

September 29, 2023

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

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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*

Kingsdale Advisors welcomes the opportunity to provide comments on the 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*.

Kingsdale Advisors is the leading shareholder services and advisory firm in North America (*ranked Top 5 Proxy Solicitor Globally,¹ # 1 Proxy Solicitor on company side in Canada, # 1 Energy Sector & Materials*

¹ The Shareholder Activism for First Half 2023. September 2023. <https://www.refinitiv.com/en/products/deals-intelligence/corporate-governance-reports>

Sector on company side, Top 5 Proxy Solicitor Globally for company and activists, Top 10 Proxy Solicitor for \$1B+Targets Only on company Side and Top 10 Proxy Solicitor, in the U.S. on company side),² trusted by public companies for our expertise in investor, governance and transaction-related matters. A key element of our client service is understanding voting decisions that are being made by investors. This includes an in-depth understanding of the voting policies of the major proxy advisory firms Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co. (GL), as well as the individual voting policies of institutional investors.

Moreover, Kingsdale Advisors is the proud supporter of BlackNorth Initiative (BNI), founded by Wes Hall, our Executive Chairman and Founder. It spearheaded the BNI CEO Pledge, a public commitment by CEOs that their companies would follow seven specific actions around addressing anti-Black racism. Among the significant goals outlined in the BNI CEO Pledge is an ambitious goal to have 3.5% of executive and board roles held by Black leaders by 2025 and we believe that improved disclosure will promote the achievement of this goal.

Given our passion for diversity and all of the economic benefits that come with it, we are writing to express our support for the proposed amendments to Form 58-101F1 *Corporate Governance Disclosure* to enhance transparency and comparability about diversity on boards and in executive officer positions, specifically in favor of adopting Form B/Policy B. As an organization that is on the front-line of shareholder decision-making, Kingsdale Advisors believes that Form B offers significant advantages over Form A and will contribute to enhancing transparency and comparability of diversity reporting, while also promoting improved diversity disclosure in corporate governance practices, which aligns with overall industry advancements in this area. The concept of diversity amongst investors and issuers alike has expanded beyond simply gender diversity and Form B reflects this new paradigm of greater inclusion, specifically underrepresented BIPOC groups. Simply put, the train has left the station when it comes to society's and investors' expectations for diversity beyond gender. There is an urgent need for Canadian securities regulators to require the disclosure of this information to support informed decision making and to continue to advance the Canadian principles of diversity and equality of all. The approach to enhanced diversity disclosure has already been addressed by the Financial Conduct Authority in the United Kingdom and the U.S. Securities and Exchange Commission in the United States.

The increased expectations of investors can further be observed in new requirements from ISS and the implementation of stricter custom voting policies from institutional shareholders. For meetings on or after February 1, 2024, ISS expects companies that are part of the S&P/TSX Composite Index to have at least one racially or ethnically diverse director to avoid negative voting recommendations against certain directors. Investors may also subscribe to certain other ISS "Specialty Policies" that have even stricter diversity targets for boards, such as 40% gender diversity and 20% racial/ethnic diversity. As well, certain institutional voting policies also consider racial or ethnic diversity in addition to gender diversity in their 2023 voting policies and it remains to be seen what additional policy changes institutional shareholders may make prior to the 2024 proxy season. One thing is for sure, we know they will only be strengthened.

Research data indicates that Canada has witnessed a slow and steady increase of women and racially diverse individuals in corporate boardrooms in terms of total board seats and the percentages they

² Data from Bloomberg Global Activism Market Review 2023 (H1) https://content-assets.computershare.com/eh96rkuu9740/39L0weIR96OoKO5WKPo2Xs/8f9052bae0947da1a0f5d4643b261435/Bloomberg_Activism_League_Tables_H12023.pdf

represent on boards, and more data is slowly emerging indicating that diversity on boards and executive positions brings better financial benefits and overall performance to companies.³

