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VIA EMAIL

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Re: *Corporate Governance Consultation: Improving Diversity and Facilitating Electronic Communications in Federally Regulated Financial Institutions (the “Consultation”)*

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following general comments on the Consultation and respond to the specific questions set out below.

General Comments

We strongly support efforts to foster inclusion and diversity in management and boards of companies and other institutions. We have proactively advocated to and regularly commented on related consultations by securities regulators with respect to diversity in the capital markets. We believe broad and holistic progress must be pursued amongst all levels of government and throughout the Canadian Securities Administrators (the “CSA”) with respect to diversity, and the related concepts of equity and inclusion.

As noted in the Consultation, representation of groups such as visible minorities and Indigenous people on corporate boards and in senior management is very low despite the numerous studies that have concluded that greater diversity and inclusion are associated with improvements in corporate innovation, organizational performance and growth. Studies have also shown that boards with diverse backgrounds are more likely to act independently of management and are better equipped to debate the merits of

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 190,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on [LinkedIn](https://www.linkedin.com/company/cfa-institute) and Twitter at [@CFAINstitute](https://twitter.com/CFAINstitute).

complex governance matters such as financial transactions.² Many federally regulated financial institutions (“**FRFIs**”) engage with Indigenous peoples, rights and titles, and thus having disclosures relating to Indigenous board and management may aid investors in assessing their institutions’ capacity to manage related opportunities and risks.

We believe that through additional data collection on diversity in the capital markets (beginning with information that could be gathered from FRFIs, CSA registrants, public issuers, and potentially expanding to other market participants), additional progress can be made on this front for both research purposes and policy insight.

The disclosure needs of Canadian investors have changed since existing diversity disclosure requirements for issuer boards were adopted. There is a need for change to the existing corporate governance regulatory regime to encourage further progress on diversity, equity, and inclusion, and to recognize the multiple aspects of diversity beyond gender that are additive to management and board composition, and to decision-making and ultimately firm value.

We believe the Department of Finance should take this opportunity to look beyond even the current diversity disclosure requirements in corporate law and securities regulation when examining the appropriate disclosure for FRFIs, and consider more ambitious emerging paradigms. The government should also look at the full scope of other disclosure required of other financial institutions not specifically discussed in the Consultation, but upon which the government has direct or indirect influence.

Specific Consultation Questions on Diversity Disclosure Requirements:

1. *What are the potential benefits and limitations of applying the CBCA diversity disclosure model to financial institutions?*

Measuring and reporting on diversity provides an institution with an incentive to become more diverse. Particularly in Canada, where FRFIs are leaders in the business world, it is important to demonstrate continuous change and improvement in diversity metrics.

In the absence of specific disclosure requirements, the current diversity disclosures in documents released by FRFIs are generally inconsistent and noncomparable at best, ranging to poor at their worst for many FRFIs. When disclosure is provided, our observation is that it is inconsistent between years and between different FRFIs, particularly given the lack of definitions and consistency in expectations for disclosure related to executive officers and others in senior management.

The expectations for disclosure relating to senior management as set out in the CBCA will not necessarily work well with all types of financial institutions, particularly if broader scope disclosure is desired across senior management of an organization. Clear definitions should be included with respect to disclosure requirements for senior

² Corporate Governance, Board Diversity, and Firm Performance by David Carter, Betty J. Simkins, W. Gary Simpson: SSRN

management so that the metrics are consistent over time and opportunities to reframe the dialogue annually are minimized.

- 2. Are the scope and content of the CBCA's disclosure requirements appropriate for financial institutions? Please explain.*

Yes, at a minimum, the scope and content of the CBCA's disclosure requirements are appropriate for financial institutions and improves over the current gender-focused disclosure (where provided). We note however, that more granular disclosure should be considered to be provided for each business line, rather than only the "top level" of a FRFI. As discussed in more detail below, particularly for the larger institutions, such information could provide a more fulsome picture of diversity metrics.

