

ANNEX J

ANNOTATED NATIONAL POLICY 58-201 (COMPATIBLE WITH FORM A)

Legend of proposed changes to policy

Underline text → disclosure item changed or added

~~Strikethrough text~~ → disclosure item removed

Plain text → no change to disclosure item

Part 1 Purpose and Application

1.1 **Purpose of this Policy** — This Policy provides guidance on corporate governance practices which have been formulated to:

- achieve a balance between providing protection to investors and fostering fair and efficient capital markets and confidence in capital markets;
- be sensitive to the realities of the greater numbers of small companies and controlled companies in the Canadian corporate landscape;
- take into account the impact of corporate governance developments in the U.S. and around the world; and
- recognize that corporate governance is evolving.

The guidelines in this Policy are not intended to be prescriptive. We encourage issuers to consider the guidelines in developing their own corporate governance practices and to apply and adapt these guidelines based on their individual circumstances as they evolve.

~~We do, however, understand that some parties have concerns about how this Policy and National Instrument 58-101 *Disclosure of Corporate Governance Practices* affect controlled companies. Accordingly, we intend, over the next year, to carefully consider these concerns in the context of a study to examine the governance of controlled companies. We will consult market participants in conducting the study. After completing the study, we will consider whether to change how this Policy and National Instrument 58-101 treat controlled companies.~~

1.2 **Application** — This Policy applies to all reporting issuers, other than investment funds. Consequently, it applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board of directors (the board), includes any equivalent characteristic of a non-corporate entity. For example, in the case of a limited partnership, we recommend that a majority of the directors of the general partner should be independent of the limited partnership (including the general partner).

Income trust issuers should, in applying these guidelines, recognize that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. For this purpose, references to “the issuer” refer to both the trust and any underlying entities, including the operating entity.

Part 2 Meaning of Independence

- 2.1 **Meaning of Independence** — For the purposes of this Policy, a director is independent if ~~he or she~~ the director would be independent for the purposes of National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

Part 3 Corporate Governance Guidelines

Composition of the Board

- 3.1 The board should have a majority of independent directors.
- 3.2 The chair of the board should be an independent director. Where this is not appropriate, an independent director should be appointed to act as “lead director”. However, either an independent chair or an independent lead director should act as the effective leader of the board and ensure that the board's agenda will enable it to successfully carry out its duties.

Meetings of Independent Directors

- 3.3 The independent directors should hold regularly scheduled meetings at which non-independent directors and members of management are not in attendance.

Board Mandate

- 3.4 The board should adopt a written mandate in which it explicitly acknowledges responsibility for the stewardship of the issuer, including responsibility for:
- (a) to the extent feasible, satisfying itself as to the integrity of the chief executive officer (the CEO) and other executive officers and that the CEO and other executive officers create a culture of integrity throughout the organization;
 - (b) adopting a strategic planning process and approving, on at least an annual basis, a strategic plan which takes into account, among other things, the opportunities and risks of the business;
 - (c) the identification of the principal risks of the issuer’s business, and ensuring the implementation of appropriate systems to manage these risks;
 - (d) succession planning (including appointing, training and monitoring senior management);
 - (e) adopting a communication policy for the issuer;
 - (f) the issuer’s internal control and management information systems; and
 - (g) developing the issuer’s approach to corporate governance, including developing a set of corporate governance principles and guidelines that are specifically applicable to the issuer.¹

¹ Issuers may consider appointing a corporate governance committee to consider these issues. A corporate governance committee should have a majority of independent directors, with the remaining members being “non-management” directors.

The written mandate of the board should also set out:

- (i) measures for receiving feedback from stakeholders (e.g., the board may wish to establish a process to permit stakeholders to directly contact the independent directors), and
- (ii) expectations and responsibilities of directors, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

In developing an effective communication policy for the issuer, issuers should refer to the guidance set out in National Policy 51-201 *Disclosure Standards*.

For purposes of this Policy, “executive officer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*.

Position Descriptions

- 3.5 The board should develop clear position descriptions for the chair of the board and the chair of each board committee. In addition, the board, together with the CEO, should develop a clear position description for the CEO, which includes delineating management’s responsibilities. The board should also develop or approve the corporate goals and objectives that the CEO is responsible for meeting.

