CCGG 20 YEARS

September 19, 2023

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

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor,
Box 55, Toronto, Ontario M5H 3S8
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

Dear Sirs & Mesdames,

Re: *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*

The Canadian Coalition for Good Governance (CCGG) welcomes the opportunity to provide the CSA with our comments in respect of the above referenced consultation on 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 (collectively, the "Proposed Amendments").

CCGG's Members are Canadian institutional investors that together manage approximately $5.5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our Members is attached to this submission.

We thank the CSA for granting the extension to the original deadline in respect of the Proposed Amendments. The extension enabled greater and more in-depth discussion with our Members and the broader investor stakeholder community.

Not surprisingly, there is a diversity of views and opinions on the CSA's Proposed Amendments. There is no dispute that institutional investors, including CCGG's Members, are in broad agreement that diversity of thought and experience are essential to high performing boards and senior management and hence to good corporate governance. Institutional investors are not a monolith, however, and they have different views as to how such diversity is best achieved and what disclosures are needed by investors to assess an issuer's approach and hold an issuer accountable for its progress.

While a majority of our Members strongly prefer the approach in Form B to Form A, this position is not unanimous. Our response and recommendations endeavour to acknowledge and balance these different viewpoints. Our conclusion is that while overall Form B is preferable to Form A, neither form as drafted in the Proposed Amendments fully meets the information needs of institutional investors. Instead, CCGG recommends a pragmatic path forward (the "Hybrid Approach") that draws on CCGG's existing positions on diversity, including diversity beyond women, as they have evolved over the past several years, and integrates aspects of Form A into Form B.

GENERAL COMMENTS

Summary of CCGG recommendations

- The CSA should extend 'comply or explain' disclosure requirements to considerations of diversity beyond gender while retaining the current 'comply or explain' disclosure regime for women on boards and in executive officer positions.
- As between Form A and Form B, a clear majority, but not all, of CCGG's Members prefer Form B.

- Consistent with the above, a clear majority, but not all, of CCGG's members prefer tabular disclosures to support clarity, consistency and comparability year over year, in conjunction with narrative disclosure.
    - Of paramount concern and importance is that all self-disclosures of diversity by individuals must be voluntary, absent coercion or pressure. Individuals should be provided with the option of 'prefer not to say', which option should also be included in any disclosed table.
- By way of next steps, CCGG strongly recommends that the CSA strive to develop a single set of disclosures. This is consistent with the CSA's mandate to harmonize regulation.
    - A potential path forward could be found by integrating components of each Form into a comprehensive set of disclosures (the Hybrid Approach) that would expressly encourage companies to identify a contextualized understanding of diversity material to their business, strategy, employees, communities, customers and suppliers, while providing investors with a baseline of consistent and comparable disclosures aligned with existing disclosures already being made by federally incorporated distributing corporations pursuant to the requirements of the *Canada Business Corporations Act* (CBCA).
    - CBCA aligned disclosures should be a starting point or baseline. Issuers should be encouraged to include other aspects of diversity where material to them, along with appropriate context and narrative, including any goals adopted and processes in place to further those goals.
    - We have endeavoured to make recommendations in support of this approach in our responses to the specific questions.
    - If harmonized disclosures along the lines of Form A or Form B cannot be agreed upon by the members of the CSA (a less than optimal result), at a minimum, we would encourage the CSA to work toward a consistent set of 'baseline' disclosure requirements. These should include how a board integrates diversity into its oversight of risk, strategy, board composition, board skills, director nomination and board refreshment, and oversight of executive officer succession. If such an approach were taken, in the event that the OSC determines on its own to implement additional tabular disclosures with respect to specific designated groups, we would encourage such disclosures to be additive; they should 'bolt on' to any harmonized baseline disclosures using common definitions.
- Finally, we would strongly caution the CSA against using the binary approach taken in this consultation for future consultations. Presenting competing proposals supported by different provinces for public consultation does not encourage a harmonized approach to Canadian securities regulation that is the goal of the CSA.

General principles and assumptions underlying CCGG's comments to the consultation

Board and executive officer diversity contributes to good corporate governance

CCGG supports the principle that boards and executive officer positions should be diverse with respect to gender and other forms of diversity, conceived broadly and in the context of an issuer's business, strategy, employees, customers, communities and suppliers.

For some time, CCGG has been active in developing corporate governance policy guidance for issuers and providing regulators with recommendations advocating for enhanced diversity policies and disclosures that reflect the growing and evolving emphasis many of our Members place on understanding how boards are integrating diverse perspectives into their oversight of risk, strategy and board and executive officer succession planning.[1]

CCGG expects that Canadian boards will be diverse and inclusive but there is no expectation that all boards will be diverse in the same way. Our comments in response to the CSA's on the Proposed Amendments are built on the following assumptions and grounding principles:

- Individual director quality is paramount. At the same time, investors expect boards to be diverse.[2]
- Homogeneous boards are at risk of group think.[3] CCGG assumes that diversity in all forms, is an inherent good and that increasing board diversity improves the quality of boards overall.[4] This assumption is not adequately reflected in the current composition of boards and senior management in Canada[5], to the detriment of overall board quality. As a result, the link between diversity and achieving the highest quality on a board has not been actualized.
- There is no conflict between director quality, merit-based appointments and board diversity. In fact, the opposite is true: accessing a larger pool of candidates is more likely to result in finding the best and most qualified candidates. Boards must be able to, and investors expect boards to identify and recruit the most qualified candidates with the skills and experience needed for the board. The current composition of boards and director nomination processes

[1] See CCGG's Gender Diversity Policy, The Directors' E&S Guidebook, Building High Performance Boards; also see CCGG's September 2020 response to Consultation – Modernizing Ontario's Capital Markets, pg. 10-14; CCGG's September 2022 submission to the Department of Finance Canada Re: Corporate Governance Consultation; and CCGG's October 2022 submission to the OECD Re: Public Consultation on Draft Revisions to the G20/OECD Principles of Corporate Governance, pg. 1-2.
[2] See CCGG's Building High Performance Boards, pg. 8-10.
[3] K. Smith, How Diversity Defeats Groupthink, Rotman Management Magazine, University of Toronto's Rotman School of Management, 2020.
[4] See CCGG's Gender Diversity Policy.
[5] See MacDougall, A. Valley, J. & Jeffrey J. Report: 2022 Diversity Disclosure Practices – Diversity and leadership at Canadian public companies: https://www.osler.com/osler/media/Osler/reports/corporate-governance/Osler-Diversity-Disclosure-Practices-report-2022.pdf (Osler 2022 Report).

that are not fully transparent and continue to rely on existing board networks to a significant degree are not exclusively merit based.

