Modernizing Ontario's Capital Markets

On January 22, 2021, the Ontario Capital Markets Modernization Taskforce ("Taskforce"), which includes Kingsdale Advisors' founder and executive chairman Wes Hall, released its 115-page Final Report, with over 70 ground-breaking recommendations to improve Ontario's capital markets to better support a dynamic and competitive economy.

Of the six proposed themes in the report (Improving Regulatory Structure, Regulation as a Competitive Advantage, Ensuring a Level Playing Field, Proxy System, Corporate Governance and Mergers and Acquisitions, Fostering Innovation and Modernizing Enforcement and Enhancing Investor Protection), we've provided an overview of several recommended changes to Ontario's capital markets, covering the most impactful proposals to the proxy voting system, corporate governance and a competitive and transparent marketplace.

Proxy Voting System

Recommendation: Transitioning towards an access equals delivery model of dissemination of information in the capital markets, and the digitization of capital markets

As public issuers embrace digital communication technologies to communicate with their investors and stakeholders, so must our regulatory communication channels. Currently, brokers and intermediaries provide non-objecting beneficial owner ("NOBO") and objecting beneficial owner ("OBO") client account address information to outsourced third party service providers such as Broadridge Financial Solutions ("Broadridge"). However, beneficial owners are required to separately consent to receive proxy materials electronically from these third parties (or their transfer agents), which has resulted in a slow adoption rate for electronic delivery of proxy-related materials. As a first step, the Taskforce recommends the full use of electronic or digital delivery in relation to documents mandated under securities law requirements (i.e., access equals delivery model) including: a prospectus under prospectus offerings, annual and interim financial statements and related Management Discussion and Analysis (MD&A), and the management report of fund performance (MRFP). As a result, securityholders would no longer require notification of these documents as long as they are accessible on the internet. The Taskforce has recommended that this model be adopted in Ontario within the next six months.

The Taskforce also recommends an electronic delivery model for all other documents that investors receive, including electronic delivery of materials that they rely on in order to vote, such as proxy-related materials and notices for regular and special meetings.

Kingsdale Insight:

Since 2017, the Canadian Securities Administrators (CSA) has explored alternatives to the physical and environmental burden that restrict Canadian issuers from electronically delivering shareholder materials to their investor base. However, the proxy system remains fully anchored in physical delivery. We speak with thousands of shareholders each year and regularly receive feedback regarding the volume of physical mail they receive for their investment portfolios.

Currently, Broadridge offers the ability for issuers to utilize e-delivery to beneficial shareholders that have consented to receive material electronically, though only a small portion of shareholders have signed up directly. From our perspective, this slow adoption is due to their confusion with the proxy process in Canada. Shareholders receive investor materials directly from third parties such as Broadridge, but they are stamped and designed with their intermediary's logo. As a result, we strongly believe that brokers and intermediaries should work with publicly listed issuers to allow issuers the opportunity to e-deliver materials to the majority of its beneficial shareholders.

We support the Taskforce's recommendation to adopt the access equals delivery model for satisfying prospectus and other documentary delivery obligations in Ontario as well as the eventual adoption of an electronic delivery model for all other investor documentation, including voting materials. A system that encourages shareholders to reduce their participation in their investments in order to reduce their environmental footprint is not a sustainable path forward.

Recommendation: Require the use of universal proxy ballots for all contested meetings and mandate voting disclosure to each side in a dispute when universal ballots are used

The Taskforce recommends the use of "universal proxy ballots" — a single ballot that lists the director nominees of each side of a proxy contest and allows a shareholder to vote for a combination of nominees — seeking to provide shareholders who vote by proxy with greater voting flexibility. In addition, mandating the disclosure of voting tallies to both issuers and dissidents in a dispute where universal ballots are used will provide both sides with greater transparency.

The Taskforce's recommendation will require additional notice requirements and minimum solicitation requirements applicable to dissidents, as well as form requirements for universal proxies. As such, the Taskforce has recommended the OSC to further consult these requirements prior to implementing the recommendation which they expect to be implemented by September 1, 2022.

