ability of investors to request paper copies of documents from the issuer if they prefer paper delivery to electronic access.

[1] Investor Economics, Household Balance Sheet (2019)

Expand the Mandate of the Ontario Securities Commission

We agree with the Taskforce's recommendation to expand the mandate of the Ontario Securities Commission (**OSC**) to include fostering capital formation in Ontario's capital markets.

The OSC should administer the Ontario Securities Act in a manner that both protects investors from misconduct and fosters a dynamic securities industry. The key is to develop and administer the rules so that the objectives of investor protection and a dynamic securities market are well balanced.

This expanded mandate is complementary to two of the OSC's current purposes, which are to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. As noted in the Report, including this additional mandate should lead to vibrant capital markets, fuelled by innovation.

Strengthen the SRO Accountability Framework through Increased SRO Oversight

The purpose of self-regulation and the delivery model for self-regulatory models in Canada are currently the subject of extensive consultation[2] by the Canadian Securities Administrators (**CSA**). Please note that IFIC will be making a submission to the CSA on this consultation at the end of October.

IFIC believes there is an important role for self-regulation in the Canadian capital markets and supports the continuation of a self-regulatory model in Canada. It is important to maintain the "self" in self-regulation. That said, we agree with the Taskforce that certain improvements to the governance of self-regulatory organizations (**SRO**) would be helpful. We support the recommendation to have requirements similar to those applicable to an independent director of a public company for the independent directors of an SRO, including a cooling-off period. We also support a majority of independent directors for SRO boards.

However, we do not support the Taskforce's recommendations that: the SROs submit an annual business plan covering all activities conducted in Ontario to the OSC for approval; the OSC have a veto on any significant publication; and the OSC have a veto on key appointments. These recommendations are inconsistent with the "lead" regulator model for CSA oversight of the national SROs and they introduce unnecessary fragmentation into this important harmonized approach. In addition, these recommendations would impair the independence of the SROs.

Ontario Should Join the Passport System

We believe the OSC should be allowed to adopt Multilateral Instrument 11-102 *Passport System* (**MI 11 – 102**) and become a "passport regulator". Ontario is the only CSA member that has not adopted the passport system. The purpose of MI 11-102 is to give each market participant a single point of access to the Canadian capital markets by allowing a market participant to deal only with its principal regulator. Thousands of market participants who do not have Ontario as their principal regulator but do business in Ontario must have both their principal regulator and the OSC review their offering documents and applications for exemptive relief. This requires a cumbersome and time-consuming coordination process between the two regulators, which imposes regulatory burden on the industry and on the regulators. Finally, if the OSC were to become a passport regulator, this would streamline the reciprocation of sanction orders from other regulators, thereby increasing investor protection.

* * * * *

[2] https://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20200625_25-402_consultation-self-regulatory-organization-framework.pdf

IFIC is pleased to have had this opportunity to provide our comments to the Taskforce on its Report. Please feel free to contact me by email at pbourque@ific.ca or by phone at 416-309-2300. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Paul C. Bourque, Q.C, ICD.D
President and CEO

Attachment: Appendix A - IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

2.1 Improving Regulatory Structure	
1. Expand the mandate of the OSC to include fostering capital formation and competition in the markets.	We agree with the Taskforce's recommendation to make explicit the mandate of the Ontario Securities Commission (**OSC**) to not only protect investors but foster capital formation in the markets. This expanded mandate would support institutional and cultural change within the OSC but we need not look globally for examples of this approach – the mandate of the British Columbia Securities Commission (**BCSC)** is to protect and promote the public interest by fostering a securities market that is fair and warrants public confidence, and includes the concept of a dynamic securities industry "that provides investment opportunities and access to capital". We note that this concept is set out in the OSC's memorandum of understanding with the Minister of Finance (**MOU**) but support it being set out in the Securities Act (Ontario) (**Act**). The high level policy goal of government is to foster Ontarians' savings, achieving their financial goals and planning for a secure retirement. To accomplish this Ontarians need access to a wide range of investment products and investment advice regardless of where they live or the size of their account. The mandate of the OSC should align with the government's goals so that it administers the Act to both protect investors from misconduct and foster a dynamic securities industry. The key is developing rules and administering the rules so that the objectives of investor protection and the importance of a dynamic securities market are well balanced. Investor protection and a dynamic securities industry that provides innovative investment opportunities and access to capital are two sides of the same coin. You cannot have dynamic capital markets without investor protection. However, regulators should intervene into the operation of the market only where demonstrably necessary, to minimize regulatory burden and provide a dynamic regulatory framework for Ontario.
2. Separate Regulatory and Adjudicative Functions at the OSC	IFIC supports the model proposed by the Cooperative Capital Markets Regulatory System participants. This model provides significant additional tribunal independence while ensuring that the adjudicative process continues to be informed by the principles that animate securities regulatory policy. The CCMR Memorandum of Agreement provides for a regulatory division, a separate adjudicative division and a regulatory policy forum. The adjudicative division consists of the independent tribunal led by the Chief Adjudicator. The Chief Adjudicator is appointed by the Council of Ministers and does not report to the Chief Regulator. The regulatory policy forum will include all members of the regulatory division executive committee, all members of the independent tribunal and will serve to