- Investors recognize that board recruitment and succession planning is a dynamic and complex process. As such, there is no 'diversity formula' and investors have no expectation that companies will adopt a 'tick the box' or a one size fits all approach even when some enumerated categories are suggested. Boards should be diverse in ways that link to the company's business, strategy, culture, geographic footprint, employees, customers, communities, suppliers and other stakeholders.

- Representation in and of itself is important but is not the goal. Inclusion and diversity of thought, experience and perspective is essential.

Based on the foundational premise that diversity leads to the integration of broader perspectives, contributing to better board oversight and executive decision-making, CCGG approaches diversity of thought on boards and at the executive officer level as a fundamental corporate governance issue.

Investors have consistently requested enhanced diversity disclosures

CCGG's response to the consultation is also informed by the CSA's stated objectives which are anchored in "ensuring investors have the information they need to make informed investment and voting decisions" such that the regulatory objectives for both Form A and Form B 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.[6]

The CSA points to three recent developments in Canada which have acted as catalysts to a heightened focus on the importance of considering diversity, beyond women, on boards and in executive officer positions:

1. The *Canada Business Corporations Act* (CBCA) requirement for federally incorporated distributing companies to provide prescribed diversity disclosures for women, Indigenous

[6] See Canadian Securities Administrators 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 Notice and Request for Comment, April 13, 2023, pg. 3126. (CSA Consultation).

peoples (First Nation, Inuit and Métis), persons with disabilities, and 'members of visible minorities'.[7]

2. The recommendations in respect of corporate diversity made by the Ontario Capital Markets Modernization Taskforce.[8]

3. The Canadian Investor Statement on Diversity and Inclusion which calls on companies to work toward enhanced annual public disclosures of diversity data (with specific application to certain traditionally underrepresented groups); adopt policies, targets and timelines to improve diversity on boards and in executive officer positions (also in reference to underrepresented groups with the goal of aligning with the racial and ethnic demography of Canada); and expand and disclose organizational efforts to address barriers to diversity and inclusion.[9]

Annex B also provides a brief summary of recent developments in the UK which require comply or explain disclosures in respect of prescribed diversity targets and numerical reporting on the representation of women and ethnicity on the board and in senior management in a tabular form. Annex B notes that the US Securities Exchange Commission has announced that it is planning to move forward with rule amendments to enhance disclosures with respect to diversity on boards.[10]

The CSA does not take note of other developments such as the diversity disclosure requirements introduced by the NASDAQ for listed companies[11] or the release by the IFRS International

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[7] Note, we have tracked the language used by the CSA in the consultation to identify the prescribed CBCA categories while noting that the terminology is not consistent with current discourse and requires updating at the Federal level. See Diversity Institute, Ryerson University: The 50 – 30 Challenge (diconsulting.ca); Diversity Institute, Ryerson University, Publicly Available Specification (PAS), 2021 The 50 –30 Challenge, Di-PAS_EN_vf.pdf (secureservercdn.net), pg. 3-6.

[8] These recommendations are found at Recommendation 36 in the Final Report and include: Recommendation 36.1 Canadian issuers to set their own board and executive officer targets and timelines, aggregated across both groups; annually provide data in relation to the representation of women, BIPOC, persons with disabilities, and the LGBTQ2SI+ community and disclose a path toward implementation with non-binding suggested targets and timelines of 50% women within five years and 30% other groups within seven years with a specific emphasis on Black and Indigenous representation; 36.2 recommends requiring issuers to adopt a written policy respecting the director nomination process which expressly addresses identification of candidates who self identify in one of the target groups during the nomination process; and 36.3 recommends setting a 12 year term limit for directors with exceptions for (a) the Chair, who may have a 15 year term limit; (b) non-independent directors of family-owned/controlled corporations where such nominees are a minority of the board; and (c) no more than one other director who will be deemed not to be independent, and will still have a 15 year term limit. See Capital Markets Modernization Taskforce, Final Report, January 2021, pg. 63; Also see CCGG's September 2020 response to Consultation – Modernizing Ontario's Capital Markets, pg. 10-14.

[9] See Responsible Investment Association (RIA), Canadian Investor Statement on Diversity & Inclusion.

[10] See CSA Consultation, supra note 6, pg. 3136.

[11] See Nasdaq's Board Diversity Rule: What Companies Should Know, last updated February 28, 2023, which requires that on or after August 6, 2021, companies listed on Nasdaq's U.S. exchange should publicly disclose board-level diversity statistics annually using a standardized template; and as of December 31, 2023, have, or explain why they do not have, one diverse director rising to two diverse directors by 2025 or 2026 depending on the company's listing date and market tier. Diversity is comprised of both women and other underrepresented groups. Boards with five or fewer directors are required to have or explain why they don't have one diverse director.

Sustainability Standards Board of the General Requirements for Sustainability Disclosure Standard (S1) which may also require disclosures with respect to diversity, equity and inclusion where material to an issuer.[12]

Our analysis is consistent with the CSA's stated objectives and recent developments.

FORM A AND FORM B

Form B General Comments

We acknowledge that institutional investors, including CCGG's Members, have different approaches to voting, engagement and investment decision-making. However, for those investors who integrate data analysis and considerations of diversity beyond women into their voting and investing decisions, which represents the majority of CCGG's Members, the approach in Form B is strongly preferred.

Support for Form B is anchored in an expressed investor need for comparable and decision-useful information as to how diversity is considered by a company in its policies and practices. This includes with respect to an issuer's board nomination policy and process, and its skills matrix, strategy, risk management and stakeholder engagements. Such disclosure is increasingly required by many institutional investors to support investment decision-making, voting and investee engagement.