- 3. Are the four designated groups outlined in the CBCA model (i.e., Indigenous peoples, members of visible minorities, persons with disabilities, and women) adequate for capturing the information investors and the public require in order to assess the state of diversity on the boards and senior management of financial institutions? If not, how should this be modified?*

Diversity is an input to evaluation of the governance quality of a FRFI as well as its broader ESG characteristics from both a risk management and return driver perspective. Institutional investors are also generally interested in human capital disclosure.

The four designated groups outlined in the CBCA model provide a starting point for assessing the state of diversity on the boards and senior management of financial institutions, but we believe any such assessment ought also to encompass 2SLGBTQI+ representation and representation of diverse gender identities, and would ideally be aligned with the latest forthcoming government policy framework (particularly relating to the ongoing review of the Employment Equity Act) for the recognition of diversity. Investors similarly see diversity as multi-faceted. We support the separate classification of Indigenous peoples outside of the category of visible minorities as a distinct and constitutionally-recognized rights and title holding group. This separate disclosure could also assist FRFIs and investors from a reconciliation and ESG reporting perspective.

We believe it would be helpful if within the Indigenous peoples category, on a go-forward basis, that the categorization was further broken down into First Nations, Inuit and Métis.

It is important however to continue to monitor changes in Canadian legislation and other global disclosure best practices, and to the extent this taxonomy is amended in future, any new designated groups should be considered for addition at that time.

- 4. For investors and owners of FRFIs, are the CBCA diversity disclosures adequate to inform your investment/voting decisions for directors?*

While we generally agree that the CBCA diversity disclosures help inform investment/voting decisions for many reporting issuers, some FRFIs are larger and more complex organizationally than a typical corporation. As a result, there are some generalized disclosures about the board and senior management that do not

appropriately capture all relevant levels and business lines of the FRFI. While we recognize that FRFIs categorize business lines differently amongst themselves, it is important to capture that information in a standardized manner for policy purposes and so that total compensation metrics can be examined together with diversity statistics to help determine if the diverse management team members are in fact in the most highly compensated senior leadership roles.

While the granularity suggested in our response should be the ultimate goal, we recognize that starting with disclosure on the four designated groups outlined in the CBCA model should be a priority and further incremental steps can be considered simultaneously.

We also note that retail investors in particular may not be aware of the benefits of board or management diversity. The government may wish to consider utilizing additional educational outreach programs with respect to the research and evolving requirements relating to board and management diversity to help encourage diversity as an investment decision-making factor.

5. *Should the requirements apply to all federally incorporated financial institutions, or should they be differentiated based on the institution's ownership or type?
a. If differentiation is preferred, why?*

We believe this policy initiative should apply to all FRFIs. Improving diversity should be a goal for all FRFIs as improvements in diversity should work to improve broader governance and board independence over time.

6. *In your view, what is the impact of these disclosure requirements on non-distributing FRFIs (i.e., credit unions, small- and medium-sized banks, and certain insurance companies)?*

We do not believe the impact of these disclosure requirements on non-distributing FRFIs differ materially, as most will likely be already collecting some of the proposed statistics for internal purposes.

7. *What are the benefits and limitations of introducing targets to achieve broader diversity goals? Should federally regulated financial institutions be required to set their own targets, or should Government introduce suggested targets or guidance in this area?*

With the exception of board terms, discussed in more detail below, FRFIs should not be subject to imposed uniform targets, but we believe that FRFIs could be mandated to set initial targets for improved diversity that make sense in the context of their organization, workforce, geographic footprint, and other factors. While we are strong supporters of mandatory disclosure, a one-size fits all approach with respect to targets may not be appropriate, as one FRFI may be very different from another and may wish to set different targets for individual reasons and for their own relevant stakeholders and regions in which they operate. The pressure that comes with an obligation to disclose representation may help to increase and improve diversity and the proposed additional



information should result in further attention and focus on these issues and could result in further significant changes. We would support publicly disclosing these targets by each individual FRFI as a way of driving organizations to move forward and hit those goals, given each institution's individual employees and areas of work. Disclosure of whether achieving these targets impact management compensation should also be prominently disclosed.