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	facilitate discussion among the regulators and adjudicators of the CMRA on significant policy issues.
3. Strengthen the SRO accountability framework through increased SRO oversight	SROs have played a vital role in regulating investment and mutual fund dealers, which has served Canadian investors well. IFIC believes that it is important not to lose sight of the "self" in self-regulation. The members of the SROs must continue to have a voice in their governance if the SROs are to continue to have value. The proposed additional requirements in the OSC's recognition order for both SROs are inconsistent with the CSA "lead regulator" model of SRO oversight whereby one regulator takes the lead in coordinating oversight on behalf of the CSA. The OSC is the lead regulator for IIROC and the BCSC is the lead regulator for the MFDA. In addition, these requirements would unnecessarily erode the concept and benefits stemming from self-regulation. IFIC agrees that the independence of independent directors should be subject to requirements similar to those applicable to an independent director of a public company, including a cooling-off period between working for a member firm and becoming an independent director. IFIC supports the creation of an ombudsperson service to address any complaints that SRO member firms may have about services received from their respective SRO. IFIC believes that the role of the ombudsperson should be to review the fairness of a compliance review process to a member but without substituting its judgment for that of the SRO. The ombudsperson should have the power to investigate complaints from a member and recommend a compliance review finding be reviewed by the SRO in a particular manner. The ombudsperson should not be a source to appeal SRO discipline decisions. Avenues of appeal to the securities commissions or the courts are already available. The addition of another participant in the adjudicative process could make the enforcement process longer and more expensive, without a clear offsetting benefit
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	IFIC will address this question in its submission regarding Canadian Securities Administrators (**CSA**) Consultation Paper 25-402 - *Consultation on the Self-Regulatory Organization Framework* We request the Taskforce to review our comments in that submission, which is due by October 23, 2020.

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

2.2 Regulation as a Competitive Advantage	
9. Transitioning towards an access equals delivery model of dissemination of information in the capital markets, and digitization of capital markets	IFIC strongly supports the adoption of an access equals delivery model for delivery of all documents required to be delivered to investors under securities law (i.e., access equals delivery model). Electronic access to documents provides a more cost efficient, timely and environmentally friendly manner of communicating information to investors, while reducing duplicative and unnecessary regulatory burden. • **Access Equals Delivery is not a New Model**. In *Canada Steps Up* - Task Force to Modernize Securities Legislation in Canada, the task force recommended the adoption of a full access equals delivery system in 2006. If access equals delivery was considered a reasonable evolution of the Canadian capital markets without imperiling investor protection in 2006, then given the technological advances since that time it is clearly a reasonable approach for the Canadian capital markets in 2020. • **Canadians' Access to the Internet Is Nearly Universal.** Past concerns about moving to an access equals delivery model have primarily focused on access to the internet, particularly for rural and older investors. The concern suggested that greater ability for all investors to access the documents electronically was necessary so that investors are not disadvantaged by the new model. The Statistics Canada Canadian Internet Use Survey for 2018 found that 91% of Canadians aged 15 and older used the internet, with more seniors reporting Internet use (71%). This level of access to the internet by Canadians alleviates previous concerns about investor access to the issuer's documents electronically. We further note that the access equals delivery model preserves the ability of investors to request paper copies of disclosure documents from the issuer. Replacing delivery requirements with a requirement to make the documents available electronically would reduce regulatory burden on issuers in a meaningful way. Investor protection would not be compromised both because of the nearly universal access of Canadians to the internet and because investors can continue to request hard copies be provided by the issuers on a one-time or ongoing basis. We therefore recommend that the Taskforce recommends early adoption of an access equals delivery model for both non-investment fund reporting issuers and for investment fund reporting issuers. Access equals delivery should be available for delivery of prospectuses and financial statements and related MD&A for non-investment fund reporting issuers. Access equals delivery should be available for any delivery of fund facts, simplified prospectuses, annual information forms,