Form B's integration of designated categories for underrepresented groups into disclosure requirements and data reporting is not arbitrary; these groups have been identified by the Canadian courts, human rights legislation and the CBCA, and are based on the Canadian *Employment Equity Act*. Notwithstanding its integration of the designated groups, Form B, does not preclude issuers from determining which other aspects or characteristics of diversity are most beneficial to that issuer in advancing its business and strategy and neither are issuers restricted from going beyond the disclosure requirements to convey this prioritization to investors. Similar to the 'building blocks' model proposed by the ISSB, Form B seeks to establish a shared baseline for disclosure upon which issuer specific diversity considerations may be layered.

Form B is more consistent with the expressed information needs of many Canadian institutional investors as evidenced through the investor feedback and resulting recommendations from the Ontario Capital Markets Modernization Taskforce[13] and through support for the Canadian Investor

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[12] See ISSB's June 2023 release of IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information.

[13] See Supra note 8, for a summary of the Ontario Capital Markets Modernization Taskforce diversity recommendations. Of note, some institutional investors and investor representatives in response to the Ontario Capital Markets Modernization Taskforce recommended that the regulators should implement mandatory, time bound, issuer determined targets for diversity which goes beyond what is set out in Form B, see: https://share.ca/wp-content/uploads/2022/01/20-09-07-Joint-Investor-Letter-w-Signatories.pdf at Section 1.3.

Statement on Diversity and Inclusion.[14] In addition, Form B is more closely aligned, but not as prescriptive as, the disclosure regimes emerging in other jurisdictions such as the US and the UK.

Form B is also most consistent with CCGG's existing positions on diversity beyond gender which recognize that diversity considerations are broad and contextual to an issuer's business, strategy, stakeholders and communities, but to be useful to investors, consistency and comparability of disclosure is required. CBCA aligned disclosures are a good starting point.

Form B is substantively consistent with the existing CBCA regime, which is already in place and functioning in Canada's capital markets and captures approximately 29% of existing reporting issuers, according to the CSA's consultation document, and other non-CBCA issuers are increasingly voluntarily disclosing against the CBCA criteria.[15] At a minimum, Form B levels the playing field between CBCA and non-CBCA public companies by harmonizing disclosures across all non-venture reporting issuers in a way that will reduce the burden for both issuers and investors.[16] Similar to the CBCA approach, Form B provides a baseline for investors to compare consistent disclosures over time, but also provides companies with the flexibility to go beyond the designated groups where relevant to the company's business, stakeholders and strategy.[17] This will provide investors with more consistent data on which to base investment decisions and to engage on progress.

Form A General Comments

In contrast, Member support for Form A is anchored in its lack of prescription when compared to Form B. Some Members have indicated that they do not incorporate data analysis with respect to diversity characteristics beyond women into investment beliefs and investment management. Others have indicated that while diversity is important, they do not support prescriptive data disclosure for pre-determined groups. For such Members, the flexibility Form A provides to an issuer to consider and describe its 'approach to diversity' (if any), absent any requirements to consider and disclose information in respect of specific designated groups (other than women), is

[14] Of note, 16 CCGG Members are signatories to this statement see Responsible Investment Association (RIA), Canadian Investor Statement on Diversity & Inclusion.

[15] Of note, the number of non-CBCA companies choosing to voluntarily disclose diversity data with respect to representation on the board and among executive officers of 'members of visible minorities', Indigenous persons and persons with disabilities increased substantially between 2021 and 2022: See (Osler 2022 Report), supra note 5, https://www.osler.com/osler/media/Osler/reports/corporate-governance/Osler-Diversity-Disclosure-Practices-report-2022.pdf pg. 50; Similar results are evident in the US with respect to year over year increases in the inclusion by issuers of qualitative and quantitative DEI disclosures in SEC regulated human capital markets disclosures. Such disclosures are triggered by materiality to the issuer and are principles based such that the issuer has discretion with respect to what and how it discloses human capital information; see, Gibson Dunn, Evolving Human Capital Disclosures, A Survey of Disclosures from the S&P 100 During the Two Years Following Adoption of the Securities and Exchange Commission Rule, January 9, 2023.

[16] With the exception of the inclusion of LGBTQ2SI+ persons as a 'designated group' in Form B. The CBCA does not require such disclosures.

[17] Noting that to date issuers have not tended to disclose diversity characteristics beyond what is mandated under the CBCA: see MacDougall, Valley & Armour, Divided on diversity: alternative proposals from Canadian securities regulators to update diversity disclosure requirements, (Osler LLP) May 25, 2023.

more aligned with the board's oversight responsibilities and in their view would allow such Members to meaningfully understand and assess a company's approach (or lack thereof) to diversity. Members who support Form A have expressed concern that Form B may interfere with a board's duty to oversee the company, including by determining what is material to the company, and with the responsibility of the board to recruit, attract and retain directors. In addition, prioritizing comparability over disclosure that is most material to a company's strategy may result in data gathering that is not fundamental to investors' understanding of a company's approach to diversity.

While acknowledging this position, on balance, it is CCGG's view that Form A does not meet the stated investor focused purposes of the regulation for those institutional investors who integrate considerations of diversity, including for women and other groups, into their investment decision-making, voting and engagements.

As drafted, it is unclear whether Form A will meaningfully increase transparency about diversity beyond women on boards and in executive officer positions. Except for disclosure of the numbers of women on the board and in executive officer positions, a simple statement that the issuer makes all decisions based on "merit" and does not consider diversity to be relevant would suffice to satisfy Form A but would not satisfy the needs of most investors.[18] Presumably, the CSA was looking to move beyond the status quo with its proposals.

