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VIA EMAIL

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Re: Consultation Paper on Diversity in the Capital Markets (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 posed below. We are supportive of the FCNB’s and NSSC’s intent to continue to consult on diversity in the capital markets, and particularly how the disclosure needs of Canadian investors have changed since the existing gender diversity disclosure requirements for issuer boards were adopted.

General Comments

The CAC is of the view that regulators need to prioritize wholesale diversity across the capital markets ecosystem and that diversity is a key element of sound corporate governance practices. Regulators need to recognize that gender diversity or balance should not be the sole focus of diversity initiatives. Boards with diverse backgrounds are more likely to act independent of management and are better equipped to debate the merits of complex governance matters such as managerial oversight or

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 178,000 CFA Charterholders worldwide in over 160 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

financial transactions.² Boards should be composed of members of different backgrounds and experiences to better reflect their stakeholders and to drive maximization of firm (and therefore shareholder) value. As we have stated in prior comment letters, we believe that diverse boards lead to improved talent management, higher quality governance and mitigate against “groupthink”. Moreover, for issuers that must engage with Indigenous peoples, rights and title, having Indigenous board and management capacity disclosure may aid investors in assessing firms’ capacity to manage related opportunities and risks.

While we are supportive of the objective of policy work in pursuit of greater diversity in issuer governance and the purpose of the Consultation, we believe that a review solely in the context of reporting issuer disclosure requirements is too narrow. A holistic examination as to the benefits of improved diversity across the spectrum of regulated entities by securities regulators should be conducted, including investment decision makers and capital allocators. Reviewing diversity issues within individual rules and disclosure requirements are helpful, but as the tone for organizations of all types starts at the top, each securities regulatory authority and the CSA should consider the opportunities that exist within their own organizations and their scope of regulation to drive progress on diversity. This should be pursued in a wide sense through leadership and promotion of diversity, equity, and inclusion-positive initiatives both within their own organizations’ governance and management, and across the capital markets in specific ways such as through data collection and analysis (such as that which could be gathered on registrants via existing systems like NRD).

As an example, CFA Institute is currently in the process of developing a voluntary Diversity, Equity, and Inclusion (“DEI”) Code to guide and encourage progress by firms within the investment industry³. To encourage investment organizations to be accountable to making progress, it is contemplated that signatory organizations would submit select key metrics at regular intervals to demonstrate change being made. Regulators should adopt a similar data and accountability-driven approach, noting that organizations which seek progress may be starting from different places in terms of organizational maturity on DEI initiatives and related opportunities and constraints.

Responses to Select Consultation Questions

General

- 1. Is there a need for changes to the existing corporate governance regulatory regime that the CSA has put in place, or for other measures or further regulatory action by Canadian securities regulators in this area? For example, should we*

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

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



consider introducing additional corporate governance guidelines or additional or revised requirements?

Yes, we believe 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 would also encourage a broader examination of diversity across the capital markets and the potential benefits of wider diversity, equity, and inclusion-positive actions by regulators, policy-related, organizationally, and otherwise.

- 2. The current regime only applies to non-venture (i.e. TSX-listed) issuers. Should the regime also apply to venture issuers?*

Yes, the regime should apply to all issuers. Improving diversity for all listed issuers should ultimately improve governance and board independence. We are of the view that while existing progress on diversity may be more nascent for venture issuers, further action to encourage progress is needed. Where there is any perceived lack of a diverse talent pool amongst issuers, regulators should take a more proactive approach in educating issuers as to the specialized talent acquisition and talent development initiatives that exist across Canada for diverse management and board candidates. By taking an active role in growing issuer awareness of the opportunities that exist to source diverse candidates and pairing it with an increasingly robust regulatory regime, we believe progress can be achieved over time.