8. *In your view, do director term limits create more opportunities to recruit diverse candidates? What are the potential challenges to achieving this outcome?*
- a. *Should federally regulated financial institutions be required to set their own term limits, or should Government prescribe term limits?*

Director term limits do create more opportunities to recruit diverse candidates as a result of the need to find new candidates on a regular basis. Term limits also help ensure that independence of directors is not eroded over time, although we recognize there are certain industries and ownership circumstances where a term limit may be exceeded for non-independent directors. It is also important to have staggered board terms as well as a strong annual evaluation process of the board, its committees and directors, where results are reviewed and acted upon as appropriate.

9. *What are the benefits and limitations of introducing a prescribed form for reporting?*

We believe there should be prescribed minimum disclosure for comparability purposes, however we have some concerns that a prescribed form may unduly circumscribe the types of additional incremental disclosure that a FRFI wish to make that should be highly encouraged.

10. *In your view, what are effective approaches and policies to achieve compliance?*

We believe that FRFIs will be best motivated to achieve compliance through the proposed enhanced disclosure requirements. By requiring an institution to publicly declare their monitored diversity metrics and targets, they will be placed under pressure over time by owners and stakeholders to achieve those stated targets. It would also be useful to know if institutions are abiding by other standardized or voluntary DEI codes, or if they are subject to DEI regulations in any other jurisdiction.

11. *In your view, what are effective approaches and policies to increasing diversity in financial institutions?*

CFA Institute has developed a diversity, equity and inclusion code for Canada and the US to promote progress across the investment industry.³ Gathering as much data and key metrics as possible from market participants helps to inform the conversation about current state and helps to set the bar for future advancements and demonstrate changes being made. There are a few environmental pillars contained in this code that relate to actively promoting a pipeline of diverse candidates that could be further

³ Online: < cfainstitute.org/en/ethics-standards/codes/diversity-equity-inclusion>

explored for this Consultation. As part of that principle, it is recognized that sustained, systematic effort is required to build capacity and mutual awareness across populations. In addition, signatories to the code agree to design, implement and maintain inclusive and equitable hiring and onboarding practices as well as promotion and retention practices to reduce barriers to progress.

Specific Consultation Questions on Electronic Communications and Virtual Only Meetings:

1. *What are the benefits and limitations of a notice-and-access or access equals delivery model for: i) financial institutions and ii) their owners?*

We generally support an access equals delivery model, with certain limitations and have commented frequently to consultations by securities regulators on this topic. We generally agree that such a model would help to modernize the manner in which documents are made available to investors and will provide for more timely disclosure over paper delivery. ***However***, we have been strong advocates that the technological architecture and related features that would make relevant documents easily accessible to investors (particularly the ongoing securities regulatory project known as SEDAR+) must be in place and robust prior to further adoption of an access equals delivery model.

2. *Were a notice-and-access or access equals delivery model to be implemented, to which governance documents should it apply?*

With respect to timing of implementation, we agreed with the CSA's proposal to implement an access equals delivery model in stages, with documents requiring immediate shareholder attention continuing to be delivered in paper format until such time as an access equals delivery model has been in place for a sufficient length of time to raise investor awareness, and for commercial solutions to develop that better facilitate interaction with documents that are either time-sensitive or governance-critical. We have previously expressed our concerns that until any such model is better understood by investors and supported by enhanced system access, the use of the model for documents requiring shareholder action could lead to challenges regarding the legitimacy of the voting results.

3. *If a notice-and-access model were implemented, are there any modifications we should make to the notice-and-access model as described in National Instruments [51-102](#) and [54-101](#) to better reflect the way financial institutions communicate with their owners? Please see Annex 1 for relevant parts of the National Instruments.*

As we would generally prefer the proposed access equals delivery model subject to the caveats outlined below, please refer to our response to Question #4.

