

29 September 2023

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario

Submitted via email: comment@osc.gov.on.ca

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 (“Request for Comment”)

Dear Sir / Madam,

MSCI¹ welcomes the opportunity to comment on the proposed amendments published in April 2023. As a leading provider of environmental, social, and governance (ESG) data and ratings to the global investment community, MSCI has collected climate and ESG related disclosures from thousands of companies globally for over two decades and developed tools to assist investors in their analysis of climate and ESG risks and opportunities to their portfolios.

MSCI supports the initiatives proposed in the Request for Comment on increasing transparency about diversity, including diversity beyond women, on boards and in executive officer positions. We propose adopting Form B with respect to providing disclosures on the approach to diversity. Though Form A and Form B both expand disclosures and increase data availability to the investors, Form A does not mandate the collection or disclosure of quantifiable data with respect to any specific groups (other than women). Whereas Form B is more likely to result in value-added disclosures, meet the needs of investors and deliver on some of the main objectives of the proposed amendments, meaning increase transparency and provide investors with diversity related decision useful information.

More detailed responses are provided as Annex 1. Please do not hesitate to contact us to discuss our submission.

Yours sincerely,

/s/ Laura Nishikawa
Managing Director, Global Research
MSCI ESG Research LLC

¹ MSCI ESG Ratings, research and data are produced by MSCI ESG Research LLC.

MSCI responses to questions posed in the Request for Comment

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)

No. The skills, knowledge, experience, competencies, and attributes sought by boards in board nominees represent an area of widespread voluntary disclosure in Canada. This disclosure is usually provided in the form of a “skills matrix”, in which the sought-after criteria are matched against the individual board nominees who meet those criteria. An alternative form indicates the anonymized number of board nominees who meet each criterion.

The Canadian Coalition for Good Governance (CCGG) has included board skills matrices in its “Best Practices for Proxy Circular Disclosure” since at least 2013. The 2022 edition notes that “boards should identify the key skills that are required of directors and use a skills matrix to ensure that these skills are accounted for among current and prospective directors.” It further states that “...CCGG expects boards to be diverse,” and one of the best practice examples highlighted in the report provides information on individual directors’ age, language competence, and visible minority and indigenous peoples status.² Skills matrices have been typical disclosure in Canadian proxy circulars for many years. In *The Globe & Mail*’s 2021 “Board Games” report, 190 of the 220 reviewed TSX-listed issuers (86%) were identified as having disclosed “the skills or areas of expertise of each director in the form of a ‘skills matrix’ or in another format”.³

In short, Canadian investors have long expected disclosure comparable to that envisioned in the proposed Amendments, and Canadian issuers have generally sought to meet that expectation. Further, existing voluntary disclosures often exceed what would be required under the Proposed Amendments by including information on the number of director nominees who meet each criterion. We therefore do not believe that the Proposed Amendments raise substantial concerns regarding the disclosure of confidential or competitively sensitive information.

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.

While we welcome the proposals to expand diversity-related disclosures and acknowledge that both approaches are likely to increase data availability, the approach described in Form A raises concerns as it

² CCGG, “[2022 Best Practices for Proxy Circular Disclosure](#),” pp. 19-21.

³ *The Globe and Mail*, “[The Globe and Mail’s comprehensive ranking of Canada’s corporate boards](#),” Dec. 6, 2021. Evaluation of general skills disclosure was discontinued in future editions of “Board Games” to date.

could result in data that is neither comparable nor decision-useful. Given that Form A does not mandate the collection or disclosure of quantifiable data with respect to any specific groups (other than women), issuers will be able to rely on qualitative disclosure, which are often limited to boilerplate statements or are sample based, and therefore may not be representative or, at worst, be misleading.

Form A may also inadvertently discourage collection of diversity data beyond gender as a means to circumvent mandatory disclosure given that only issuers that have opted to collect data with respect to specific groups identified as being relevant for their approach to diversity are subject to such disclosure requirement. Even if issuers opt to collect data, their definitions of specific groups are likely to vary and so is the format and content of their disclosure. In our experience in collecting diversity data, lack of standardized disclosure has limited the usability of the data and placed the burden of interpreting and normalizing the data on the users of the data.

It is worth noting that lack of quantifiable data will not only impair comparability but also prevent investors from identifying the current diversity makeup of issuers' board of directors and executive officers as well as assessing issuers' progress towards their own diversity goals. Increasing disclosure and monitoring progress on the representation of Black, Indigenous and People of Colour in Canadian public companies was identified as a priority for the Canadian investment industry in October 2020, when 31 institutional investors (managing CAD2.3 trillion in assets) signed the Canadian Investor Statement on Diversity & Inclusion, coordinated by the Responsible Investment Association;⁴ an additional 23 organizations have signed the statement since its initial release.⁵

We believe that the approach described in Form B is more likely to result in value-added disclosures, meet the needs of investors and deliver on some of the main objectives of the proposed amendments, meaning increase transparency and provide investors with diversity related decision useful information. Form B is also better aligned with other jurisdictions' initiatives to improve diversity beyond gender (e.g., the Nasdaq Board Diversity Matrix and UK FCA Policy Statement PS22/3) and to the existing disclosure requirements under the Canada Business Corporations Act.⁶

Although Form B is more prescriptive than Form A, under Form B, issuers maintain their autonomy to design their own practices and policies and to define their own diversity objectives and targets (if any). There is nothing preventing issuers from choosing to collect and disclose data concerning additional groups that best fit their own circumstances or from providing qualitative disclosure that helps contextualize their data or justify apparent shortcomings concerning designated groups.

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)

To date, most diversity related data available concerns boards of directors. However, we have seen an increase in demand for data concerning other groups including executive officers, senior managers, and issuers' overall workforce. Availability of diversity related data across a variety of seniority groups not only allows for a more comprehensive and meaningful assessment of representation, but could provide insights into issues (or the lack thereof) concerning hiring practices, career progression policies, employee turnover, etc.

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

⁴ <https://www.businesswire.com/news/home/20201001005261/en/Canadian-Investors-Representing-2.3-Trillion-Pledge-to-Promote-Diversity-Inclusion-in-Their-Portfolios-and-Institutions>

⁵ <https://www.riacanada.ca/investor-statement-diversity-inclusion/>

⁶ <https://canadagazette.gc.ca/rp-pr/p2/2019/2019-07-10/html/sor-dors258-eng.html>

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 per above, we believe that issuers should be required to disclose data about specified designated groups, consistent with the approach in Form B. Form B is more likely to result in value-added and comparable disclosures, meet the needs of investors to identify issuers’ current diversity makeup as well as assess progress towards issuers’ diversity goals and deliver on some of the main objectives of the proposed amendments. Issuers should be able to complement their disclosure with information concerning any other groups they thought appropriate and to provide qualitative disclosure to contextualize their data or justify apparent shortcomings concerning designated groups.

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.

Yes, we believe that a tabular format improves standardization and facilitates data collection.

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.

Not applicable.

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.

Yes, we support extending the disclosure requirements for venture issuers in a second phase of this project. For better comparability of data across issuers, the disclosure requirements for venture and non-venture issuers should ideally be aligned. Therefore, we propose a phasing in of the disclosure requirements over a period providing more time to venture issuers to comply with the requirements.