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September 29, 2023

VIA EMAIL

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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

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Re: ***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*** **(the *"*Consultation*"*)**

The Canadian Advocacy Council of CFA Societies Canada[1] (the "**CAC**") appreciates the opportunity to provide the following comments on the Consultation.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 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 and Twitter at @CFAInstitute.

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The CAC is strongly supportive of the motivating spirit behind the Consultation to build on the CSA's existing diversity work to expand the application of diversity considerations in disclosure on issuer boards and management to other historically marginalized groups. This is important and necessary work, an analogue of which the CFA Institute recently undertook for itself and the investment management industry in the development of the CFA Institute Diversity, Equity, and Inclusion Code **("CFA Institute DEI Code**"),[2] which has seen wide adoption amongst firms in the investment management industry in the US and Canada since its launch for these countries in 2022.

As outlined below, we endorse the approach taken in Form B. Standardized disclosure makes it less costly for investors to compare issuer disclosures between issuers and over time, facilitating better-informed voting and other investment decisions. As is the case with other standardized disclosures, issuers' management teams are free to provide additional context or supplemental disclosures to the extent they view this as necessary.

In the discussion that follows, we respond to most of the questions raised in the Consultation, but also raise some general points, including the following:

- We believe the cost-benefit analysis included in the Consultation understates the benefits of Form B, particularly by underestimating investor-side costs of the status quo for investors who currently are required to expend considerable costs collecting and attempting to piece together non-standardized diversity disclosures.
- We are skeptical as to whether the approach taken in Form A is compatible with federal and provincial legislative commitments to Indigenous Peoples and the 2SLGBTQI+ community. We invite the regulators endorsing this Form to reconsider their position in light of these commitments.

While we are generally strongly supportive of regulatory harmonization, we believe the policy matters and concerns underlying this consultation override harmonization considerations. If the CSA are unable to agree on a policy position that materially advances diversity disclosures, such as the adoption of Form B, we would strongly support the OSC in exercising its prerogative for leadership and proceeding unilaterally.

Specific Comments

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.*

   We do not believe the proposed amendments will raise significant concerns regarding the disclosure of confidential or competitively sensitive information. The Proposed Amendments are grounded in principles and practices of self-

[2] https://www.cfainstitute.org/-/media/documents/code/dei/DEI-Code_2022.pdf

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disclosure, and permit a sufficient degree of latitude in disclosure to allow issuers to exercise discretion to preserve confidentiality and protect competitively sensitive information as appropriate.

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.*

   We strongly believe that Form B better meets the needs of investors by providing standardized and consistent diversity disclosure information, allowing investors to more easily compare issuers' approaches, commitments, and performance on diversity-related commitments and metrics, between issuers and over time. This improved comparability of information allows investors to more easily make informed voting and other investment decisions. To the extent issuers are concerned that standardized disclosures might leave an unflattering impression of their efforts to promote diversity, we submit that this is not a valid factor for guiding securities regulation. As is always the case with standardized disclosures presenting financial and other information, issuers are free to add additional context in form of supplementary quantitative disclosures or narrative that they feel would help investors understand any unique circumstances, considerations, or narrative.

   We disagree, however, with Form B's approach to Item 13. Issuers *should* be required to disclose diversity considerations in relation to executive officer appointments and approaches to talent management for executive officers. The extent to which diversity factors are being considered when a company appoints an executive is relevant information which should be made available to investors.

   Principle 2 of the CFA Institute DEI Code is a commitment by signatories to "creating, implementing, and regularly reviewing robust talent acquisition processes and policies, such as anti-bias, cultural competency, and other educational training."[3] We believe it is imperative to demonstrate that (and material to investors to understand the extent to which) diversity considerations and commitments are embedded in the operating fabric of an organization, including when considering the appointment of executive officers and approaches to talent management. As such, we advocate for the disclosure of this information within the Form B framework. In our view, such a revision would not be a material change to this framework.

[3] https://www.cfainstitute.org/-/media/documents/code/dei/DEI-Code_2022.pdf

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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.*

   We believe that information on the diversity approach and objectives of issuers with respect to executive officer positions is useful to investors and should be a normal-course disclosure made to investors.

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, B.6: Request for Comments April 13, 2023 (2023), 46 OSCB 3130 consistent with the approach in Form A? Please explain.*

   We are of the view that issuers should be required to disclose data about specific designated groups, consistent with the approach laid out in Form B. We note that this would not prevent issuers from supplementing this standardized disclosure with additional information on representation of additional groups and/or explanatory narrative which may be appropriate and relevant to a given issuer's circumstances, the nature of their business, or the extent to which they have significant operations and employees in geographies where the standardized designated group information may be less relevant or available. If the issuer has a significant business interest outside of Canada for example, it may be prudent to evaluate whether any local historically marginalized groups in their primary operating geographies should be included as a supplemental "designated group" for disclosure purposes.