It is the view of some of CCGG's Members that Form A may therefore not provide investors with decision-useful information that enables them to better understand how diversity ties into an issuer's strategic decisions. Also, because the information provided is at the discretion of issuers, it is unlikely to be comparable among issuers and is also not clearly required to be consistent year to year, which undermines the decision-usefulness of the disclosure because investors are unable to consistently benchmark the effectiveness of an issuer's progress over time against the issuer's own

[18] Supra note 5, Osler 2022 Report at pg. 26 which highlights that the top five reasons disclosed by issuers for not adopting a written board diversity policy are 1) companies focus on merit (which has been a consistent finding year after year); 2) best candidate may not be selected; 3) adequate systems already in place; 4) policy is ineffective or arbitrary; and 5) stage of development. This list appears to be drawn from analysis of the data for women which has been accumulating for eight years. In our view, the risk of the merit argument being used under Form A in particular is potentially quite high where there is no requirement for a written diversity strategy and more detailed disclosures are derived only from a request to "describe an approach" as is contemplated under Section 6.2 of Form A. In addition, experience from the U.S. SEC has shown that where complete flexibility for an issuer to define diversity is provided, disclosure is not meaningful and results in the need for additional guidance. After introducing diversity policy disclosure requirements in 2009 that did not define diversity, in 2019, the U.S, SEC introduced new guidance specifying that to the extent board or nominating committees considered self-identified diversity characteristics, the SEC expected the company to disclose the relevant characteristics and how they were considered after critiques of the quality of disclosures under the 2009 regime, see: SEC Issues New Guidance on Diversity Disclosure Requirements, The National Law Review, February 11, 2019; the guidance is available at: U.S. Securities and Exchange Commission, Regulation S-K, Questions and Answers of General Applicability, Section 133. Item 407 —Corporate Governance, Question 133.13, https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp#133-13, August 25, 2023.

diversity objectives. This creates potential risk for reporting issuers because as noted by the CSA "institutional investors and proxy advisory firms are developing diversity-related policies which have resulted in disparate diversity related disclosure practices among issuers".[19] Absent disclosures that meet the informational needs of investors, investors will have to make their own determinations in respect of a board's approach to and representation of diversity when making voting and investment decisions, which may ultimately be detrimental to issuers. As further discussed below, there is no requirement in Form A that a board nomination policy take into account diversity considerations.

Finally, Form A, unlike Form B, was not accompanied by a Local Matters Annex explaining how, in the views of the regulators supporting it, the approach meets the stated investor-focused objectives and responds to the diversity-related developments in capital markets, referred to above, which are relied upon as the impetus for the expanded disclosures. Barring a single paragraph under the Substance and Purpose section of the consultation, investors are provided with little insight into how the jurisdictions supporting Form A understand the needs of investors for decision-useful information on diversity beyond gender to be met. An equivalent to Form B's Annex L for Form A would have been helpful to stakeholders when evaluating the different options.

Support for continued disclosures of women on boards and executive officers

We are pleased to see that the CSA indicates an intention to substantively maintain the disclosure regime for women on boards and in executive officer positions under either Form A or Form B. The existing regime has proved an important source of information for investors and provides a useful benchmark for investors to hold directors and companies accountable where they have disclosed targets or commitments for the representation of women. Notwithstanding whether or not the current consultation leads to a broadening of the diversity disclosure regime, CCGG strongly encourages BC and PEI to adopt the existing disclosure requirements for women.

[19] On December 1, 2022, ISS published its 2023 ISS Benchmark Proxy Voting Policy, for Canadian TSX-Listed Companies with updates to the board racial/ethnic diversity policy as follows: "General Recommendation: For meetings on or after Feb. 1, 2024, for companies in the S&P/TSX Composite Index, generally vote against or withhold from the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or the Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where the board has no apparent racially or ethnically diverse members"; CCGG's Member NEI in its NEI Investments Proxy Voting Guidelines Fifteenth Edition – last updated March 2021, states: "we vote against the members of the nominating committee when the board does not appear to have at least one racially/ethnically diverse director" at pg. 11.

RESPONSES TO SPECIFIC QUESTIONS

Board nominations

Q1. 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).

Both Form A and Form B are closely aligned with respect to the proposed amendments to board nominations and board renewal provisions. Overall, we are supportive of the proposed approach and regulations subject to the detailed comments below.

Support for proposed amendments to board nominations under Form A and Form B

The proposed requirement in both Form A and Form B for issuers to "disclose the skills, knowledge, experience, competencies, and attributes of candidates that are considered when evaluating a candidate" does not raise concerns for issuers in terms of confidentiality and competitively sensitive information.

CCGG views the disclosure of board member skills and competencies as a best practice generally and believes that companies should be disclosing this information. CCGG regularly encourages issuers to be more transparent in their proxy circular disclosure with respect to their skills matrices so that investors can ascertain how board appointments and nominees align with identified skills needs as well as pending gaps or areas where additional depth is required to support succession planning.[20] The CSA's proposed disclosure is responsive to that information need.

As such, we are also supportive of the proposed inclusion in both Form A and Form B of the related requirements to disclose "whether the board has a composition matrix setting out the mix of skills, knowledge, experience, competencies and attributes that the board currently has and is looking to obtain it its membership" and "how the board manages any conflicts of interest that arise or could arise during the nomination process". In our view these new additions to Form 58-101F1 under both approaches are positive developments.

Concerns with proposed amendments to board nominations under Form A and Form B

With respect to other proposed changes to the Board nomination process disclosures under paragraph 6 of Form 58-101F1 we have the following comments:

- We are unclear as to why existing 6(c) of Form 58-101F1 is proposed to be deleted from both Form A and Form B. The existing clause states "if the board has a nominating committee,

[20] See CCGG's Building High Performance Boards, pg. 10 and CCGG's 2022 Best Practices for Proxy Disclosure, pg. 15-21

describe the responsibilities, powers, and operation of the nominating committee." In our view, this requirement should be retained on the basis that transparency in respect of the nominating committee's powers and responsibilities is important information to investors and a fundamental good governance practice.

- We are unclear as to why Form A does not incorporate any requirements to disclose if and how the Board nomination process incorporates women and 'identified groups'.

  Under Form A the proposed disclosure (at new para 6(c)) is for "any written policy respecting the nomination process" whereas under Form B the equivalent disclosure is for "any written policy respecting the nomination process*, including, for greater certainty, the nomination of persons from the designated groups*" [emphasis added]. This difference is intentional and is supported by the justification that under Form A all diversity questions are considered only in the Approach to Diversity section.[21]

  This appears to carve out considerations of diversity, including for women and identified groups, from disclosures of written board nomination policies and process. It is incongruous that a "written policy respecting the board nomination process" would not address women and identified groups, when the 'identified groups' are defined in Form A as being "individuals with shared personal characteristics, *whose representation on the issuer's board or in its executive officer positions has been identified by the issuer as being part of the issuer's strategy respecting diversity…"*[Emphasis added].[22]

- Form A also proposes to delete the existing requirements under section 11 of Form 58-101F1 which require comply or explain disclosure about the adoption of a written policy relating to the identification and nomination of women directors and then delineates specific disclosures if there is a policy; existing section 12 is also proposed to be deleted which requires disclosures of "whether and, if so, how the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so".[23]

