

Hon. Senator Howard Wetston  
Independent Senators Group & Senator for Ontario  
Chair, Senate Standing Committee on Banking, Trade and Commerce

*By email only to: Howard.Wetston@sen.parl.gc.ca*

June 21, 2021

RE: Investor letter to Standing Senate Committee on Banking, Trade and Commerce regarding Bill S-216, the Modern Slavery Act

Dear Hon. Senator Wetston and members of the Senate Committee on Banking, Trade and Commerce:

We are a group of institutional investors with \$857 billion in assets under management who share an interest in addressing human rights risks within our investment portfolios.

We are pleased that the Standing Senate Committee on Banking, Trade and Commerce is studying the proposed *Act to enact the Modern Slavery Act and to amend the Customs Tariff*, Bill S-216, and we welcome discussion on the form, content, application, and effects of supply chain human rights due diligence legislation.

We are encouraged by the introduction of Bill S-216 and the passage of related legislation in leading international jurisdictions. Human rights due diligence legislation in Canada would drive change in preventing and addressing adverse human rights impacts. Legislation would support Canadian companies in attracting and maintaining investment and delivering long term value to investors.

As set out in the United Nations Guiding Principles on Business and Human Rights (“UNGPs”), human rights due diligence is a responsibility jointly held by businesses and government. As institutional investors, we take this responsibility seriously when making investment decisions.

Institutional investors have a duty to ensure that the entities in which we invest have sound policies, consistent oversight, and effective management designed to address human rights risks in their operations and global supply chains. This duty is set out by the Responsible Business Conduct considerations for institutional investors under the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”). Investor Signatories to the United Nations Principles for Responsible Investment (“UNPRI”)’s are also expected to adopt and report on human rights due diligence practices by 2025.

We would like to address three areas of the draft legislation which should be strengthened. In these areas, we believe Bill S-216, as proposed, will limit its effectiveness and therefore risks imposing additional requirements on companies without securing the full intended benefits envisioned under the law.

1. The scope of rights currently considered under Bill S-216 is overly narrow

The human rights risks to be considered under Bill S-216 are limited to incidents of forced and child labour. This scope is impractically narrow and omits many of the material human rights issues that companies and investors encounter. If adopted with the proposed limited scope, we would have concerns with the quality of an investee company’s due diligence program. The proposed framework would permit companies to ignore the broader human rights responsibilities set out in international standards, such as the UNGPs and the OECD Guidelines. These standards envision human rights due diligence that encompasses internationally recognized human rights norms expressed in UN Core Conventions. We encourage the committee to amend Bill S-216 to follow these global standards.

## 2. Due diligence is necessary for adequate coverage and reporting

The proposed legislation does not lay out a process for businesses to identify and mitigate risks through human rights due diligence. Established international standards provide clear guidance on the elements of human rights due diligence. As proposed, Bill S-216 would establish some of the elements of an effective due diligence program's reporting obligations. For example, Bill S-216 provides the requirement to report on "any measures taken to remediate any forced labour or child labour." However, as drafted, Bill S-216 does not provide for any systematic approach to due diligence to identify and mitigate human rights risks and remediate impacts.

Without concrete direction on human rights due diligence expectations, it will be difficult for investors to assess and compare the quality of company disclosures. These disclosures are essential for investors to differentiate between companies that are effectively mitigating the risk of human rights abuses and those that are not.

## 3. Accountability needs to be fit for purpose

The question of accountability is complex. Companies have many relationships within their global operations and supply chains. However, as institutional investors, we believe that Bill S-216's accountability regime should be structured to encourage entities to identify and remediate adverse human rights impacts. This should be done regardless of the size of the enterprise and the nature of its operations. Further, the regime should not incentivize under-reporting to avoid potential legal liability.

Bill S-216 allows the Minister to levy fines on entities that do not file an annual report and publicize it on their websites. However, we are concerned that the legislation is silent on accountability for entities that fail to take steps to address negative human rights impacts effectively. In our experience, a disclosure regime alone is not as effective in mitigating human rights impacts. Disclosure must be coupled with clear expectations and accountability for conducting human rights due diligence.

We would welcome an opportunity to discuss these and other concerns as you consider Bill S-216 in Committee. Anthony Schein, Director of Shareholder Advocacy at SHARE will contact you to make any necessary arrangements. Should you wish to contact us in the mean time, please email Anthony at [aschein@share.ca](mailto:aschein@share.ca) or telephone 416-306-6462.

Sincerely,

18 Asset Management Inc  
Addenda Capital Inc.  
AIMCo  
Alderville Community Trust  
Anglican Church of Canada  
Anglican Diocese of BC  
Atkinson Foundation  
BMO Global Asset Management  
Boston Common Asset Management  
British Columbia Teachers' Federation  
Canadian Religious Stewardship  
Christian Brothers Investment Services  
ClearBridge Investments  
Comitato Lady Lawyer Village  
Congregation of Sisters of St. Agnes  
CorpGov.net  
CtW Investment Group  
Dominican Sisters ~ Grand Rapids  
Dragonfly Ventures  
Echo Foundation  
Evangelical Lutheran Foundation of Eastern Canada (ELFEC)

Fédération des travailleurs et travailleuses du Québec  
Felician Sisters of North America  
Genus Capital Management  
Gestion FÉRIQUE  
Grey Sisters of the Immaculate Conception  
HLB Investments  
IBVM Foundation of Canada Inc.  
Laidlaw Foundation  
Leith Wheeler Investment Counsel  
Miller/Howard Investments, Inc.  
Mission Wealth Advisors of Raymond James Ltd.  
Mississaugas of the Credit First Nation Community Trust  
NEI Investments  
Northwest Coalition for Responsible Investment  
Nugent Inc  
Ontario Nature (Federation of Ontario Naturalists)  
Our Lady's Missionaries  
Pension Plan of The United Church of Canada  
UN Principles for Responsible Investment  
Primate's World Relief and Development Fund  
Propellus Financial  
Province of St. John the Baptist  
RBC Global Asset Management  
Régime de retraite par financement salarial de la FTQ (RRFS-FTQ)  
Region VI Coalition for Responsible Investment  
Regroupement pour la Responsabilité Sociale des Entreprises (RRSE)  
Roman Catholic Archdiocese of Toronto  
SHARE  
Silicz Wealth Management Team | National Bank Financial  
Sisters of Instruction of the Child Jesus  
Sisters of Saint Joseph of Chestnut Hill, Philadelphia, PA  
Sisters of St. Dominic of Blauvelt, New York  
Sisters of St. Francis (Oldenburg)  
Sisters of the Holy Names of Jesus and Mary  
Sisters of the Holy Names of Jesus and Mary.  
Sisters of the Precious Blood  
Sisters of the Presentation of the Blessed Virgin Mary, New Windsor, NY  
Sisters of the Presentation of the BVM of Aberdeen SD  
The Daly Foundation  
The Sisters Of Mercy Newfoundland Limited  
Trottier Family Foundation  
United Church of Canada, Treasury  
United Steelworkers Pension Plan  
University of St. Michael's College  
University of Toronto Asset Management  
Ursuline Convent of the Sacred Heart  
Ursuline Sisters of Chatham, Ontario  
Vancity Investment Management

*Copies to:*

The Honourable Filomena Tassi, Minister of Labour  
The Honourable Senator Larry W. Smith, Deputy Chair  
The Honourable Senator Pamela Wallin, Deputy Chair  
The Honourable Senator Julie Miville-Dechéne  
Mireille K. Aubé, Clerk of the Committee