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.*

   It would be beneficial to require reported data to be disclosed in a common tabular format to promote uniform standards, to assist investors when drawing comparisons between issuers, and in tracking issuers' changes over time. Again, in arriving at this conclusion, we are guided by what would serve investors as the key users of disclosure. As noted above, as is the case with standardized financial disclosures, issuers are free to provide any supplemental information or context they believe would be useful to investors in interpreting these disclosures. We do not believe that the extent to which disclosure in a common tabular format may raise concerns for issuers is a predominating factor when considering what and how information should be disclosed to the investing public.

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.*

   We are not aware of any specific issues or challenges for CBCA-incorporated issuers under either Form, though believe Form B to be more consistent with the legislative intent of the recent CBCA amendments, and the likely forward path for future amendments to the CBCA.

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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.*

   We would support the CSA undertaking a second phase of the project to explore how the current proposed amendments could be applied and adapted to Form 58-101F2 for venture issuers. While all aspects of the disclosure regime may not need to be applied to venture issuers, we would support the inclusion of at least some of the qualitative and policy related questions, particularly in relation to the diversity of boards and management. This would be particularly beneficial where the diversity of the board and management of an issuer are relevant to the viability of the issuer's operations and business.

General Comments

We submit that the cost-benefit analysis presented in Annex L of the Consultation does not adequately capture the current costs and potential benefits to investors of receiving enhanced diversity disclosure information. Currently, investors who seek out this sort of information as inputs to voting and investment decisions must consult alternative data sources and other service providers, such as proxy advisory firms. This data can be costly to produce and acquire and, because the information is not standardized, may facilitate only limited efficacy and comparability even after significant expense. The adoption of a standardized tabular disclosure format would significantly reduce the time and costs currently borne by investors by providing readily comparable and consistent diversity-related data to inform investor decision making. When contrasted against the duplicative costs incurred by each diversity-interested investor under the existing system, the cost of implementing standardized diversity disclosure for issuers seems comparatively manageable.

With respect to the approach proposed under Form A, we are skeptical as to whether this sort of approach is appropriate given federal[4] and provincial[5] commitments to Indigenous Peoples and the 2SLGBTQI+[6] community. In 2021, the federal government passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* ("**UNDRIP"**) which among other things, affirmed and set out a broad range of collective and individual rights that constitute the minimum standards for the protection of the rights of Indigenous Peoples. These commitments include equality, non-discrimination, civil, economic, and social rights. These commitments have also been adopted at the provincial level in certain provinces. In 2019, British Columbia passed the *Declaration on the Rights of Indigenous Peoples Act* (the "**Declaration Act**"). The Declaration Act specifically lays out its intention to respect the human rights of Indigenous Peoples while introducing "better transparency and predictability" in the work we do together.

[4] https://www.justice.gc.ca/eng/declaration/index.html
[5] https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples
[6] https://women-gender-equality.canada.ca/en/free-to-be-me/federal-2slgbtqi-plus-action-plan.html

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Part and parcel of these commitments to respect and recognize the rights of Indigenous Peoples should be mandatory reporting on the extent to which Indigenous Peoples are represented in the boards and executive positions of Canadian issuers. Particularly in jurisdictions like the Prairie provinces, British Columbia and the Territories, with comparatively larger Indigenous populations per capita, an approach which invites issuers to explain why they may choose not to disclose levels of Indigenous representation seems misplaced.

As a point of clarification, we would appreciate commentary as to why both proposals have decided to discontinue the requirement to report on the responsibilities, powers, and operation of the nominating committees of issuers. While we appreciate the expanded disclosure regarding how boards are identifying and evaluating new candidates, we believe that continued reporting on the responsibilities, powers and operations of nominating committees continues to be germane information, which should be included in the mandatory disclosure regime.

One area which we would flag for policy consideration is the extent to which distinct language groups should be designated groups for disclosure. Most obviously (but not solely) in Québec, we believe acknowledging the importance of language and the intersectionality of language, culture and diversity could be additive to the disclosure approach espoused in Form B. Particularly in light of the significant recent amendments made to the *Charter of the French Language* by Bill 96 in Québec, it is clear that language is a significant and protected aspect of diversity in parts of Canada, which may merit consideration as a recommended disclosure at minimum, and perhaps a mandatory disclosure where deemed material to the issuer's operating geography.

While we commend the CSA for proposing methods to improve diversity disclosure by issuers, we would also be interested in a broader analysis which could examine the diversity metrics amongst registrants, to ascertain the extent to which designated groups are represented in the population of securities registrants in Canada. We would strongly support the CSA undertaking a policy project to explore the degree of diversity in the registrant base, and the extent to which the representation of designated groups has economic and wider inclusion implications.

Concluding Remarks

For the reasons set out above, we support the adoption of the Form B approach to diversity disclosure set out in the Consultation. We would prefer this to include a requirement to disclose diversity considerations in relation to executive officer appointments and approaches to talent management for executive officers.

Standardized, decision-relevant disclosure that gives issuers room to provide additional context facilitates informed voting and other investment decisions. Non-standardized disclosure that requires investors to piece together what relevant information issuers' management teams might or might not be offering up does not. If the CSA are unable to agree on this approach, we would support a decision by the OSC to adopt Form B unilaterally.

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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 the future.

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

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