Use of Information by Investors

- 3. The existing disclosure requirements are focused on the representation of women on boards and in executive officer positions. Do investors need information on diversity more broadly and, if so, what specific information are investors seeking? For example, do investors find the broader diversity disclosure required under the CBCA to be useful?*

Yes, we believe that investors and other stakeholders see diversity as multi-faceted, extending beyond just gender. We believe the recent amendments requiring broader diversity disclosure under the CBCA to be just one of many examples of government considering a range of diverse characteristics of individuals, and that there is a well-developed understanding and consensus in multiple policy circles as to this subject matter. We recognize the complexity in data collection or onward disclosure in certain limited instances, particularly relating to self-identification, but we believe these challenges are surmountable through appropriate policy development, and that the benefits investors and other stakeholders receive through such disclosures outweigh these challenges. For example, we would encourage additional information be provided specifically with respect to representation of Indigenous people in the workforce, on boards, in



executive management of issuers by Indigenous people and that Indigenous people not be grouped as “minorities”, rather reported on independently as a distinct, constitutionally-recognized, rights and title holding group. The separate disclosure of Indigenous representation can also assist issuers and investors from a reconciliation and ESG reporting perspective.

There is also a current opportunity to alleviate the effective fragmentation of information provided by issuers to investors (usually upon investor request or through specialized issuer data providers) through a regulatory solution that raises the bar for all issuers on both human capital and governance disclosures.

An additional opportunity to consider is that retail investors in particular may not be aware of the benefits of board or management diversity. Regulators may wish to consider utilizing existing outreach programs to educate investors on the prevailing research, evolving regulatory requirements and sources of statistics relating to board and management diversity with a view to having diversity as a factor in their investment decision making process.

4. *How is information relating to gender diversity incorporated into investors’ investment and voting decisions or used to engage with issuers? How is information relating to broader diversity incorporated into investors’ investment and voting decisions or used to engage with issuers?*

Gender diversity (along with other forms of diversity where data is available) is an input to evaluation of issuers’ governance quality, and evaluation of issuers’ broader ESG characteristics, both from a return-driver and risk management perspective. This is further considered relating to investors’ stewardship activities, in considering how to engage with investee companies and vote shares in alignment with stated corporate or investor objectives. Where present, a noticeable lack of diversity in an issuer’s management and governance relative to its peer companies can be a cause for investor concern, perceived as an idiosyncratic risk to an investment in the issuer, and potentially drive engagement and voting activity by those investors actively engaged in stewardship relating to their investment portfolios. Institutional investors are also generally interested in human capital disclosure (i.e., general disclosure of human capital resources, including any objectives that an issuer focuses on in managing their business to the extent it is material to understand the company’s business taken as a whole). While not specific to Canada, standard setters such as the Sustainability Accounting Standards Board (SASB) and some securities regulators globally have respectively examined and are considering human capital disclosure issues and potential additional regulation⁴. Investors in Canada are also increasingly interested in diversity relating to Indigenous peoples vis-à-vis issuers in extractive industries and beyond, as a lack of

⁴ Online: <www.sasb.org/standards/process/active-projects/human-capital/>.



Indigenous representation in resource or right-of-way related businesses can be associated with increased project, financial and insurance risks.

Diversity Data

9. *How can broader diversity data be collected in compliance with privacy laws? Are there other challenges in gathering data and providing disclosure in relation to board and executive diversity more broadly?*

We are of the view that broader diversity data can be collected in compliance with privacy laws given proper drafting of policy and the consideration of exceptional circumstances where personally identifiable information might be contained in an aggregate or issuer-level disclosure. We are cognizant of the need to conceal certain identifying information about individuals (particularly in cases of smaller issuer management teams and boards) such that individuals are not publicly identifiable. This being noted, we're of the view that the benefits of these additional disclosures far outweigh what little risk would remain if policy and reporting requirements were drafted and implemented with this consideration in mind. Securities regulators should look to collection methods, related knowledge, and disclosure of aggregated data in other contexts and by other levels of government and related agencies, particularly those with track records of working with diverse communities or individuals.

