

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*

April 13, 2023

Introduction

The Canadian Securities Administrators (CSA or we) are publishing for a 90-day comment period:

- proposed amendments to Form 58-101F1 *Corporate Governance Disclosure* (**Form 58-101F1**) of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) pertaining to board nominations, board renewal and diversity, as well as ancillary amendments to section 1.1 Definitions of NI 58-101 (the **Proposed Amendments**); and
- proposed changes to National Policy 58-201 *Corporate Governance Guidelines* (**NP 58-201**) pertaining to board nominations, board renewal and diversity (the **Proposed Changes**),

(collectively, the **Proposed Amendments and Changes**).

The CSA is seeking comment on two approaches to build upon the existing disclosure requirements in Form 58-101F1 regarding the representation of women on boards and in executive officer positions and board renewal adopted by most CSA jurisdictions in 2014¹ (the **2014 Requirements**). While each approach is premised on different concepts discussed further below, both approaches are intended to provide enhanced, decision-useful information to investors to assist with their investment and voting decisions.

We are issuing this notice to solicit your comments on the Proposed Amendments and Changes, and in particular to seek feedback on which approach best meets the needs of stakeholders. The public comment period will end on July 12, 2023.

Although British Columbia and Prince Edward Island have not adopted the 2014 Requirements, all jurisdictions are consulting on the Proposed Amendments and Changes with a view to adopting them.

The text of the Proposed Amendments and Changes is included in Annexes C through G of this notice and will also be available on the websites of the following CSA jurisdictions:

www.albertasecurities.com
www.bsc.bc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca

www.lautorite.qc.ca
www.mbsecurities.ca
nssc.novascotia.ca
www.osc.ca

¹ Not adopted in British Columbia and Prince Edward Island. Adopted in Alberta in 2016.

Substance and Purpose

The Proposed Amendments and Changes set out amendments to the corporate governance disclosure requirements in Form 58-101F1 and changes to the corporate governance guidelines in NP 58-201 pertaining to board nominations, board renewal and diversity.

In particular, the Proposed Amendments would require disclosure on aspects of diversity beyond the representation of women, while retaining the current disclosure requirements with respect to women included in the 2014 Requirements. The CSA recognizes the importance of providing investors with transparency on issuers' practices with respect to board and executive-level diversity. The Proposed Amendments are intended to elicit meaningful disclosure about how non-venture issuers identify and evaluate new candidates for nomination to the board, how they address board renewal, and how diversity is incorporated into those considerations. This is intended to reflect that the board's consideration of diversity is an integral component of the board's nomination and renewal processes.

The Proposed Changes would provide enhanced guidelines related to board nominations and would introduce guidelines on board renewal and board diversity in NP 58-201. This ensures that the guidelines in NP 58-201 adequately complement the disclosure requirements in Form 58-101F1, as amended by the Proposed Amendments.

The Proposed Amendments and Changes reflect the CSA's commitment to ensuring investors have the information they need to make informed investment and voting decisions. The main objectives of these proposals are to:

- increase transparency about diversity, including diversity beyond women, on boards and in executive officer positions;
- provide investors with decision-useful information that enables them to better understand how diversity ties into an issuer's strategic decisions; and
- provide guidance to issuers on corporate governance practices related to board nominations, board renewal and diversity.

The CSA is committed to engaging with Indigenous Peoples and organizations. We will continue to broaden our engagement as we advance our understanding of how to best approach this work. Input collected through such engagement conducted by individual CSA members will be shared within the CSA so that all members can benefit from the views obtained.

Background

The 2014 Requirements require non-venture issuers to provide disclosure on an annual basis in the following areas:

- director term limits and other mechanisms of board renewal;
- policies regarding the representation of women on the board;
- consideration of the representation of women in the director identification and selection process;
- consideration given to the representation of women in executive officer appointments;
- issuer's targets regarding the representation of women on the board and in executive officer positions; and
- number of women on the board and in executive officer positions.

The objective of the 2014 Requirements was to increase transparency for investors regarding the representation of women on boards and in executive officer positions, and the approach that issuers take in respect of such representation, to inform investment and voting decisions.

In recent years there have been several developments that have heightened the importance of considering diversity on boards and in executive officer positions, beyond women, including:

- As of January 1, 2020, distributing corporations governed by the *Canada Business Corporations Act (CBCA)* are required to provide prescribed diversity disclosure with respect to women, Indigenous peoples (First Nation, Inuit and Métis), persons with disabilities and members of visible minorities in connection with their annual meeting of shareholders held on or after such date.
- In February 2020, the Ontario Government established the Capital Markets Modernization Taskforce to review and modernize the Ontario capital markets. The Taskforce published a final report in January 2021, which includes recommendations pertaining to corporate board diversity.
- On October 1, 2020, institutional investors managing more than \$2.3 trillion in assets signed the Canadian Investor Statement on Diversity & Inclusion, an initiative to combat systemic inequities and advancing diversity and inclusion efforts.