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	financial statements, Management Reports of Fund Performance (**MRFPs**) and annual notice reminders for investment fund reporting issuers. Please see our comment letter to the CSA in response to CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers:* https://www.ific.ca/wp-content/uploads/2020/03/IFIC-Submission-CSA-CSA-Consultation-Paper-51-405-Access-Equals-Delivery-March-9-2020.pdf/24242/ We recommend the Taskforce recommend this initiative to reduce regulatory burden for investment fund issuers.
10. Consolidating reporting and regulatory requirements	In 2017 IFIC suggested a number of areas where reporting and regulatory requirements applicable to investment funds could be consolidated to reduce regulatory burden, including: • Combine the simplified prospectus and annual information form into one annual disclosure document, eliminating redundant disclosure requirements and updating other requirements. • Make certain changes to financial reporting requirements to align with the direction of the International Accounting Standards Board, including addressing regulatory overlap and inconsistencies. • Make changes to the MRFP requirements to either eliminate the MRFP in its entirety or, alternatively, to eliminate the interim MRFP and streamline the annual MRFP. Please see our comment letter, which is attached as Appendix B to our comment letter to the OSC relating to OSC Staff Notice 11-784 *Burden Reduction:* https://www.ific.ca/wp-content/uploads/2019/02/IFIC-Submission-OSC-Staff-Notice-11-784-Burden-Reduction-March-1-2019.pdf/21945/ We recommend the Taskforce recommend these three initiatives to reduce regulatory burden for investment fund issuers.
15. Expediting the SEDAR+ project	Our members support an expedited implementation of a new integrated national information and filing system to improve the user experience. The goals of improving market participants' filing experiences as well as offering investors better access to disclosure information are commendable. Building a system with improved features will improve the experience of all stakeholders. Renewing the national filing systems with a modern, easy-to-use, flexible system that meets both current and future needs brings the potential for regulatory burden

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	reduction for market participants. This can create significant operational efficiencies for regulators, firms and registered representatives. The CSA's collaboration with market participants is critical to realizing this opportunity. Early engagement can assist the CSA in creating a renewed system that is responsive to the needs of both the regulators and market participants. Industry stakeholders can add significant value at each development phase, beginning at the systems specifications and development stages through to user functionality testing prior to launch. Collaboration with industry stakeholders is also necessary to validate the renewed system's privacy security as well as its cybersecurity considerations. Please see our submission relating to CSA Notice and Request for Comment - Proposed National Systems Renewal Program Rule and Related Amendments https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20190729_13-102_upadhyayaa.pdf
2.3 Ensuring a Level Playing Field	
18. Introduce a retail investment fund structure to pursue investment objectives and strategies that involve investments in early stage businesses	We believe that the possibility of introducing a retail investment fund structure to pursue investments in early stage businesses with potential periodic redemptions (**interval fund**) is a concept worthy of deeper study. Our members support product innovation provided that it is appropriately balanced with investor benefits and protection. Among the investor protection issues which would need to be considered are: • Liquidity. Retail investment fund investors are used to daily liquidity through redemption of mutual fund securities or, in the case of ETFs, sales on an exchange. It would be a significant change in their expectations to invest in an investment fund which has extremely limited liquidity, and it would be important that disclosure was explicit about the limited liquidity of such funds. • Adviser proficiency. In the same way that investors in investment funds are accustomed to daily liquidity, advisers are currently most proficient in liquid investment options for their clients, and important training on the use of illiquid interval funds would be needed. • Ensuring an adequate pipeline of investment opportunities for interval funds. The Director of Investment Fund Management at the SEC has recently suggested that defined contribution pension plans should provide access to private investments, such as private equity, hedge funds and real estate, to provide "main street investors" with access to these alternative assets. In reporting on the Director's speech, the Financial Times quoted Erik Gerding,