Targets for Boards and Executives

11. *Are targets an effective mechanism for achieving diversity on boards and in executive roles? What are the benefits and challenges associated with targets?*

Although we are supporters of targets as a policy tool, once a target is set it's necessary that accountability to that target and reporting on the progress towards that target must also be put in place. In addition, targets should not only be based on the absolute number of diverse members of the management team or board. There should be a normalizing factor which makes it easier to compare diversity across different sizes of organizations and their management and governance structures. For instance, a total compensation metric (e.g. proportion of compensation of women in senior roles) in addition to a diversity target (30% women in senior roles) would show whether the diverse management team members are in the most highly-compensated senior leadership roles, or in less senior/highly-compensated roles and what influence they truly have at the organization (such as if there were 30% of women in senior management roles but their compensation accounted for only 10% of total compensation for all senior management team members).

To achieve and maintain targets, it is critical for the firm to create an inclusive culture to attract both underrepresented individuals to the firm and also create an



environment where they are more likely to stay. This requires developing metrics and initiatives to be able to measure, maintain and evolve the inclusive nature of the firm across all regions, departments and activities. The diversity strategy of the firm therefore requires the creation of internal structures to support the DEI strategy, ensure an inclusive culture, and to increase impact, accountability, and transparency. This can include employee resource groups, a DEI council or committee, the appointment of a Chief Diversity Officer, etc. Gender and diversity pay gaps are also a key metric to understand how effectively companies are creating equity at the organization.

12. *If you think that targets are an effective mechanism for achieving diversity on boards and in executive roles: a) Should recommended targets be set by the securities regulators? b) What would be an appropriate target or targets for various groups? Should the target or targets vary by sector or size of issuer? c) What is an appropriate length of time for an issuer to achieve a target?*

We believe that targets suggested by external organizations, many of which are based on extensive empirical research and/or reviews of academic literature, are the most obvious and efficient source of defensible policy prescriptions. For example, the Canadian Coalition for Good Governance (“CCGG”) has represented institutional investors in promoting good governance practices for Canadian reporting issuers. In its December 2018 Gender Diversity Policy, the CCGG notes that boards should have an appropriate target, but they are not in favour of having regulators prescribe specific targets at this time. Rather, they suggest that a company’s choice of target be informed by relevant research with the intention of increasing gender diversity. For example, they note the research suggests there is an “ideal zone where neither gender is less than 40% or more than 60%⁵.

With respect to Indigenous people, the Truth & Reconciliation Committee’s Call to Action #92 calls upon Canada’s corporate sector to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles to corporate policy. In this respect, we note the letter sent to the Ontario Securities Commission from the First Nations Financial Management Board (the CEO of which is a volunteer member of the CAC) with respect to its consultation on its statement of priorities⁶. The comments suggest that an appropriate target for executives would be 5% Indigenous representation, which would correspond with the fact that Indigenous peoples make up approximately 5% of the total population of Canada. Arguably, every reporting issuer in Canada should have at least one Indigenous person as a director as a target number to work toward, especially for larger issuers or those where consideration of Indigenous-related issues are highly material to the issuer’s operations, such as in a number of extractive industries in Canada.

⁵ Online: <ccgg.ca/policies>.

⁶ Online: <www.osc.ca/sites/default/files/2020-12/com_20201216_11-791_fmb.pdf>.



Initiatives such as the BlackNorth Initiative are laudable; one stated mission is to end anti-Black systemic racism throughout all aspects of our lives by utilizing a business-first mindset. It partners with numerous organizations and businesses to help support emerging Black Canadian leaders and introduce diversity at the highest levels. We believe that the directors and others spearheading these initiatives should specifically be sought out and consulted with respect to appropriate targets, as again they have engaged in their own research and have their own valuable data sets and perspectives to incorporate into the discussion.

It is important to include dates by which such targets will be met, and regulators should explain why those dates were chosen (and if extensions are provided, why they have been granted).