  Taken together these proposed changes appear not only to allow issuers to avoid addressing diversity considerations in any board nomination policy they have but it also appears to weaken the existing reporting regime for women by removing disclosure requirements specific to the identification, nomination and representation of women in the board nomination process. If Form A were to be implemented as drafted, in our view, it would

[21] See CSA Consultation, supra note 6, pg. 3133.
[22] We acknowledge that in Form A Section 6.2 (e) of the Approach to Diversity requests disclosure of "any written policy or process that the board has adopted as it relates to women and to individuals from identified groups" in respect of maintaining diversity on its board and its executive office positions, but in our view this general language is not the same as requiring disclosure as to how diversity considerations are factored into the board nomination process itself under Section 6.
[23] See CSA Consultation, supra note 6, pg. 3154.

impact the integrity of the annual data collection and analysis which has occurred for women in future reporting cycles which would undermine the usefulness of that data to investors.

Support for proposed amendments to board renewal under both Form A and Form B

We agree with the proposed reframing of the current board renewal disclosure requirements in both Form A and Form B to enhance disclosure around *how* the board addresses board renewal and *how* mechanisms other than term limits contribute to board renewal.

Approach to diversity

Q2. 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.

As noted above, in CCGG's view, Form B, best reflects the stated needs of those institutional investors who integrate diversity considerations beyond women into their investment decision-making, voting and engagement activities.

Form B requests that issuers describe their "written strategy", regarding achieving or maintaining diversity on the board, including, on a comply or explain basis, any written policy the board has adopted as it relates to the representation on the board by persons from the designated groups. If an issuer has not adopted such a policy, it would have to explain its reasoning.

Form B's approach also mandates required disclosures of historically underrepresented groups, following a comparable approach as that adopted under the CBCA (although differing slightly on the nomenclature). Form B mandates reporting on the representation of four designated groups aligned with the CBCA: women, Indigenous peoples, racialized persons, persons with disabilities and also proposes to extend disclosures to LGBTQ2SI+ persons which goes beyond the current requirements of the CBCA.

Form B also implicitly permits issuers to choose to voluntarily provide disclosure in respect of other groups beyond the designated groups. This capacity of the issuer to choose to make additional disclosures is clearly highlighted in Annex L.[24] This is consistent with CCGG's view that diversity is a broad contextualized concept that is tied to an issuer's business, strategy stakeholders and communities. However, we find the drafting of the proposed 'approach to diversity' in Form B itself is too narrow to encourage such disclosures. We recommend that in any future CSA guidance in this area, the permission is encouraged and made explicit.

[24] See CSA Consultation, supra note 6, pg. 3177-3178.

Form B could be improved by making it clearer to issuers that, while disclosures are required with respect to the designated groups on a comply or explain basis, they are not limited to the designated groups when considering their diversity strategy and issuers are encouraged to meaningfully consider and disclose to investors the diversity considerations that are most contextually relevant to their business, strategy, stakeholders and communities.

Form A, in contrast, requires an issuer to describe its "approach to diversity" in respect of the board and executive officers but does not mandate disclosure in respect of any specific groups, other than women. Form A introduces the concept of an issuer "identified group", which as noted above is completely discretionary. Although proposed amendments to paragraph 6 of the instructions to Form A note "[f]or greater certainty, an "identified group"…can include, without limitation, Indigenous Peoples, persons with disabilities, members of visible minorities, members of the LGBTQ2SI+ community and members of linguistic minorities",[25] this integration of underrepresented groups is not part of the definition of '"identified group" and does not require an issuer to consider or integrate these groups into its diversity strategy (or indeed have any diversity strategy at all).[26]

While CCGG advocates for a broad contextualized concept of diversity that is tied to an issuer's business, strategy stakeholders and communities, absent some obligations or requirements that boards consider key characteristics of diversity relevant to Canada's demographics and population, investors have a legitimate concern that disclosures under Form A will tend toward boilerplate and not be decision-useful, comparable or consistent.

Potential for the Hybrid Approach - "approach to diversity"

Both forms could be improved by integrating components of the other form's understanding of diversity. This could be achieved by leveraging the flexibility and connection to strategy in Form A's definition of 'identified groups' but anchoring it to considerations of the designated groups in Form B. For example, "identified groups" could be redefined to mean "a group of individuals with shared personal characteristics, whose representation on the issuer's board or in its executive officer positions has been identified by the issuer as being part of the issuer's strategy respecting diversity, "*including but not limited to consideration of designated groups*".

Such an approach would also recognize that what diversity means and the definitions of designated groups are evolving concepts. Additionally, this removes the concern that securities regulators should not be determining categories of diversity relevant to issuers.

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[25] Ibid., pg. 3156.

[26] Of note, other than in the definition of 'identified group' Form A does not refer to or require any disclosure related to a "strategy respecting diversity'; The Approach to Diversity in 6.2 requests disclosure on an "approach to achieving or maintaining diversity" and then seeks related disclosures on objectives, implementation mechanisms, metrics, targets and policies (if any).

Q3. 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)

With respect to inclusion of executive officers we prefer the broader more inclusive approach in Form A. Form A requires the same information on the diversity approach and objectives with respect to executive officer positions that is required for the board. Form B would not require disclosure on the consideration of diversity when making executive officer appointments or an issuer's approach to talent management for executive officers, based on the rationale that it is granular and increases regulatory burden.

Disclosure by an issuer of its approach to diversity, including its objectives and implementation mechanisms with respect to executive officer positions is very useful for investors, particularly in the context of understanding how an issuer approaches developing a 'pipeline' of potential candidates within its organization.

Form B should be amended to require equivalent policy related disclosures with respect to the board and executive officers, and not be limited only to numerical representation.

Potential for the Hybrid Approach – inclusion of Executive Officer positions

Form B should integrate the same disclosures for executive officers as it does for the board, similar to what is proposed in Form A. How a company is integrating diversity considerations into executive officer succession planning and developing its talent pipeline is highly relevant information for investors.