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	a law professor at the University of Colorado University, who said successful private equity managers would not want to deal with retail investors as they preferred working with institutions that could make large investments. "Retail investors will be left with the worst offerings from the bottom of the barrel while the best opportunities will go to institutional investors. These changes will not help retail investors earn better returns but they will provide private equity managers with fresh meat." https://www.ft.com/content/23556406-b462-44db-bb90-a595448e056e?segmentId=ccb77210-8a19-54fa-1c97-2b277de6567c We therefore recommend that the Taskforce recommends a deeper study of whether and how investments such as interval funds can be made available to retail investors.
19. Improve corporate board diversity	IFIC supports diversity, including on corporate boards. The McKinsey & Company report *Delivering Through Diversity*, which the Taskforce notes in its Consultation, observes the following benefits from inclusion and diversity: • The relationship between diversity and business performance persists. The statistically significant correlation between a more diverse leadership team and financial outperformance demonstrated three years ago continues to hold true on an updated, enlarged, and global data set. • Leadership roles matter. Companies in the top-quartile for gender diversity on executive teams were 21% more likely to outperform on profitability and 27% more likely to have superior value creation. The highest-performing companies on both profitability and diversity had more women in line (i.e., typically revenue-generating) roles than in staff roles on their executive teams • It's not just gender. Companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability. That this relationship continues to be strong suggests that inclusion of highly diverse individuals – and the myriad ways in which diversity exists beyond gender (e.g., LGBTQ+, age/generation, international experience) – can be a key differentiator among companies. • There is a penalty for opting out. The penalty for bottom-quartile performance on diversity persists. Overall, companies in the bottom quartile for both gender and ethnic/ cultural diversity were 29% less likely to achieve above-average profitability than were all other companies in our data set. In short, not only were they not leading, they were lagging.

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	Diversity exists beyond gender, however: in ethnic/cultural diversity, LGBTQ+ diversity, age/generation diversity and international experience. All of this diversity should be reflected around the board table of companies, both public and private. Equally importantly, diversity of all types should extend throughout each company, and at all leadership levels so as to develop a robust pipeline of senior leadership candidates and board candidates. IFIC commends initiatives to identify and develop diverse candidates such as the Women's Executive Network and The BlackNorth Initiative.
2.4 Proxy System, Corporate Governance and Mergers and Acquisitions (M&A)	
21. Decrease the ownership threshold for early warning reporting disclosure from 10 to 5 per cent	IFIC does not support this proposal. We note that the CSA proposed reducing the early warning threshold from 10 per cent to 5 per cent in 2014. In its final publication, in 2016, the CSA did not reduce the threshold, and offered the following explanation: "We originally proposed to reduce the early warning reporting threshold from 10% to 5%. We considered this lower reporting threshold to be appropriate because information regarding the accumulation of significant blocks of securities can be relevant for a number of reasons in addition to signaling a potential take-over bid for the issuer. However, a majority of commenters raised various concerns about potential unintended consequences of reducing the early warning reporting threshold from 10% to 5% in light of the unique features of the Canadian public capital markets, including the large number of smaller issuers as well as limited liquidity. These commenters noted the potential risks of reducing access to capital for smaller issuers, hindering investors' ability to rapidly accumulate or reduce large ownership positions in the normal course of their investment activities, decreased market liquidity, and increased compliance costs. Taking into account these concerns, we have concluded that it is not appropriate at this time to proceed with this proposal. We are of the view that the intended benefits of the enhanced transparency are outweighed by the potential negative impacts of implementing the lower reporting threshold." https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20160225_62-104_early-warning-system-take-over-bids.htm We suggest that these concerns remain valid today. There are also other potential unintended consequences of decreasing the reporting threshold. For example, this could make foreign investment in Canadian companies relatively less attractive due to increased regulatory/operating burdens and concerns