In order to drive accountability, it may be possible in future for data gathered from the regulators to be aggregated and distributed more broadly than is currently the case. While the CSA members do release frequent reports with respect to the status of existing diversity initiatives, if more data were collected it might be possible to publish a broader picture of diversity within Canadian companies, and across a wider breadth of capital market participants. This would likely generate interest from both media and the public, and potentially spur further progressive public dialogue. As stated previously, NRD could be enhanced to collect diversity data on registrants, and issuer disclosure databases could be enhanced to permit companies (initially, potentially on a voluntary basis) to report wider-than-required diversity data that investors could access, potentially eliminating the need for duplicative supplemental issuer disclosures on diversity and related human capital issues. It might be possible to incorporate such a data set within the ongoing SEDAR+ project and facilitate data benchmarking and tracking as well as disclosure of these metrics. Such information and the resulting analysis could also be used as the basis for future policy proposals.

Term Limits for Directors

13. *Are director term limits an effective mechanism for achieving board renewal? What are the benefits and challenges associated with term limits?*

Board term limits are one potentially effective method of achieving greater diversity in that the composition of the board would be forced to change more frequently, though have limited efficacy when implemented in the absence of other diversity-enhancing initiatives and policy changes. We note that the CCGG's Gender Diversity Policy indicates that board refreshment is one key to increasing gender diversity, and that setting director term limits (or a retirement age) may help achieve this goal. CCGG prefers, however, a strong annual evaluation process of the board, its committees and directors where results are acted upon. We're of the view that term limits should be accompanied by other policy demands and process evolution where they're being implemented as a



diversity-enhancing tool. Corporate boards should look at their by-laws and if these include the possibility of increasing the number of board members then this can be a quick way to increase the diversity of the existing board while continuing to assess potential term limit changes. Creating an advisory board that reports to the board but that does not have the same legal fiduciary duties as directors may also be an intermediate step to quickly increase diverse perspectives as companies review governance matters such as term limits and board appointments.

14. *If you think that term limits are an effective mechanism for achieving board renewal: a) Should recommended term limits be set by the securities regulators? b) What would be an appropriate term limit? Does it vary by sector or size of issuer? c) How could term limits work in the context of family-owned or controlled businesses? d) What is an appropriate length of time for an issuer to implement term limits?*

We believe that combined with other mechanisms such as annual evaluations and staggered board terms, recommended term limits should be set by the securities regulators. Regulators should consult with expert organizations such as CCGG that have conducted extensive research on these topics to inform the setting of these limits. Globally, the International Corporate Governance Network's⁷ (ICGN) stated mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies worldwide. Principle 3.4 of the ICGN Global Governance Principles states that independent non-executive directors should serve "for an appropriate length of time to ensure they contribute an impartial perspective to board discussion and decision-making". Where term limits exist, it is suggested that they be disclosed, along with the identity of directors who have exceeded those limits. Similar to other organizations, the ICGN principles suggest that director tenure be reviewed annually, and re-election be contingent on a satisfactory evaluation of the director's contributions.

By way of comparison, the UK has adopted a comply-or-explain policy with respect to independent board members serving terms greater than nine years. Board members serving over these term limits must explain how their tenure with the board has not compromised their independence or be considered a non-independent board member. We believe thoughtful policy features such as this should be considered as a supplement to any policy action on term limits.

Concluding Remarks

We are of the view that regulatory efforts to encourage gender diversity in Canadian capital markets should evolve to become more overtly supportive of diversity, equity, and inclusion across a wider range of participants in the Canadian capital

⁷ Online: < www.icgn.org/sites/default/files/ICGN%20Global%20Governance%20Principles2021.pdf>.

markets. Research has shown the benefits of diversity in decision-making across a range of corporate and investment decision structures, and we believe that policy should be more overtly supportive of progress to this end. Indigenous reconciliation also dictates greater inclusion of Indigenous people in corporate Canada. We believe that regulators can be leaders through their example and encourage progress throughout the Canadian capital markets through education, policy, and regulatory efforts. We believe there is a broad body of research that demonstrates the benefits to all of investors, issuers, and the broader stakeholder community, and an emerging societal consensus that demands further action.

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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