Kingsdale Insight:

Under Canadian securities laws, shareholders who attend a contested meeting in person can vote for a combination of director candidates from those nominated by the issuer or those nominated by a dissident shareholder. Most shareholders, however, do not attend meetings in person, choosing to vote by proxy using either the issuer or dissident's proxy card. Frequently in Canada, these proxy cards can look very different (universal, blended, single slate etc.) and are a source of complication for investors whose interests may not be represented on either proxy. In August of last year, the SEC Investor Advisory Committee (IAC) voted to adopt a universal proxy card rule for all U.S. contested meetings. Vote procedures are however quite different in Canada and the U.S. as U.S. dissidents receive vote information from the issuers card throughout the entire contest, whereas in Canada, a dissident shareholder is only able to see the votes cast on their own proxy card.

Proxy design depends on the type of contested meeting (a requisitioned meeting, nomination via an advance notice bylaw, nomination through shareholder proposals or proxy access) and are typically constructed to influence shareholders to select one card over the other. Both issuers and dissidents also take the views of ISS and Glass Lewis into consideration when selecting a proxy design, however, differing resolutions and nominees on each card create significant challenges for proxy advisors when

attempting to select their recommended nominees. A universal proxy card with mandated vote sharing between both parties would provide the most effective avenue for shareholders and proxy advisors to select their preferred bucket of nominees though universal ballots are not without their own issues. Vote dispersion amongst the nominee group from institutional and retail investors may result in an ineffective mix of directors elected to the board (i.e. lacking critical audit expertise), causing significant impediments to future board decisions. A universal card is the most democratic process and enables investors to properly elect directors without gamesmanship on the part of the company or the dissident.

Recommendation: Prohibit voting with borrowed shares and introduce rules to prevent over-voting

A key principle of shareholder voting is that voting shareholders have an economic interest in the outcome of the election or matter being approved. Publicly listed issuers today cannot rely on this principle and may be faced by issues of empty or over-voting that can directly affect the outcome of their annual meeting director elections, M&A transactions, or proxy contest.

Empty voting occurs when a holder has reduced or eliminated its economic interest in its shares but still maintains the attached voting rights.

- The Taskforce recommends that the OSC provide guidance on its intention to use its public interest authority in relation to empty voting at public company shareholder meetings and remind market participants of their existing disclosure obligations under securities law

Over-voting occurs when an intermediary casts more votes on behalf of its clients than it holds at underlying depositories (such as CDS or DTC), and as a result, the meeting tabulator does not have documentation establishing it is entitled to vote as of the meeting record date.

- The Taskforce recommends that the OSC set up a technical implementation committee with representation from the relevant participants in the intermediated holding system to address the technical issues involved in operationalizing its proposed rules to prevent over-voting

Kingsdale Insight:

In our experience, over-voting occurs in 90-95% of all public shareholder meetings, causing issuers and shareholders to continually express concerns over the accuracy and reliability of the proxy voting infrastructure. We spend a significant amount of time with intermediaries, working to identify over-voting for our clients as well as working with the back-office teams to 'cure' the over-vote, which generally entails securing the appropriate vote entitlement documentation directly from the underlying intermediary. If the over-voting is unresolved, the meeting tabulator will typically pro-rate the proxy votes received per the Securities Transfer Association of Canada's ("STAC") protocol guidelines. The Taskforce has proposed the adoption of four rules, which build off the work of the CSA's numerous protocols developed by the Protocol Working Group in 2015 (published in 2017 as CSA Staff Notice 54-305 Meeting Vote Reconciliation Protocols) that provide guidance on the vote entitlement information provided by intermediaries as well as communication protocols between tabulators, intermediaries and Broadridge.