Q4. 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")

As the CSA states, "Form B is intended to address investor calls for diversity-related information that is material to their investment-related decisions, while also providing clarity to issuers on disclosure expectations and aligning with existing reporting frameworks to enhance comparability across the market." Form B provides designated groups that are aligned with the groups identified under the CBCA with the addition of LGBTQ2SI+ persons. Combined these five "designated groups", are categorized as persons who self-identify as one or more of the following: Indigenous peoples, LGBTQ2SI+ persons, racialized persons, persons with disabilities or women.

CCGG's existing position is that the CBCA model of four designated groups is a good starting point,[27] but we recognize that the quality of disclosures needs to improve over time to reflect the breadth of Canadian diversity and acknowledge the complexity and nuance of developing a concept of diversity as relevant to issuers that extends beyond the listed four designated groups.[28] We expect Canadian legislation to evolve to allow for enhanced quality and consistency in Canada's diversity disclosure regime, and the CSA should seek alignment where possible with evolving federal and provincial human rights legislation.

Many institutional investors are actively seeking information about the representation of women and other diverse groups on boards and in executive officer positions because they believe it advances board quality, corporate governance oversight including with respect to risk and strategy oversight, and performance.[29] Considerations of diversity are also intrinsic components of board renewal and succession planning, as issuers will increasingly need to compete to draw and develop talent from Canada's highly educated and increasingly diverse pool of human capital.[30] Finally, a competent and well-rounded board of directors, that actively demonstrates integration of environmental and social risks and opportunities into its oversight of a company's long-term strategy and risk management activities,[31] should be representative and diverse. Issuers have a role to play in filling the data and information gaps with respect to diversity metrics in Canada, but issuers will also rely on this information as it evolves to support their own understandings of how

[27] See CCGG's September 2022 submission to the Department of Finance Canada Re: CCGG's response to Corporate Governance Consultation, pg. 3.
[28] Ibid. pg. 3.
[29] See CCGG's Building High Performance Boards: Guideline 5: Ensure that the goal of every director is to make integrity the hallmark of the corporation "Consider whether the CEO and other senior officers demonstrate the right "tone at the top" to ensure a culture of integrity throughout the organization"'
See also CCGG's The Directors' E&S Guidebook: "Culture and strategy go hand in hand and rely on tone from the top…for example, many of the participants in our study spoke about the positive impact adopting E&S into their culture has had on talent attraction and retention". pg. 9-10.; See Dyck et al., *Renewable Governance: Good for the Environment?*, August 2019, which found that following implementation of quotas in France for 20% female representation on the board, for firms without any women on the board prior to the quota implementation there was an "…increase [in] their environmental performance by 14% more than firms that already had women on the board. These results from the mandated quota in France support our argument that board renewal through the appointment of female directors leads to subsequent increases in firms' environmental performance." pg. 25.
[30] See StatsCan: 2022 study "Proportion of male and female postsecondary graduates, by field of study and International Standard Classification of Education," finds an overall greater percentage of Canadian women post-graduates in comparison to men (56.8% women vs. 43.2% men); Also see, Canada's Immigration Levels Plan 2023-2025: In 2022, Canada received more than 437,000 immigrants and IRCC has a 2023 target of 465,000 new permanent residents.
[31] See CCGG's Building High Performance Boards: Guideline 10 Oversee Strategy: "Directors are responsible for oversight of the corporation's strategy and ultimately approving the overall vision, objectives and long-term strategy of the corporation. Management, on the other hand, is responsible for developing and implementing an appropriate detailed strategy that is designed to realize the corporation's vision and achieve its objectives while managing the associated risks", pg. 16.

different perspectives can best be integrated effectively into their board oversight of strategy and risk.[32]

Potential for the Hybrid Approach – disclosure for designated groups as a baseline

Issuers should be required to disclose data about specified designated groups, consistent with the approach in Form B, as a baseline. This is not inconsistent with a broad and contextual approach to diversity. There is nothing inherently binary about the two options. There can be disclosures against the designated groups as well as other identified groups where such groups are relevant to the company's strategy, customers, employees, and other stakeholders. The goal is to facilitate investor understanding of a company's approach to diversity through disclosure. There are no mandated quotas or targets. Issuers and issuer boards remain responsible for identifying and overseeing the integration of diversity (or not) into their organizations' strategies.

Additionally, we do recognize that Canadian issuers operating internationally face challenges and potentially perverse outcomes from disclosure of specified designated groups that are tied to underrepresentation in the Canadian context, because what is captured by "diverse" in Canada, North America or Europe is not necessarily universally relevant or recognized globally. In some jurisdictions certain disclosures may lead to negative consequences for individuals including criminal prosecution. This was consistently raised as a concern with respect to the extension of disclosure requirements to the LGBTQ2SI+ community. We would encourage the CSA to consider including guidance and potential relief to internationally operating companies in any final amendments. We would further encourage the CSA to reach out specifically to the LGBTQ2SI+ community to ascertain their views with respect to such guidance as well as the potential inclusion of this category into mandatory disclosure.[33]

Q5. 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.

Form B provides the opportunity for the CSA to promote consistency, clarity, and comparability of disclosures for investors and other stakeholders. The tabular format requirement establishes a framework for consistency and comparability of disclosures and improves the collection of this data for institutional investors who have integrated diversity considerations beyond women into their investment decision-making, voting and engagement activities. This standardized format combined with narrative disclosure, provides investors with the ability to analyse and synthesize comparable and consistent data *and* provides issuers with the ability and opportunity to include additional narrative details that are relevant to understanding the context of the data, i.e., disclosure regarding any written strategy, written policies and measurable objectives relating to diversity on an issuer's board, including adding additional categories of diversity.

[32] See StatsCan: By 2041, the racialized population could reach 16.4 million to 22.3 million people depending on the projection scenario. The racialized population could therefore account for 38.2% to 43.0% of the Canadian population. In 2016, this proportion was 22.2%

[33] See, June 10th, 2023 comment letter from the LGBTQ+ Corporate Directors Canada Association (LGBTQ Association) in response to the CSA Consultation.

Overall support for tabular disclosure

We note that while there is overall strong support among CCGG's Members for Form B's approach to standardized tabular disclosure of defined 'designated groups' it is not unanimous.