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	about the transparency of proprietary investment strategies. This increased transparency could erode investors' returns, including through inducing competitive copycat trading or even front-running. These risks are not offset by a commensurate public benefit. In any event, passive investors should be able to continue to rely on the 10% reporting threshold.
22. Adopt quarterly filing requirements for institutional investors of Canadian companies	IFIC supports the suggestion for quarterly filing requirements for institutional investors, provided there is sufficient time for producing and filing the reports. We recommend a 60 day period after the end of each quarter to file these reports; this corresponds with the current requirement to file MRFPs 60 days after the end of each quarter. We note that the SEC is currently suggesting an increased threshold for Form 13F from $100 million (USD) to $3.5 billion (USD). In discussing the proposed significantly higher threshold the SEC proposing document reviewed the history and purpose of the Form 13F requirement: "The section 13(f) disclosure program had three primary goals. First, to create a central repository of historical and current data about the investment activities of institutional investment managers. Second, to improve the body of factual data available regarding the holdings of institutional investment managers and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence. Third, to increase investor confidence in the integrity of the U.S. securities markets Legislative history indicates that the reporting threshold of section 13(f) was designed so that reporting would cover a large proportion of managed assets, while minimizing the number of reporting persons. The $100 million threshold that was adopted thereby limited the burdens of reporting, particularly on smaller managers. The 1975 Amendments Senate Report noted that, at the time of the section's adoption, approximately 300 persons—holding about 75 percent of the dollar value of all institutional equity security holdings—would be subject to the reporting requirements." (pg. 9) "Since 1975, the relative significance of managing $100 million in securities as compared with the overall size of the U.S. equities market has declined considerably. More managers have become subject to the Form 13F reporting obligation, even though $100 million represents a much smaller fraction of the U.S. equities market, which has grown substantially in aggregate size" (pg.10).

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	The proposal noted another concern with a threshold which is too low and therefore impacts smaller asset managers disproportionately: "public reports of smaller managers, as compared with larger managers, may be more likely to reflect a limited number of separately managed portfolios that follow the same style or reflect the investment behavior of a single portfolio manager. Consequently, Form 13F data of smaller managers may be more likely to be used by other market participants to engage in behavior that is damaging to the manager and the beneficial owners of the managed portfolio, such as front running (which primarily harms the beneficial owners) or copycatting (which potentially harms the portfolio manager), which may increase the costs of investing for smaller managers and hinder their investment performance". (pg 14) https://www.sec.gov/rules/proposed/2020/34-89290.pdf We therefore urge the Taskforce to be mindful to recommend a threshold which does not cast too wide a net in terms of the number of reports that would be filed, and which does not risk the possible damage to smaller managers noted by the SEC. We recommend a threshold proportionate to the $3.5 billion proposed by the SEC for the Canadian market. According to the World Bank, the market capitalization of listed domestic companies in the United States in 2018 was $30,436,313,050,000 (current US$); for Canada it was $1,937,902,710,000 (current US$).
25. Require enhanced disclosure of material environmental, social and governance (ESG) information, including forward-looking information, for TSX issuers	Existing securities regulation requires reporting issuers to disclose all material information, which would include material information about environmental, social and governance (**ESG**) issues. For some material ESG issues there are specific disclosure requirements applicable to issuers as set by the CSA and the TSX. For example, the CSA requires detailed governance information and the TSX requires standardized reporting on board diversity. However, for some material ESG issues, there is a lack of consistent and comparable disclosure requirements. Investors would benefit from improved disclosure requirements on some key material, defined ESG issues. For example, while a broad range of investors consider climate-change related information important for the assessment and pricing of securities, there are no mandated, specific carbon disclosure standards. This was also noted by the Canadian Expert Panel on Sustainable Finance (**CEPSF**), whose report recommended that provincial securities regulators adopt the carbon standards set by the Task Force on Climate-Related Financial Disclosures.

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	The CEPSF report indicated that these standards, "…appear well on their way to becoming the global benchmark not only for climate-related reporting, but also for the measurement and governance of climate issues." The TSX and the CSA should continue to develop and adopt disclosure standards on material ESG issues. Efforts should be undertaken in consideration of related reporting initiatives, in particular, the Sustainability Accounting Standard Board (**SASB**) and the Task Force on Climate-related Financial Disclosures (**TCFD**).
2.5 Fostering Innovation	
32. Requirement for market participants to provide open data	IFIC supports data mobility, provided an appropriate framework for data transfer can be established. Such a framework would be contingent on the development of a standardized application program interface (**API**) that enables information exchange between parties. A standardized framework must consider the obligation of participants to transfer the data that an individual has provided versus the transfer of accurate data. Individuals must continue to be solely responsible for the accuracy of their data. Organizations should not be held responsible for transferring inaccurate data provided by an individual. Only data that has been provided by the individual should be subject to data mobility requirements. Data that has been derived by an organization, an affiliate of the organization, or a third party using the data on behalf of the organization should not be subject to these requirements. Derived data belongs to the organization and therefore should not be considered part of the information that is owned by the individual. Data mobility should not generally include information pertaining to a third party who has not consented to the transfer of their personal information, with some limited exceptions. In the context of financial services, any data that is required to be collected by law should be transferrable. In some instances, this will include information about an individual's spouse or dependents. It would also be appropriate to transfer the contact information for providers of professional services to an individual, such as an accountant or lawyer. Please see our comment letter to the Director, Privacy and Data Protection Policy Directorate concerning its consultation *Proposals to Modernize the Personal Information Protection and Electronic Documents Act:* https://www.ific.ca/wp-content/uploads/2019/11/IFIC-Submission-Proposals-to-Modernize-PIPEDA-November-4-2019.pdf/23563/