Similarly, we have faced numerous instances of empty voting that have threatened to change the outcome of some highly contentious meetings in Canada as well as numerous proxy contests across Europe and the U.S. We agree with the Canadian Coalition for Good Governance's(CCGG)assessment that securities regulators should publicly state that they will use their discretion to act in the 'public interest' to restrict empty voting or empty voters where it is warranted in the particular circumstances, and also to provide guidance as to the sorts of situations that will prompt the exercise of their discretion. What's clear is that there needs to be protocols adopted to increase transparency and disclosure of significant empty positions which enable regulators to restrict empty voters under specific circumstances.

While we note a significant improvement in communication and information sharing between intermediaries and meeting tabulators since the published CSA proxy voting protocols, empty and over-voting are still prevalent in most issuer meetings. We believe that irregularities and inaccuracies in the proxy voting system will only be solved with a true end-to-end vote confirmation system which has yet to be fully adopted. In the interim, the recommended rules will help streamline prevalent issues and ensure shareholders votes are not disenfranchised by their intermediaries.

Recommendation: Enshrine annual director elections and individual director voting requirements in securities law and implement majority voting in uncontested director elections

Recent amendments to the *Canadian Business Corporations Act* (CBCA) under Bill C-25 (not yet in force) would require CBCA incorporated companies to implement a majority voting standard in uncontested director elections (including those listed on the TSX Venture Exchange). Currently, however, there is no majority voting standard in Ontario securities law. Many, but not all, reporting issuers are subject to a majority voting requirement under TSX rules whereby a director who fails to receive a majority of the votes cast at an uncontested meeting must immediately tender their resignation to the board, leaving the board to determine whether to accept the resignation over a 90-day period. The board must accept the resignation absent exceptional circumstances. The Taskforce recommends adding a majority voting requirement to securities law and have laid out the following requirements:

- The majority voting requirement should only apply in respect of uncontested director elections;
- Provide for a reasonable transition period in the event a director does not receive a majority to allow for the recruitment of qualified replacement board members;
- Provide for an exemption where an issuer is subject to and complies with substantially similar requirements in corporate law; and
- Permit an issuer to apply to the OSC for exemptive relief in exceptional circumstances.

The Taskforce also recommends adding requirements for annual director elections and individual director voting to securities law to require directors stand for election individually (rather than as a slate).

Kingsdale Insight:

Majority voting policies are supported by leading governance organizations including the Council of Institutional Investors (CII) and the CCGG, who believe that each director of a corporation should have the confidence and support of a majority of its shareholders and that this should be a legal requirement for every public issuer in Canada. Even in uncontested situations, the election of directors should be

more than an empty formality. Director elections are the basis for legitimacy of boards of directors in their exercise of power over property they do not own. As stewards of shareholder capital, directors must be held accountable.

The key features of the majority voting requirement would include the ability of shareholders to effectively vote "for" or "against" each director, and a director would not be elected if they failed to receive majority support at an uncontested meeting (stricter than the TSX rule where the board may decline to accept a board member's resignation). Incumbent directors could remain in office until a successor is appointed or elected, up to a maximum of 90 days after the meeting and the board would not have discretion to re-appoint the director. The Taskforce has recommended to permit an issuer to apply to the OSC for exemptive relief in exceptional circumstances, which in our view could include the necessity to satisfy the Canadian residency requirement or minimum officer and director representation requirements of the corporation.

Ownership Transparency

Recommendation: Allow reporting issuers to obtain beneficial ownership data

In Canada, public issuers generally communicate with beneficial owners indirectly through intermediaries that have outsourced their investor mailing and voting functions. The determination of whether a beneficial owner elects to become a non-objecting beneficial owner ("NOBO") or an objecting beneficial owner ("OBO") will allow an issuer to identify, mail and solicit voting instructions directly from underlying NOBO owners. Issuers are not currently able to directly mail proxy materials or solicit voting instructions from OBO securityholders and have limited ways of identifying their OBO shareholders.