Many, but not all, CCGG Members support requiring reported data to be disclosed in a common tabular format for one or more of the following reasons:

- it is consistent with the approach being taken domestically and in other jurisdictions. For example, the CBCA guidelines recommend disclosures be made using a table and the UK has also adopted this approach to disclosure.[34]

- it allows for consistency and comparability of disclosures among issuers and improves the collection and analysis of this data for securities regulators. It also reduces the burden for issuers by taking the guess work out of determining how to disclose.

- it reduces the risk that proxy service advisors, will make voting recommendations that are not based on the issuer's own data and disclosures.[35] It is important to note in this context that the proxy service providers' voting guidelines are not determined arbitrarily but are developed in response to sustained institutional investor client input.

- the 'designated groups' represent a starting point, disclosure of other groups relevant to the company may be included.

- institutional investors use this information:

    - Institutional investors are primarily focused on investment performance, risk and return over the long-term. For those investors who have integrated diversity, including women and increasingly other diversity characteristics on boards and in executive offices, into their investment strategy and beliefs, the data is used to inform investment selection due diligence, proxy voting and engagement priorities.[36]

    - With respect to risk, some institutional investors emphasize that to the extent the designated groups link to historically underrepresented groups in Canada that are currently almost completely absent from participation at the level of boards and executive management, this absence represents a significant systemic risk to social stability and economic growth and participation, which is of concern to institutional investors over the long term.

[34] See Corporations Canada Guidance, Diversity of boards of directors and senior management and UK FCA Policy Statement PS22/3, Diversity and inclusion on company boards and executive management, April 2022, pg. 7 and 31.
[35] See 2023 ISS Benchmark Proxy Voting Policy, Board Gender Diversity and Board Racial and Ethnic Diversity, pg. 15-17.
[36] Research is ongoing with respect to the financial and other impacts of diversity and inclusion on company performance, but more consistent and comparable disclosures are needed to support that work.

- Some institutional investors bring an impact focus to their investment strategies, concentrating on achieving greater diversity among the board and executive officer positions of investee companies, and such data supports monitoring of outcomes and targets.
- The need for disclosure is even higher where ESG considerations including diversity have been integrated into investment products and portfolio construction.[37] In such cases, investors require information from issuers to ensure suitability of inclusion of the issuer into the fund, or portfolio.
- Increasingly, investors are also being required to integrate such data into their own disclosures in respect of public ESG or responsible investment stewardship commitments or ESG labelled investment products.[38]

Concerns raised with respect to tabular disclosure

Not all CCGG's members are supportive of the tabular disclosure and cautions were raised with respect to this approach. Concerns in this regard coalesced around two core themes as below.

1. **The scope of Canadian diversity should not be prescribed and cannot be meaningfully captured in a table:**

   - There are so many potential diversity characteristics/categories that could be disclosed that the data risks becoming meaningless.
   - The designated groups do not include all forms of diversity or underrepresented groups in Canada, which has the potential effect of prioritizing some groups over others.

   In CCGG's view Form B does not purport to require collection of data or disclosure against every possible characteristic of diversity. Nor does it require representation of any designated group on any board or among executive officers. By anchoring the tabular diversity disclosures in the designated groups, Form B helps alleviate concerns of meaninglessly broad disclosure because it provides a baseline set of consistent disclosures relevant to a significant portion of underrepresented groups in Canada and integrated by investors into their investment decision-making, voting and engagement. The ability to extend disclosures (both narrative and tabular) to other diverse groups that have been identified by a particular issuer, if implemented thoughtfully, will create a natural check and balance on additional disclosures

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[37] Noting that there may be differences between institutional investors on the principle that disclosures by issuers should facilitate asset managers' data collection for their own use (for marketing or reporting) rather than connecting such disclosures to what is material for the company.

[38] One critique of this use by investors of tabular disclosure is that regulatory disclosures should not place the burden on issuers to supply data to investors for the investor's benefit to facilitate its own reporting, although it would appear that this is in fact a growing reason for increased investor demand for sustainability related information, notably with respect to how investors are addressing de-carbonization and meeting their net-zero commitments at the portfolio and institutional level. Such reporting is also needed to reinforce the accountability relationship between institutional investors and their ultimate beneficiaries to prevent 'greenwashing'.

because they will be limited to those diversity characteristics that have been identified by the issuer as relevant to their business, strategy, employees, communities, customers and other stakeholders. Such disclosures should facilitate meaningful investor engagement and voting.

Potential Hybrid Approach to address Concern 1 - tabular disclosure of diversity

A potential path forward is to adopt CCGG's recommendation with respect to amending the definition of "identified groups" to include but not be limited to designated groups and then track that into the construction of the tabular form with the addition of "other identified groups" that are material to the issuer in the specific context of its business, strategy, employees, communities, customers and other stakeholders.

2. **The reliance on voluntary self-identification to collect diversity data generally and in particular for tabular disclosure under Form B is problematic and can lead to unintended consequences:**

   - Issuers will be reluctant to disclose zeros on a table, so a standardized table may incentivize a 'tick the box' approach on the part of issuers, leading to arbitrary increases to board size, over-boarding of certain individuals and perceptions of tokenism, whereby the focus becomes solely representational diversity with equity and inclusion not being meaningfully integrated.

   - The challenges around self-identification and gathering personal information and privacy concerns were also highlighted:

     - The anonymity derived from aggregated data can be compromised on small boards or where there are small executive management teams.

     - Individuals may not trust how the data will be used.

     - Individuals may not be comfortable self-identifying as a member of a designated group or groups but may be pressured to do so by companies:

     - Individuals may be concerned that they will be perceived as a 'diversity' rather than 'merit' based appointment.

     - Voluntary self-identification data cannot be verified and is therefore not reliable.

It is again important to note that Form B does not mandate any forms of diversity, it does not require targets or quotas, and requires only a core set of comparable disclosures. Nearly a decade of experience with disclosure of women on boards and in senior management, and more recent experience of disclosures for other designated groups under the CBCA, indicates that requiring diversity-based disclosures does not trigger an avalanche of irrational board appointments, board refreshment remains measured and the pace of change is slow.[39]

[39] See Osler 2022 Report, supra note 5, https://www.osler.com/osler/media/Osler/reports/corporate-governance/Osler-Diversity-Disclosure-Practices-report-2022.pdf pg. 16-17.