In light of this heightened focus, CSA Staff undertook the following consultations, research and reviews related to diversity:

- **Consultations** – In May 2021, we announced consultations with a variety of stakeholders to better understand their needs and perspectives with respect to diversity, including diversity beyond women. The consultations were held through a variety of forums, including consultation papers, roundtables, meetings and other communications with stakeholders.

A high-level overview of the feedback from these consultations is as follows:

- Diversity is an important consideration in investment and voting decisions.
 - There is strong investor support in expanding the existing disclosure regime to consider diversity beyond women, while maintaining specific disclosure requirements regarding women.
 - Diversity on boards and in executive officer positions is a critical component of good corporate governance.
 - Many stakeholders support guidelines related to diversity that provide issuers with flexibility to adapt them to their circumstances.
 - Institutional investors and proxy advisory firms are developing diversity-related policies which have resulted in disparate diversity disclosure practices among issuers.
 - Some stakeholders expressed support for a consistent, standardized framework for diversity disclosure.
 - Other stakeholders stressed that a flexible approach would be better suited to Canada's diverse capital markets and expressed concern with the disclosure of personal characteristics.
- **Research** – The CSA also revisited and updated research on the approach to diversity by certain securities regulators outside of Canada. Annex B provides a summary of these approaches, which highlight an increasing focus on diversity generally, including diversity beyond women. The CSA continues to follow domestic and international developments related to diversity.

- **Annual Reviews** – We have considered issuer disclosure practices and key trends arising from eight annual reviews of public disclosure regarding women on boards and in executive officer positions conducted by several CSA jurisdictions since the adoption of the 2014 Requirements. Most recently, CSA Multilateral Staff Notice 58-314 *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions* reports that the proportion of board seats held by women has increased from 11% to 24% during the eight-year period since the 2014 Requirements came into effect.

The Proposed Amendments and Changes were informed by these consultations, research and reviews.

Summary of the Proposed Amendments and Changes

Proposed Amendments

Two versions of Form 58-101F1 are presented for comment (**Form A** and **Form B**). Form A and Form B are generally aligned with respect to disclosure requirements related to board nominations and board renewal but reflect different approaches respecting diversity-related disclosure issuers must provide.

In this consultation, we are seeking feedback on both proposals. While all participating jurisdictions are consulting on both Form A and Form B, certain jurisdictions have expressed their preference for one proposal over the other. Specifically, the British Columbia Securities Commission, the Alberta Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan and the Office of the Superintendent of Securities Northwest Territories support Form A and the Ontario Securities Commission supports Form B. The Autorité des marchés financiers, the Financial and Consumer Services Commission of New Brunswick, the Manitoba Securities Commission, the Nova Scotia Securities Commission, the Office of the Superintendent of Securities Newfoundland and Labrador, the Office of the Superintendent of Securities Nunavut, the Office of the Yukon Superintendent of Securities and the Superintendent of Securities Department of Justice and Public Safety Prince Edward Island have not expressed a preference at this time.

Both Form A and Form B are designed to increase transparency about diversity, including diversity beyond women, on boards and in executive officer positions, and provide investors with decision-useful information that enables them to better understand how diversity is addressed by an issuer. At a high level, the key components of each approach, represented in the design of the applicable form, are described below.

Form A would require an issuer to disclose its approach to diversity in respect of the board and executive officers, but would not mandate disclosure in respect of any specific groups, other than women. An issuer would be required to describe its chosen diversity objectives and how it would measure progress, and explain what mechanisms it has determined are appropriate for the issuer to achieve its diversity objectives. If an issuer chooses to collect data with respect to specific groups it identifies as being relevant for the issuer's approach to diversity, this data must be disclosed in a manner determined by the issuer. We acknowledge there may be a desire, by some investors, for comparability of such disclosure. However, the approach taken in Form A is intended to provide each issuer with flexibility to design practices and policies respecting how it will address diversity in its specific circumstances, and not requiring it to report data on any specific group. This approach also removes securities regulators from defining to whom an issuer's approach to diversity must apply, other than women.

Similar to the approach adopted under the CBCA (although differing to some degree on the identified categories utilized), Form B contemplates mandatory reporting on the representation of five designated groups, being women, Indigenous peoples, racialized persons, persons with disabilities and LGBTQ2SI+

persons, on boards and in executive officer positions. An issuer may also choose to voluntarily provide disclosure in respect of other groups beyond the designated groups. All such data would be required to be reported in standardized tabular format to promote consistency and comparability of such disclosure. The information reported must be based on voluntary self-disclosure by directors and executive officers. In addition, Form B would require disclosure regarding any written strategy, written policies and measurable objectives relating to diversity on an issuer's board.

The key difference between Form A and Form B is that the latter mandates disclosure on historically underrepresented groups. In doing so, it conforms to the approach taken in the CBCA and is intended to provide statistical data that is comparable amongst issuers in connection with these groups. Form A's approach is based on a view that securities regulators should not select categories of diversity, other than women, preferring to leave that to the issuer's determination as to what aspects of diversity are most beneficial to that issuer in advancing its business and strategy. In other words, a less prescriptive approach. It may also avoid limitations on the completeness of disclosure arising from the use of information resulting from voluntary self-identification in relation to the specified categories, although this issue may also arise from these or other categories chosen for use by issuers under Form A.