The Taskforce recommends that, as of September 1, 2022, public companies and other reporting issuers be able to obtain the identities and holdings of all beneficial owners of their securities. To achieve this, the Ontario government should set up a stakeholder group with representation from the relevant regulatory bodies, proxy solicitors, transfer agents, intermediaries, law firms and other stakeholder groups to develop a strategy for achieving this objective. In the interim, the Taskforce recommends that beneficial owner transparency be increased by amending securities law so that NOBO status is the default for beneficial owners.

Kingsdale Insight:

The OBO/NOBO distinction in Canada impedes issuer communications with beneficial owners as well as communications amongst shareholders. It is therefore no surprise that public issuers among many market participants, strongly favour the elimination of this beneficial distinction. In their view, increased shareholder transparency would lead to more engagement, and thus, more concrete action to address shareholder concerns. We believe more transparency would also lead to increased turnout at shareholder meetings and provide a more difficult landscape for activist investors who rely on archaic and opaque shareholder reporting requirements in Canada to launch proxy contests and hostile M&A. While we acknowledge that removing the NOBO/OBO system in Canada would be a divergence from U.S. practices, we see this as an opportunity to lead a new and open system of direct communication

***and constructive engagement practices. Mandating a default NOBO status in the interim will further serve to increase transparency for Canadian issuers until full transparency can be achieved*.**

Recommendation: Decrease the ownership threshold for early warning reporting disclosure from 10% to 5% for non-passive investors

Currently, a shareholder of a Canadian issuer is not required to publicly disclose their beneficial ownership until it becomes an owner of 10% or more of the issuer's shares. Other global jurisdictions, such as the U.S. and U.K., mandate ownership disclosure at the 5% level or even lower in certain circumstances. The Taskforce believes that, in an era of increased shareholder activism, the 10% early warning reporting threshold is too high and recommends:

1. Decreasing the shareholder reporting threshold in Ontario from 10% to 5% for non-passive investors, which includes if an investor intends to make a take-over bid, proposes a transaction that would result in the investor gaining control of an issuer, or solicits proxies against any director nominees or corporate actions proposed by the management of an issuer.

2. Non-passive shareholders who cross the 5% ownership level should not be subject to a moratorium on further acquisitions following the disclosure of their ownership until their ownership increases to the 10% level.

Kingsdale Insight:

In Canada, a 5% shareholder is relevant to control of an issuer, given that a shareholder can requisition a shareholders' meeting to replace the board if it holds 5% of an issuer's voting securities. Under the current system, however, shareholders are not forced to disclose their beneficial ownership until they reach the 10% threshold, leaving companies with the potential to be blindsided. We note that the CSA had previously proposed to lower the early warning threshold in 2013 from 10% to 5% to put Canada in line with the U.S., though they ultimately decided not to proceed. While the proposal was met with broad support from Canadian issuers, it was opposed by Canadian investors who noted increased compliance costs, reduced access to capital and lower market liquidity as a result of institutional investors reducing investments in smaller companies to avoid triggering the lower threshold. We believe the 10% reporting threshold hinders a Canadian issuer's ability to proactively engage with their shareholder base and strongly support the move to 5% to increase transparency for both public issuers and the global investor community. Not only would this make the disclosure requirements for shareholders consistent with U.S. rules, it would make disclosure and filing requirements more consistent across the board, including the 5% requisition rule as well as the 5% disclosure requirement currently in place if a shareholder acquires 5% or more of an issuer that is subject to a formal takeover bid (tender offer) or issuer bid (self-tender).

Ensuring a Level Playing Field

Recommendation: Improve corporate board diversity

Since 2014, TSX-listed companies have been required to provide disclosure regarding their approach to gender diversity, including data regarding the representation of women on boards of directors and in executive officer positions. The disclosure follows a "comply or explain" model and does not require TSX-listed companies to adopt any racial diversity policies and practices, including targets. The Taskforce proposes to require publicly listed issuers in Canada to set targets, and annually provide data in relation to the representation of those who self-identify as female, BIPOC, persons with disabilities or LGBTQ+ on boards and executive management positions.