4. *If an access-equals-delivery model were implemented, are there any modifications we should make to the CSA's access equals delivery model as described in [these proposed amendments](#)?*

As we noted in our response to the CSA's consultation paper on their proposed amendments to implement such a model, we have overriding concerns that as currently constituted and operated, SEDAR is difficult for many retail investors to access and navigate. As a result, a significant segment of investors in widely-held FRFIs may not be able to easily locate and access the documents that would have otherwise been mailed out to them. In particular, we understand that there are significant accessibility challenges that result from SEDAR's current interface. We expect that retail investors in particular will be discouraged from looking for any posted governance documents given the time and process currently involved.

In our view, SEDAR must function as an accessible, intuitive, and modern resource for these critical disclosure documents. As a result, we noted in our comment letter to the CSA that **we believe the implementation of an access equals delivery model should be delayed until the roll-out of SEDAR+ is complete**. We also noted our preference that SEDAR+ include enhancements to allow a person to subscribe to emailed alerts for new filings on FRFIs (issuers generally) of interest, in the event that they do not see a news release alerting them to a document's release in a timely manner.

We also believe FRFIs (issuers generally) should be encouraged to provide and maintain a website as a secondary point of reference for easy investor access to their disclosure information through open data protocols and easy electronic linking to the FRFI's disclosure record on SEDAR+.

5. *In your view, how should future regulations address:*
- a. *how, where, and when paper copies can be accessed by owners; and,*
 - b. *how and when owners will be informed about the process for obtaining paper copies?*

We would support regulation that required FRFIs to mention in the press release contemplated by the CSA's access equals delivery model how to access paper copies. The particulars with respect to how paper copies can be accessed should be left to the individual FRFI, provided that copies can be requested and delivered to owners free of charge and with sufficient time to review and action.

7. *What are the risks and opportunities of holding virtual shareholder meetings for:*
- i) *financial institutions and ii) their owners? If applicable, please include information on topics such as:*
- a. *attendance, participation, and voting;*
 - b. *how questions are solicited, selected, and addressed;*
 - c. *if and how participants communicate with one another during the meeting; and,*
 - d. *if and how participants interact informally with management during the meeting.*

We do not have any objections to an FRFI holding a virtual shareholder meeting. In fact, this type of meeting may be more inclusionary for people who otherwise could not travel to attend a meeting. It is important that the meeting materials for owners /

investors in FRFIs be easily accessible and that questions be addressed equitably at the meeting.

8. *How do the risks and opportunities differ for distributing and non-distributing FRFIs, including credit unions and certain insurance companies?*

We believe the risks and opportunities are similar for both distributing and non-distributing FRFIs, recognizing that any larger institution may need to have virtual capabilities to effectively deal with a larger number of owners.

9. *In your view, how should the legal and regulatory framework be structured to ensure that communication during virtual meetings is inclusive and effective? Should regulations governing virtual shareholder meetings include provisions that require:*
- a. communication among participants and owners;*
 - b. authentication of attendees;*
 - c. transparent selection of shareholder questions;*
 - d. accessible presentation of shareholder proposals;*
 - e. publication of the recording after the meeting; and/or*
 - f. any other elements for which regulatory provisions should be made?*

We believe the elements listed above will all help ensure that communication during virtual meetings is effective. It will be important to ensure that the needs of persons with hearing, visual or other disabilities can be accommodated through a virtual medium.

Concluding Remarks

We strongly support initiatives to further encourage disclosure of diversity initiatives. Regulatory efforts in this sphere should evolve to become more overtly supportive of diversity, equity and inclusion across a wider range of participants in the Canadian financial ecosystem. We also support engaging with owners/investors in FRFIs through electronic means as long as the materials are easily accessible and provided through an advanced system that has an intuitive user interface and provided paper copies are easily available without charge to those owners/investors requesting them.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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