Orientation and Continuing Education

- 3.6 The board should ensure that all new directors receive a comprehensive orientation. All new directors should fully understand the role of the board and its committees, as well as the contribution individual directors are expected to make (including, in particular, the commitment of time and resources that the issuer expects from its directors). All new directors should also understand the nature and operation of the issuer’s business.
- 3.7 The board should provide continuing education opportunities for all directors, so that individuals may maintain or enhance their skills and abilities as directors, as well as to ensure their knowledge and understanding of the issuer’s business remains current.

Code of Business Conduct and Ethics

- 3.8 The board should adopt a written code of business conduct and ethics (a code). The code should be applicable to directors, officers and employees of the issuer. The code should constitute written standards that are reasonably designed to promote integrity and to deter wrongdoing. In particular, it should address the following issues:
- (a) conflicts of interest, including transactions and agreements in respect of which a director or executive officer has a material interest;
 - (b) protection and proper use of corporate assets and opportunities;
 - (c) confidentiality of corporate information;
 - (d) fair dealing with the issuer’s security holders, customers, suppliers, competitors and employees;

- (e) compliance with laws, rules and regulations; and
- (f) reporting of any illegal or unethical behaviour.

3.9 The board should be responsible for monitoring compliance with the code. Any waivers from the code that are granted for the benefit of the issuer's directors or executive officers should be granted by the board (or a board committee) only.

Although issuers must exercise their own judgement in making materiality determinations, the Canadian securities regulatory authorities consider that conduct by a director or executive officer which constitutes a material departure from the code will likely constitute a "material change" within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations*. National Instrument 51-102 requires every material change report to include a full description of the material change. Where a material departure from the code constitutes a material change to the issuer, we expect that the material change report will disclose, among other things:

- the date of the departure(s),
- the party(ies) involved in the departure(s),
- the reason why the board has or has not sanctioned the departure(s), and
- any measures the board has taken to address or remedy the departure(s).

Nomination of Directors Board Nominations

3.10 The board should appoint a nominating committee composed entirely of independent directors.

3.11 The nominating committee should have a written charter that clearly establishes the committee's purpose, responsibilities, member qualifications, member appointment and removal, structure and operations (including any authority to delegate to individual members and subcommittees), and manner of reporting to the board. In addition, the nominating committee should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties. If an issuer is legally required by contract or otherwise to provide third parties with the right to nominate directors, the selection and nomination of those directors need not involve the approval of an independent nominating committee.

3.11.1 The nominating committee should be responsible for reviewing and making recommendations to the board in relation to:

- (a) the appropriate size of the board, with a view to effective decision-making;
- (b) board succession planning;
- (c) orientation and continuing education for directors;
- (d) the development and implementation of a process for assessing the effectiveness of the board, its committees and directors; and
- (e) the process for director recruitment.

3.11.2 A board should have a composition matrix setting out the mix of skills, knowledge, experience, competencies, attributes and independence that the board currently has or is looking to achieve in its membership. In order for the board to effectively fulfill its mandate and address existing and emerging business and governance issues relevant to the issuer, the board should regularly review the composition matrix and use this review process to recruit new directors or provide continuing education opportunities to existing directors.

3.11.3 The board should adopt a written policy respecting the director nomination process that sets out the process used in relation to director appointments and the board's approach to succession planning.

3.11.4 Recommendations for appointments to the board should be based on objective criteria. In making its recommendations, the nominating committee should consider the skills, knowledge, experience, competencies, attributes and level of independence that:

(a) are necessary for the board, as a whole, to function effectively; and

(b) are held by each existing director and each new nominee.

The nominating committee should also consider whether or not each new nominee can devote sufficient time and resources to their duties as a board member.

Board Renewal

3.11.5 The board should maintain an effective succession plan for directors, which:

(a) provides a transparent process and timeline for replacing board members so as to ensure that necessary skills, knowledge, experience, competencies and attributes are maintained;

(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; and

(c) maintains the board's independence from management.

3.11.6 The board should adopt mechanisms of board renewal that are appropriate to its circumstances. These mechanisms may include:

(a) establishing director term limits;

(b) assessing the effectiveness of an individual director when proposing the director as a candidate for re-election to the board; and

(c) using a composition matrix to identify gaps in the board's collective skills, knowledge, experience, competencies, attributes and independence.