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

2.6 Modernizing Enforcement and Enhancing Investor Protection	
34. Consider automatically reciprocating the non-financial elements of orders and settlements from other Canadian securities regulators and granting the OSC a streamlined power to make reciprocation orders in response to criminal court, foreign regulator, SRO, and exchange orders.	Canada has been rightly criticised for its fragmented enforcement system. Investor protection would be enhanced if the CSA were able to ensure that bad actors banned from the capital markets in one province are effectively banned in all provinces and territories. Implementing streamlined procedures for banning fraudsters across Canada, which are already in place in some provinces would enhance investor protection in Ontario. The same logic applies to individuals convicted of capital market related offences in the provincial criminal courts. In an increasingly inter-connected and globalized economy, it is also important to protect Canadian investors from individuals sanctioned in foreign courts and tribunals for misconduct that would also result in bans, fines and imprisonment if they had occurred in Canada. Subsection 127(10) of the Act provides, among other things, the OSC with the power to make an order under subsection 127(1) or (5) in respect of a person or company that is subject to an order from a securities regulator in any jurisdiction. To ensure fairness to the respondent, the reciprocal order process should provide the respondent with an opportunity to be heard before the order is made. IFIC also supports procedures that would allow the respondent to agree to the making of reciprocal orders by other regulatory authorities as part of a settlement agreement. IFIC notes that if the OSC were to become a passport regulator, this would streamline the reciprocation of sanction orders from other regulators, thereby increasing investor protection.
35. Improve the OSC's collection of monetary sanctions	A common feature of investment fraud is that the investor's money is swiftly dissipated or transferred offshore. Investors in these fraudulent schemes are often unsophisticated, of modest means, or retired. Investor losses can be catastrophic with no prospect of recovery or time to restore the investor to financial health. The Taskforce proposes giving the OSC more effective powers to freeze property. A freeze order prevents anyone from dealing with the property but does not transfer ownership. These orders are typically made in cases involving real time evidence of an on going fraudulent scheme orchestrated by unregistered individuals or firms. IFIC members may be stake holders of the account that is subject to the order. The Taskforce proposes that the OSC be permitted to freeze any assets, starting at the investigation stage, by establishing that the assets are being preserved in order to satisfy a possible disgorgement, monetary sanction, or costs order. The British

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

	Columbia Securities Act (**BC Securities Act**) currently provides the BCSC with the power to issue a freeze order if staff intend to commence or are conducting an investigation. Currently, when applying to the Superior Court to continue a freeze order issued by the commission, the OSC must provide some evidence that frozen funds were obtained through a breach of Ontario securities laws by the target of an investigation. This process should continue to ensure freeze orders are not continued gratuitously. IFIC supports the power to freeze an investment or bank account swiftly for a limited period of time starting at the investigation stage with regular review and oversight of the process by the OSC and the courts. This power would allow the regulators to preserve the status quo until a finding of liability is made, and can help preserve funds for later distribution to the defrauded investors.
37. Increase the maximum for administrative monetary penalties to $5 million	In IFIC's view, the quantum in any particular case should remain at the discretion of the adjudicative panel, governed by normal sentencing principles.
38. Strengthen investigative tools by empowering OSC Staff to obtain production orders and enhancing compulsion powers ("find and gather" and "prepare and produce")	Production orders directed to third parties who are essentially "innocent bystanders" are currently available under the Criminal Code, the draft Capital Markets Stability Act s.111(1) and the BC Securities Act s.146.04. The objective of production orders is to assist law enforcement conduct significant and complex white collar crime investigations. The use of a production power should always be subject to a proportionality test that would prevent overly onerous and disproportionate requests, which is addressed in the Taskforce Proposal 42. In addition, a production order should only be available on application to a judge with the right to apply for a revocation or variation if the request is unreasonable or not in the public interest or if the information is privileged or otherwise protected from disclosure by law.
39. Greater rights for persons or companies directly affected by an OSC investigation or examination	IFIC supports the addition of a new power that will permit a person affected by an investigation to apply to a Commissioner that is part of the adjudicative tribunal to clarify orders relating to investigations or examinations and possibly summonses. This will assist in streamlining the investigation and examination process by providing a process for the efficient resolution of issues by a neutral adjudicator. These changes will assist market participants in complying with their obligations.

