

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission, New Brunswick
Manitoba Securities Commission
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Superintendent of Securities, Nunavut
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Re: CSA Notice and Request for Comment – Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines*

We are writing in response to the CSA Notice and Request for Comment – Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices* and Proposed Changes to National Policy 58-201 *Corporate Governance Guidelines* (the "**Proposed Amendments**"). Capitalized terms used in this letter that are not otherwise defined herein have the meanings given to them in the Proposed Amendments.

Thank you for the opportunity to comment on the Proposed Amendments. We understand that the proposals embodied in the Proposed Amendments are the result of lengthy consultation processes, debate and discussion that resulted in a view that expanded diversity disclosure was appropriate and in fact demanded by investors. Our comments on the expanded diversity requirements therefore accept this position and attempt to provide comment on the alternatives.

Below are our comments on the questions posed in the Notice and Request for Comment followed by some other specific comments on the Proposed Amendments.

Board nominations

- 1. The Proposed Amendments would require the disclosure of the skills, knowledge, experience, competencies and attributes of candidates that are considered and evaluated. Does this requirement raise concerns for issuers regarding disclosure of confidential or competitively sensitive information? Please explain. (Please refer to the table entitled "Board Nominations" in Annex A for a description of this proposed requirement)***

While specific disclosure requirements could necessitate disclosure of confidential or competitively sensitive information, the current form appears to be general enough that we do not anticipate it would be a concern.

However, we believe the "Board Nominations" table could provide more clarity as it is currently unclear whether an issuer will be mandated to disclose skills, knowledge, experience, competencies and

attributes for each specific director or the skills, knowledge, experience, competencies and attributes that are considered generally by the board for any nominees.

Approach to diversity

- 2. *We are consulting on two alternatives with respect to the requirement to provide disclosure on the approach to diversity (Form A and Form B). Which approach best meets the needs of investors for making investing and voting decisions? Which Form best meets the needs of issuers in describing their approach to diversity at the board and executive officer level? Do either of the approaches raise concerns for issuers? Are there certain requirements in either form that you find preferable to the equivalent requirement in the other form? Please explain.***

We believe that the less prescriptive requirements set out in Form A would encourage good governance. We support the position that the most important diversity disclosure is the particular diversity that is important to an issuer, including why that may be the case, and the process that an issuer has undergone to ensure inclusion of diversity in its leadership. Form A allows an issuer to define which categories of diversity are important to it, and to provide fulsome disclosure as to how such diversity would advance the issuer's business.

Allowing an issuer flexibility to focus on and design diversity policies and practices that reflect its particular circumstances would encourage a thoughtful approach to diversity and result in good governance, while discouraging tokenism. We believe Form B might incentivize the opposite, as well as amplifying focus on tabular disclosure instead of the surrounding context and processes, which in most cases, is the more important aspect of diversity.

- 3. *Is information on the diversity approach and objectives of issuers with respect to executive officer positions useful for investors? Does this requirement raise concerns for issuers? Please explain. (Please refer to the table entitled "Approach to Diversity – Executive Officer Positions" in Annex A for a description of this proposed requirement)***

We are unclear why executive officers would have a different disclosure standard than the directors of an issuer if diversity is an important principle for executive officers as well as directors.

- 4. *Should issuers be required to disclose data about specified designated groups, consistent with the approach in Form B? Or should issuers be required to disclose data about women only and the identified groups for which they collect data, consistent with the approach in Form A? Please explain. (Please refer to the table entitled "Concept of Diversity" in Annex A for a description of "designated groups" and "identified group")***

As outlined above, we believe that the more valuable disclosure is how diversity is connected to an issuer's particular circumstances and strategy. There is a risk with Form B that the value of diversity disclosure may be lost by designating groups, thereby incentivizing issuers to recruit individuals for the sole purpose of diversity reporting. Conversely, the flexibility of the Form A approach would encourage issuers to consider diversity while recruiting those that would improve decision-making processes and governance.