Targets:

1. Publicly listed issuers should set an aggregated target of 50% for women and 30% for BIPOC, persons with disabilities and LGBTQ+.
2. Implementation of these targets should be completed within **five years** to meet the target for women and **seven years** to meet the target for the other diversity groups, placing specific focus and emphasis on representation of Black and Indigenous groups.

The Taskforce also proposes to require TSX-listed companies to adopt a written policy respecting the director nomination process that expressly addresses the identification of candidates who are women and BIPOC during the nomination process.

Kingsdale Insight:

TSX-listed companies are required to report on their progress towards achieving any targets if they have chosen to adopt them, but they should also be required to review and assess the appropriateness of the targets on an annual basis. With regards to gender diversity, progress on the representation of women in leadership roles at TSX-listed companies has been slow, with the OSC reporting that the total board seats occupied by women in their review samples increased only from 11% in 2015 to 17% in 2019. We strongly support a diverse (both gender and race) Canadian capital markets and applaud the Taskforce for taking a material stance in the push for total representation. As of 2020, companies incorporated under the CBCA are required to report representation of women, Indigenous peoples, persons with disabilities and members of visible minorities on boards of directors and in senior management. We see this as a notable step forward to increasing standardized reporting methods across issuers which will serve to provide investors with the appropriate metrics to make informed investment and voting decisions. As noted above, publicly listed issuers would have until 2025 to meet the proposed target for gender representation and until 2027 to meet the targets for BIPOC, persons with disabilities and LGBTQ+.

Corporate Governance

Recommendation: Introduce a regulatory framework for proxy advisory firms ("PAFs") to: (a) provide issuers with a right to "rebut" PAF reports, and (b) restrict PAFs from providing consulting services to issuers in respect of which PAFs also provide clients with voting recommendations

PAFs play an important role in the proxy voting process by providing services that facilitate investor participation, such as analyzing proxy materials and providing vote recommendations. Issuers and other stakeholders have expressed concerns about the influence of PAFs, errors in the reports produced by PAFs, and conflicts of interest arising from PAFs' provision of voting recommendations in respect of issuers to which PAFs also provide consulting services.

The Taskforce recommends:

1. Introducing a securities regulatory framework for PAFs by September 1, 2022 to ensure that PAF institutional clients are provided with the issuer's perspective simultaneously with the PAF's recommendation report.
2. Providing an issuer with a statutory right to rebut (at no cost) the reports published by PAFs, provided that the issuer published the relevant materials (such as the Management Information Circular) at least 30 days prior to the date of the applicable meeting.
3. Implementing a framework to address conflicts of interest by restricting the ability of PAF's to provide consulting services to issuers where they also provide recommendations to clients.

Kingsdale Insight:

In recent years, the SEC has indicated an increased appetite for pursuing the introduction of these regulations, and it is only natural that Canadian regulators explore these possibilities as well. Last summer, SEC Commissioner Elad Roisman addressed the CII, specifically touching upon the following:

1. ***Clarifying key aspects of investment adviser's fiduciary duty, specifically relating to proxy voting and utilizing the services of PAFs;***
2. ***Confirming the interpretation that voting advice provided by PAFs fits within the definition of "solicitation"; and***
3. ***Possible new amendments to the exemptions from the Exchange Act proxy solicitation rules tailored to PAF advisory services and accounting for current market practices.***

Clearly, the seminal issue is defining the PAFs' role and responsibilities within the market, which remains a highly debated topic. Many question why issuers possess the "right" to rebut through PAFs distribution channel given that they have always done so in the past via the public release channel, and question if universal due diligence is possible given the breadth of materials covered. The onerous nature of greater filing responsibilities leads to questions of efficacy as well. Overhead and quality control issues may triumph over the supposed benefits of the imposition of such a regime. However, we note that by enforcing an issuer's right to rebut and demanding greater transparency on the part of PAFs, the