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

41. Broaden the confidentiality exceptions available for disclosing an investigation and examination order or a summons	Generally, investigations need to be kept confidential but respondents also need the ability to notify relevant parties and gather information. Additional disclosure exemptions would reduce the regulatory burden and expedite the investigative process. For example, new confidentiality disclosure exceptions could be created for: • regulatory authorities, • an expanded list of counsel, (e.g., the person's counsel, the company's counsel, or counsel for the person's employer), • any person where the disclosure is necessary for sound corporate governance and • to the company's board of directors and senior management
42. Ensure proportionality for responses to OSC investigations	IFIC supports the inclusion of a proportionality threshold; it is important that some limits be proposed to the response to investigations. In the absence of any reasonable threshold, requests for documents, and the deadlines imposed, have the potential to be costly and disproportionate to the countervailing public interest objective in each particular instance. In IFIC's view, reference should be made to more modern schemes which include a reasonableness threshold (e.g. the *Regulated Health Professions Act*) It is also important that a proportionality threshold be included in the Act.
43. Clarify that requiring production of privileged documentation is not allowed	IFIC supports clarification that production of privileged documentation is not required. While privileged documents need not be produced in any circumstance under Part VI, it would be helpful for the Act to include this clarifying language.
44. Implement OSC procedural change to provide an invitation to discuss OSC Staff's proposed statement of allegations at least 3 weeks before initiating proceedings	IFIC supports the proposal to mandate an invitation from Staff to discuss alleged infractions and a potential resolution within at least three weeks before it delivers a notice that enforcement proceedings will be initiated. Similar provisions used by other CSA members have been proven to reduce the cost and time of investigations and hearings.
45. Promote prompt resolution of OSC enforcement matters by ensuring the confidentiality of dialogue between OSC Staff and parties under investigation,	IFIC supports this proposal.

Appendix A

IFIC Responses to Questions Posed in the Capital Markets Modernization Taskforce Consultation Report

and protecting such investigated parties from liability for admissions made to the OSC in settlements and from liability for disclosing privacy-protected information to the OSC in the context of an investigation	
46. Require that amounts collected by the OSC pursuant to disgorgement orders be deposited into court for distribution to harmed investors in cases where direct financial harm to investors is provable	IFIC supports this proposal.
47. Give a dispute resolution organization, such as OBSI. the power to issue binding decisions and increase the limit on OBSI's compensation recommendations	IFIC supports effective dispute resolution mechanisms that achieve favourable, fair, cost-effective outcomes for investors. If OBSI were to have the power to make binding decisions, this would require OBSI to change its processes and build in procedural fairness requirements such as the right to notice of allegations, the right to be heard and call evidence, the right to receive reasons for a decision and a right of appeal. This could negate OBSI's ability to offer fair, fast, effective and low-cost dispute resolution services to consumers. Factoring in the necessary requirement for procedural fairness and compliance with rules of evidence could result in delays and a long queue of cases waiting to be heard leaving many consumers in limbo. These potential delays may eventually make the OBSI process less attractive to consumers. Currently, OBSI's cap at $350,000 is higher than that of any other Commonwealth nation referenced in the *Independent Evaluation of OBSI* report (UK, Australia, and New Zealand are respectively at $280,000, $309,000, and $176,000 at conversion to CDN). Increasing the cap to $500,000 would attract higher net-worth more sophisticated investor complaints tying up resources and inevitably leading to delays of resolution of complaints by smaller investors who need the efficient, low- cost dispute resolution services of the OBSI the most.