A more detailed comparison between the two forms, and in relation to the current disclosure requirements, can be found in Annex A. The text of the Proposed Amendments can be found in Annex C and Annex D (with Annex E providing proposed amendments to section 1.1 Definitions of NI 58-101 that would apply to Form B only).

Existing disclosure requirements with respect to women

Form A and Form B substantially maintain the existing disclosure requirements with respect to women on boards and in executive officer positions under the 2014 Requirements. Under both forms, the current "comply or explain" disclosure model would continue to apply with respect to policies for women on boards and targets for women on boards and in executive officer positions. Both Form A and Form B also contemplate maintaining existing disclosures of data for women on boards and in executive officer positions. We consider it important that new disclosure requirements pertaining to diversity do not affect the substance of the 2014 Requirements that have been in use for over nine years and have provided valuable information to stakeholders. Notwithstanding the proposed expansion of the concept of diversity, we have heard that information on the representation of women on boards and in executive officer position continues to be important for many stakeholders.

Non-venture issuers

Both Form A and Form B would be applicable only to non-venture issuers, as is currently the case with the 2014 Requirements. The CSA is not currently proposing amendments to Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)*. We are consulting as to whether we should consider adapting the Proposed Amendments for application to venture issuers in a second phase of this project.

Proposed Changes to NP 58-201

The Proposed Changes would provide enhanced guidelines for all issuers related to board nominations and would introduce guidelines on board renewal and board diversity in NP 58-201 to complement the disclosure requirements contained in Form 58-101F1, as amended by the Proposed Amendments.

Although these guidelines are not intended to be prescriptive, we would encourage issuers to consider them in developing their own corporate governance practices and to apply and adapt these guidelines based on their individual circumstances as they evolve. These corporate governance guidelines have been

formulated to achieve a balance between providing protection to investors and fostering fair and efficient capital markets, while recognizing that corporate governance is evolving.

The proposed guidelines would address the following:

- the responsibilities of the nominating committee;
- the written policy respecting the director nomination process;
- the use of a composition matrix;
- effective succession planning and the mechanisms of board renewal, including term limits;
- the written diversity policy; and
- targets for achieving diversity on the board and in executive officer positions.

Two versions of NP 58-201 are presented for comment (**Policy A** and **Policy B**). The guidelines pertaining to board nominations and board renewal are harmonized in both Policy A and Policy B; however, the guidelines pertaining to board diversity are different as to be compatible with the disclosure requirements provided in Form A and Form B, respectively.

The text of these guidelines can be found in Annex F and Annex G.

Impact on Investors

The Proposed Amendments are expected to be beneficial to investors. The Proposed Amendments are expected to enhance the quality of the information disclosed. This is expected to result in disclosure that is more meaningful and which provides information investors need to make informed investment and voting decisions.

Anticipated Costs and Benefits of the Proposed Amendments

We believe the Proposed Amendments will enhance the quality of the disclosure to be provided to investors, which would enable investors to make better informed investment and voting decisions. We expect the Proposed Amendments will make disclosure easier for non-venture issuers by clarifying and streamlining disclosure requirements pertaining to board nominations, board renewal and diversity. As a result, we expect that the Proposed Amendments will not significantly increase regulatory burden. Accordingly, the Proposed Amendments will not compromise investor protection or the efficiency of the capital markets. A more detailed discussion of the costs and benefits of the Proposed Amendments is included in the Ontario Securities Commission's Annex L – Local Matters.

Local Matters

Where applicable, Annex L provides additional information required by local securities legislation.

Request for Comments

In addition to your comments on all aspects of the Proposed Amendments and Changes, we are seeking specific feedback on the following questions:

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)*

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.
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)*
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”)*
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.
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.

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.

Please submit your comments in writing on or before **July 12, 2023**. If you are not sending your comments by email, please send us an electronic file containing the submissions (in Microsoft Word Format).

Address your submission to all of the CSA jurisdictions as follows:

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

Send your comments to the following addresses listed below. Your comments will be forwarded to the remaining jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
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Fax: 416-593-2318
Email: comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-6381
Email: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Content of Annexes

This notice contains the following annexes:

- Annex A: Detailed comparison of Form A and Form B with current disclosure requirements.
- Annex B: Approach to diversity by certain securities regulators outside of Canada.
- Annex C: Proposed amendments to NI 58-101 and Form 58-101F1 (Form A).
- Annex D: Proposed amendments to NI 58-101 and Form 58-101F1 (Form B).
- Annex E: Proposed amendments to section 1.1 Definitions of NI 58-101 (Applicable to Form B).
- Annex F: Proposed changes to NP 58-201 (Compatible with Form A).
- Annex G: Proposed changes to NP 58-201 (Compatible with Form B).
- Annex H: Annotated Form 58-101F1 (Form A).
- Annex I: Annotated Form 58-101F1 (Form B).
- Annex J: Annotated NP 58-201 (Compatible with Form A).
- Annex K: Annotated NP 58-201 (Compatible with Form B).
- Annex L: Local Matters.

Questions

Please refer your questions to any of the following:

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