Taskforce's recommendation has the opportunity to fully align ISS and Glass Lewis's premise of clear disclosure and communication as a "corporate governance best practice" across all market participants—in this case, ISS and Glass Lewis themselves. The ideal concept of providing stakeholders with a full suite of information can only be improved by providing fulsome details from all participants, particularly in the case of inconsistent or incorrect information provided by any party. By enabling the dissemination of information from multiple parties in a single, accessible location, the overall level of conflicting "noise" may be reduced, improving efficiency of decision making and preventing kneejerk decisions driven by sensationalist press or faulty analysis. We do note, however, that increased legislation may also result in greater barriers to entry. In the already highly concentrated proxy advisory space, the need for a more rigorous and faster review process may lead to a cost that new entrants will be unable to profitably manage. This would essentially solidify ISS and GL's near dominant control upon the space, contrary to the desire of shareholders for having more competition in the market. We strongly believe that this risk would be further mitigated if investors adopted a more robust process as opposed to a robotic proxy voting process in which recommendations are automatically accepted, as larger institutions have been doing for years. This could mean more investors will wait until closer to the meeting date to cast their vote as more rebuttals from issuers are expected which will create new challenges for the already squeezed proxy voting process.

Recommendation: Set a 12-year maximum tenure limit for directors

The Taskforce proposes to set a 12-year maximum tenure limit for directors, with an exception for:

a) 15-year maximum tenure limit for the Chair of the board;
b) Non-independent directors of family-owned and controlled businesses, where such nominees represent a minority of the board; and,
c) No more than one other director who will be deemed not to be independent and will still have a 15-year limit.

Issuers must implement this recommendation within three years of this amendment taking effect. This is aimed to encourage an appropriate level of board renewal as continued refreshment of the board helps to ensure that fresh and diverse perspectives and skills are brought into the boardroom.

Kingsdale Insight:

Many market participants have voiced input on the issue of director tenure in the past, and this continues to be a point of contention today. Canada occupies a unique position as many Canadian public issuers have their genesis in family owned businesses, which to this day maintain extensive ties to the boardroom and executive positions. The concept of tenure may be intricately linked to that of independence, whereby directors are closely tied to others within the boardroom, executives whom they have worked closely with for years, and of course, preserving their own seat at the table.

ISS and Glass Lewis frequently comment in the framework of contested situations, and certain specialty policies of ISS and its Governance QualityScore view 9 to 12 years as lengthy tenure. For the first time, starting in 2021, Glass Lewis introduced a bright-line test on director tenure in evaluating board refreshment, where they will note the lack of board refreshment as a concern, if a) the average tenure of nonexecutive directors is 10 years or more AND b) no new independent directors have joined the board in the past five years

Beyond the proxy advisors, many other market participants, particularly institutional investors and pension funds, have adopted a hardline term limit in their voting guidelines. Some notable examples include British Columbia Investment Management Corporation ("BCI") whereby if the average tenure on a board is 10 years or more, BCI will consider voting against individual nominees on a case-by-case basis, accounting for board composition. BMO Global Asset Management applies a 12-year benchmark as a general guidance for director independence and considers that no more than one-third of non-executive directors should have served more than 12 years. We note that the revised recommendation is not as strict as initially posed by the Taskforce (10 years) and still allows for some flexibility, which may be necessary to ensure continuity in times of extreme change in the market, economic hardship or transition within the boardroom. This provides an opportunity for knowledge retention and mentorship opportunities, while ensuring that refreshment of skills and perspectives can effectively and organically occur. Mandatory terms also go hand in hand with diversity by providing a further framework for board turnover and ensuring spaces are made for new directors.

Recommendation: Require all publicly listed issuers to have an annual advisory shareholders' vote on the board's approach to executive compensation

The Taskforce recommends the adoption of mandatory annual non-binding advisory votes on executive compensation practices for all publicly listed issuers. This recommendation is in line with developments in Canada, such as recently passed amendments to require advisory say-on-pay votes for CBCA companies, and other jurisdictions, such as the U.K., U.S. and Australia which serve to provide critical input to boards and facilitate shareholder engagement.