Furthermore, shareholder proposals have played a significant role in driving the demand for enhanced diversity disclosure. In 2023, third-party racial audit proposals were voted on at Royal Bank of Canada (RBC) and Bank of Montreal (BMO). Notable, the proposal at RBC received significant support of 42.2% support. Additionally, three other Canadian banks, namely Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, and National Bank of Canada, have already committed to conducting a third-party racial equity audit. It is clear that transparency and disclosure are being increasingly requested from institutional shareholders. We also expect diversity will be amongst the areas of increasing focus in activist campaigns and, as such, should play a crucial role in shaping a board's approach to its refreshment process. Failure to deliver on diversity could leave boards vulnerable, as activists look to capitalize on areas of board weakness – especially ones that should be common sense – in making their cases for change.

Form B/Policy B adopts five defined “designated groups” similar to the ones adopted under the *Canada Business Corporations Act* (CBCA), with the addition of LGBTQ2SI+ persons. These categories are not arbitrary, rather they reflect Canadian society, and moreover Form B/Policy B allows issuers to voluntarily provide disclosure in addition to these groups as part of an issuer’s diversity strategies and objectives. The standardized tabular format required by Form B/Policy B also offers a two-fold advantage: i) it provides the information that investors are basing their decisions on, and ii) ensures consistency and comparability of diversity disclosure across issuers, enabling investors and stakeholders to make informed decisions based on comprehensive and comparable data. In light of the increased use of Artificial Intelligence (AI) by institutional shareholders for circular review, the consistent table format enhances efficiency; it facilitates the identification of industry-wide trends, best practices, and concrete actions that track progress over time.

While the flexibility of Form A/Policy A may appear appealing, it is essential to recognize that without standardized reporting requirements, issuers may adopt inconsistent and fragmented approaches to diversity disclosure, possibly in an effort to overstate their performance in this area and hindering effective comparisons between companies to support informed decision making by investors. Supporters of Form A will argue that it doesn’t prevent companies from providing the disclosure in Form B, however one could argue that Form A/Policy A appears to support the status quo as issuers would not be mandated to disclose diversity-related information beyond women. Finally, the suggestion by the proponents of Form A, that a narrative of a company’s approach to disclosure provides “decision-useful information” is, quite simply, incorrect based on our experience and the disclosed policies of many investors. We believe that this alternative would not result in any meaningful change in the actions that will be taken by issuers in the advancement of historically underrepresented groups.

In conclusion, we firmly believe that adopting Form B / Policy B in the proposed amendments to Form 58-101F1 *Corporate Governance Disclosure* and National Policy 58-201 *Corporate Governance Guidelines* is the appropriate approach for promoting investor useful disclosure around corporate governance practices. In this way, Form B best aligns with the general understanding of the securities regulators’ mandate of protecting investors while ensuring the efficiency of the market. A standardized definition of diversity categories combined with a consistent reporting format, will allow investors to make informed investment

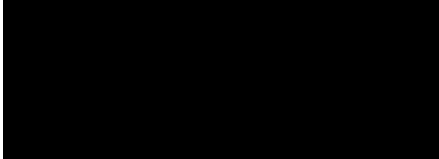
³ ISS Corporate Solutions. Gender Diversity in Canadian Corporations: Rise in Board Seats for Women Hides Scant Progress in Leadership Roles. July 26, 2023. <https://insights.issgovernance.com/posts/gender-diversity-in-canadian-corporations-rise-in-board-seats-for-women-hides-scant-progress-in-leadership-roles/>

decisions. We would also recommend that the CSA consider adopting similar disclosure requirements for venture issuers at this time given the importance of this disclosure to investors.

We commend the CSA's efforts to gain perspectives of a variety of stakeholders with respect to diversity and by enhancing the disclosure in this area, we believe this will work towards bridging the gap of underrepresented groups on boards and in executive officer positions.

Kingsdale Advisors

Sincerely,



Ian Robertson
Chief Executive Officer



Kelly Gorman
Executive Vice President, Governance Advisory