5. *Would it be beneficial to require reported data to be disclosed in a common tabular format? Does this requirement raise concerns for issuers? Please explain.*

Disclosure in a tabular format may be helpful if additive to the Form A disclosure, and issuers may see reason to do so if proxy advisory firms encourage tabular reporting. However, there is concern that a requirement of tabular disclosure may actually reduce the value of the remaining disclosure with focus shifting to the contents of the table. This is especially true with respect to the processes an issuer is using, and any progress made, which may not necessarily be linear or reflected in a table.

6. *For CBCA-incorporated issuers, are there issues or challenges in providing both CBCA disclosures and the disclosure proposed under either Form A or Form B? Please explain.*

While we do not necessarily see an issue with providing both CBCA disclosure and the proposed disclosure requirements, consider if a blanket exemption should be sought by the CSA to exempt CBCA reporting issuers from complying with CBCA disclosure if they comply with applicable securities laws.

Application to Venture Issuers

7. *Should we consider developing similar disclosure requirements for venture issuers in a second phase of this project? If so, should any changes be made to the proposed disclosure requirements to reflect the different stages of development and circumstances of venture issuers? Please explain.*

We believe that venture issuers already have difficulty finding and attracting qualified candidates, and additional disclosure requirements may be overburdensome. If desired, in the alternative, consider including additional required disclosure under Item 5 of Form 58-101F2 to address the issue generally such as with an additional disclosure requirement of "any steps taken in the board nomination process to attempt to obtain diversified representation on the board".

Other Comments

Annex H - Proposed changes to Form 58-101F1 (Form A)

(f) whether the board has a composition matrix setting out the mix of skills, knowledge, experience, competencies and attributes that the board currently has and is looking to obtain in its membership;

Comment: It is unclear to us whether the requirement is to only disclose whether the board has a composition matrix (or why not), or to disclose the composition matrix the board currently has, and the skill sets of current members. We assume the latter, and, if so, clarification may assist.

(g) the skills, knowledge, experience, competencies and attributes of candidates that are considered when evaluating a candidate.

Comment: Consider clarifying whether the requirement is to disclose all the skills, knowledge, experience, competencies and attributes of candidates that are considered or specifically any the board is currently missing and looking to fill.

Annex I – Proposed changes to Form 58-101F1 (Form B)

6.4 (b) Complete the following table in respect of the issuer's most recent completed fiscal year.

Comment: This information appears to be covered in proposed addition 6.4(a), which requires more fulsome disclosure for each of the two preceding fiscal years.

Annex J – Proposed changes to National Policy 58-201 (Compatible with Form A)

3.11.4 Recommendations for appointments to the board should be based on objective criteria.

Comment: We do not believe this is an appropriate required standard. We believe that subjective criteria such as fit are also important for effective and good governance. This statement also may be duplicative and unnecessary as the desired objective criteria are reflected in the skills matrix.

3.11.5 (a) provides a transparent process and timeline for replacing board members...

Comment: Consider whether including timeline is appropriate. The inclusion of a timeline imposes time limits for board members, which we do not think should be mandated, and is not necessarily tied to ensuring the required skillsets are maintained.

3.11.5 (b) maintains a mix of longer-serving directors with a deep understanding of the issuer and its business and newer directors with fresh ideas and perspective;

Comment: While having a mix of longer-serving directors and newer directors may be an appropriate consideration for the board when considering composition, consider if it should not be a mandated requirement. Also consider whether including this as a form requirement may also lead to uncertainty as "longer-serving" and "newer" are not concrete and may be relative or hard to define.

Regular Board Assessments – 3.18

Comment: Consider if the requirement for regular board assessments should also include assessments of the board or a committee's diversity. It is unclear from the current language whether or not the assessment of composition includes diversity, but given the importance of diversity and for consistency with the Proposed Amendments, any regular board assessments should also include consideration of diversity.

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We appreciate the opportunity to comment on the Proposed Amendments. If you have any questions on our comments or if we can clarify or expand on any of them, please feel free to contact Ted Brown, Lindsay Cox, Mardi McNaughton or Tyler Engelking of our office.

Yours very truly,

BURNET, DUCKWORTH & PALMER LLP