Kingsdale Insight:

Currently, despite being considered market best practice, the adoption of advisory say-on-pay votes remains voluntary within the Canadian market. Beginning with the adoption by major Canadian banks and large issuers in 2010, these advisory votes have gained traction over the years, with more than 70% of the TSX Composite Index adopting say-on-pay. Today, almost all large Canadian issuers have voluntarily elected to put pay on their annual meeting agendas. The regulatory and advisory communities have been somewhat polarized regarding mandatory enforced implementation. The CCGG supports implementation of a mandatory vote and has urged the OSC to act accordingly. The Institute of Corporate Directors ("ICD") and most issuers oppose such a measure, mainly citing concerns regarding a "one size fits all" approach to managing compensation practices may be detrimental in certain cases. However, as these votes are advisory, risk remains somewhat limited on the side of the issuer, with the most obvious downside arguably being an exposure of negative shareholder sentiment in the event of perceived or real pay-performance misalignment. In our experience, a subpar say-on-pay vote tends to be a catalyst for shareholder engagement which drives subsequent positive changes by the issuers in order to satisfy shareholders as well as the ISS and Glass Lewis board responsiveness tests in the following year, if the vote fell below certain threshold. Increased transparency, resulting from mandatory implementation, could be beneficial for issuers by providing a window into possible shareholder discontent in advance of activism. Furthermore, as noted, the implementation of such a measure is in line with markets across the world, including the U.S., Australia, and the U.K, clearly indicating that any administrative or engagement onus remains minor across varying geographic and reporting jurisdictions.

Recommendation: Require enhanced disclosure of material environmental, social and governance (ESG) information, including forward-looking information, for TSX issuers

Globally, and in Ontario, there is increased investor interest in issuers reporting on ESG-related information. As a result, the Taskforce recommends mandating disclosure of material ESG information, specifically climate change-related disclosure related to governance, strategy and risk that is compliant with the Task Force on Climate-Related Financial Disclosures' (TCFD) recommendations for all reporting issuers, with a transition phase dependent on the issuer's market cap at the time the requirements are implemented. This will also include disclosure of Scope 1, Scope 2 and if appropriate, Scope 3 greenhouse gas emissions on a "comply-or-explain" basis.

Transition:
The transition phase would continue to apply to each issuer regardless of whether the issuer's market cap subsequently changes:

- Large cap issuers: Greater than $500 million – Transition phase of two years
- Medium cap issuers: Between $150 million and $500 million – Transition phase of three years
- Small cap issuers: Less than $150 million – Transition phase of five years

Kingsdale Insight:

As investors continue to shift towards a more robust framework for evaluating investments, it has become apparent that voluntary climate-related financial disclosures allow market participants to make more informed capital allocation decisions and serve as a valuable risk assessment tool for lenders, insurers, and underwriters. We support the TCFD initiative created by the Financial Stability Board ("FSB") as a gold standard for climate change disclosure. TCFD routinely engages with key stakeholders across the world to develop their policy recommendations, and currently, their recommendations are supported by over 1,027 organizations representing a market cap over $12 trillion (Canadian organizations include Barrick Gold, BCI, BMO, BCE, Manulife, Suncor, CIBC, Teck, and Telus among others). Following the release of the recommendations by the TCFD in 2017, many workshops have been held in Canada to address the challenges of implementation and possible solutions revolving around TCFD reporting, including variation in climate-related data, standardizing data inputs and assumptions from a variety of sources, and processes to determine materiality of climate issues, in addition to internal talent constraints. This would help address the concern people may have on practicality of the concept of universal disclosure.

As a market participant for over 17 years, Kingsdale is proud to have been represented on the Taskforce to bring forward some of the most bold and innovative recommendations to fundamentally modernize the Ontario capital markets.

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