3.11.7 If an issuer establishes term limits, factors that may be considered include:

(a) the board's current size and composition, and the board's composition matrix;

(b) the board's independence from management and the issuer's ownership structure;

- (c) characteristics of the issuer, including its industry, size and stage of development; and
- (d) the existence of other mechanisms, such as regular assessments, to ensure the effectiveness of board members.

Diversity and Targets

- 3.11.8 A board should consider adopting a written diversity policy or process to ensure that recruitment of directors is appropriately structured to promote a broad range of perspectives and experiences on the board.
- 3.11.9 A board should set objectives for achieving diversity in the composition of its board and executive officer positions. Mechanisms to achieve these objectives may include setting targets, establishing a diversity council, implementing training and leadership programs, and expanding strategic outreach directed at developing a diverse pipeline of candidates for director and executive officer positions.
- 3.11.10 For purposes of this Policy, a “target” has the same meaning as in Form 58-101F1 under National Instrument 58-101 *Disclosure of Corporate Governance Practices*. If a board sets targets for the representation of any of the groups referenced in paragraph 6.2(g) of Form 58-101F1, the board should review and assess the appropriateness of the targets on an annual basis. When considering an appropriate target, a board should consider various factors, including:
 - (a) the board’s current size and composition, and the boards’ composition matrix; and
 - (b) characteristics of the issuer, including its industry, size and stage of development, investors, stakeholders, and location of its operations.
- 3.12 ~~[Deleted] Prior to nominating or appointing individuals as directors, the board should adopt a process involving the following steps:~~
 - (A) ~~Consider what competencies and skills the board, as a whole, should possess. In doing so, the board should recognize that the particular competencies and skills required for one issuer may not be the same as those required for another.~~
 - (B) ~~Assess what competencies and skills each existing director possesses. It is unlikely that any one director will have all the competencies and skills required by the board. Instead, the board should be considered as a group, with each individual making his or her own contribution. Attention should also be paid to the personality and other qualities of each director, as these may ultimately determine the boardroom dynamic.~~

~~The board should also consider the appropriate size of the board, with a view to facilitating effective decision making.~~

~~In carrying out each of these functions, the board should consider the advice and input of the nominating committee.~~
- 3.13 ~~[Deleted] The nominating committee should be responsible for identifying individuals qualified to become new board members and recommending to the board the new director nominees for the next annual meeting of shareholders.~~

- 3.14 ~~[Deleted] In making its recommendations, the nominating committee should consider:~~
- ~~(a) the competencies and skills that the board considers to be necessary for the board, as a whole, to possess;~~
 - ~~(b) the competencies and skills that the board considers each existing director to possess; and~~
 - ~~(c) the competencies and skills each new nominee will bring to the boardroom.~~
- ~~The nominating committee should also consider whether or not each new nominee can devote sufficient time and resources to his or her duties as a board member.~~

Compensation

- 3.15 The board should appoint a compensation committee composed entirely of independent directors.
- 3.16 The compensation committee should have a written charter that establishes the committee's purpose, responsibilities, member qualifications, member appointment and removal, structure and operations (including any authority to delegate to individual members or subcommittees), and the manner of reporting to the board. In addition, the compensation committee should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties.
- 3.17 The compensation committee should be responsible for:
- (a) reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating the CEO's performance in light of those corporate goals and objectives, and determining (or making recommendations to the board with respect to) the CEO's compensation level based on this evaluation;
 - (b) making recommendations to the board with respect to non-CEO officer and director compensation, incentive-compensation plans and equity-based plans; and
 - (c) reviewing executive compensation disclosure before the issuer publicly discloses this information.

Regular Board Assessments

- 3.18 The board, its committees and each individual director should be regularly assessed regarding ~~his,~~ ~~her~~ their or its effectiveness and contribution. An assessment should consider
- (a) in the case of the board or a board committee, its mandate or charter, composition and how effectively directors work together to achieve the objectives of the issuer; and
 - (b) in the case of an individual director, the applicable position description(s), as well as the ~~competencies and skills~~ skills, knowledge, experience, competencies and attributes each individual director is expected to bring to the board.