Similarly, in our view disclosures based on voluntary self-identification are likely more reliable than individual investors or proxy analysts determining for themselves the diversity characteristics of a board and executive management teams. As noted above, some non-CBCA issuers have already taken note of this fact and have begun to voluntarily make disclosures aligned with the CBCA requirements.[40]

Potential Hybrid Approach to address Concern 2 - voluntary self-disclosures

To address these concerns, consideration should be given to developing additional guidance with respect to how issuers can ensure that self-identification is in fact voluntary, in particular, addressing issues for Canadian domiciled international companies where collecting diversity characteristics data is either illegal for the issuer or could lead to criminal or safety risks for the individuals being asked to disclose. Ultimately whether a person determines to self-disclose or not will be determined by a number of factors related to where they live, their personal experiences and opinions, and the culture of the company with which they are affiliated.

Consideration may also be given by the CSA to adding a 'prefer not to say' column to the tabular disclosure form, consistent with the approach taken in the UK.[41] Such an inclusion could potentially alleviate some of the issues around data reliability.

The tabular nature of the information is not perfect but, in our view, when supported by thoughtful narrative, has the potential to mitigate the risk of such disclosures becoming a mere 'box-ticking' exercise. The combination of consistent tabular disclosure combined with supporting narrative is a good starting point for monitoring, analysis, engagement and stewardship by investors.

The CSA may wish to consider implementing a phase in period whereby issuers are provided with one or two reporting cycles to focus on the narrative disclosure with respect to their diversity strategies, policies and processes and to work through how to collect the appropriate data within their organizations prior to the tabular disclosures becoming mandatory. Such tabular disclosures could be voluntary in the interim for the significant number of issuers already reporting diversity data either pursuant to the CBCA or voluntarily.

CCGG would also emphasize the need for the CSA to review the effectiveness of the diversity disclosure regime on a frequent and regular basis to ensure that it is meeting the needs of investors.

[40] See Ibid. at pg. 50, which reports that in 2022 67 companies voluntarily disclosed the number of directors who are members of visible minorities (compared to 36 in 2021); 34 voluntarily disclosed the number of Indigenous directors (compared to 23 in 2021) and 28 voluntarily disclosed the number of persons with disabilities (compared to 18 in 2021). In each case the number of companies voluntarily disclosing increased from the prior year.
[41] See UK FCA Policy Statement PS22/3, Diversity and inclusion on company boards and executive management, April 2022, Annex 2, pg. 31.

Q6. 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.

As noted above, approximately 29% of TSX-listed issuers that are incorporated under the CBCA are already required to provide the broader diversity disclosures required by the CBCA. The overall alignment between the approach of Form B and the CBCA requirements would work to reduce regulatory fragmentation and limit the reporting burden on issuers.

Form B's approach would work to reduce reporting issues, as Form B is generally consistent with the CBCA. Although the CBCA does not require disclosure of diversity data for persons distinguished by sexual orientation or gender identity, disclosures under the CBCA do permit additional categories of disclosure so there should be no compliance issues with respect to the CSA's specific inclusion of this group. However, as we have articulated above there may be other concerns which need to be addressed.

We would encourage the CSA to clarify that the terminology differences between the two regimes are not considered substantive and disclosure with respect to the designated groups under the CBCA would be accepted even as the definitions by which those groups are described may evolve.

It is expected that challenges may arise for CBCA-incorporated issuers to provide CBCA disclosures and disclosures proposed under Form A, based on the lack of general alignment and specification on reporting on historically underrepresented groups in Form A's approach. Form A would appear to create more inconsistency for CBCA issuers.

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.

CCGG advocates the CSA should consider developing similar disclosure requirements for venture issuers for the second phase of the project.

It is premature to comment on potential changes to the disclosure requirements to reflect the different stages of development and circumstances of venture issuers at this time, as the Proposed Amendments reflect two potential paths forward with substantive differences. Recommendations about impact on venture issuers and potential modifications will not be meaningful until a harmonized disclosure regime is in place for non-venture issuers, and regulators and capital markets participants have had an opportunity to evaluate its overall effectiveness.

OTHER CORPORATE GOVERNANCE IMPROVEMENTS

In addition to the foregoing, we have the following additional comments and observations:

- Both Forms propose to introduce consistent policy guidance into National Policy 58-201 for Board Nomination and Board Renewal. We support this inclusion.
- Both Forms propose to introduce policy guidance into NP 58-201 for Diversity and Targets but take different approaches.
  - CCGG is generally more supportive of the guidance proposed under Form B as it provides issuers with more useful information with respect to the integration of diversity considerations into the development of board nomination policies and targets, including taking into account investor expectations regarding the board and executive officers when setting targets.
  - We would encourage the Form B guidance to be expanded to integrate executive officers more comprehensively.
  - We would recommend that the new proposed language set out in Annex F for NP 58-201 Form A Section 1.1 also be considered for Form B, if adopted.[42] This language acknowledges the breadth of the Canadian public equity market and the different stages of corporate governance maturity represented by Canadian issuers and also acknowledges that some issuers "may find it challenging to incorporate certain of the guidelines below that address diversity" and encourages consideration and adoption of the guidelines by issuers as their individual circumstances evolve. This provides a degree of reassurance to issuers that disclosures can evolve over time and that investors do not expect perfection at the outset but are looking for progress.
- For both Forms of 58-101F1, we would encourage the CSA to clarify where comply or explain disclosure is required and which disclosures are not subject to this regime. As drafted, both forms are difficult to interpret in this regard.
- The Form A amendments to Form 58-101F1 do not include similar language as Form B with respect to data collection being based on self-identified voluntary disclosure and aggregated reporting (see paragraphs 7 and 8 of Form B Form 58-101F1 disclosure). Such language should be integrated if Form A is adopted to avoid confusion as to how issuers may collect and disclose data especially given issuers are required to collect the data in respect of women under paragraphs 6.3 (a) and (b) and have the option to collect and disclose under paragraph 6.3 (c) and (d) for identified groups.

[42] We note that language referred to above in Annex F is not included in the annotated NP 58-201 for Form B in Annex J. Additionally, both versions of NP 58-201 for Form A and B integrate definitions of 'target' that appear to have been deleted in the Annotated Form 58-101F1 drafts in Annex H and Annex I.

CONCLUSION

Concern with the structure and approach of the CSA consultation

Finally, CCGG has serious concerns about the process the CSA has elected to follow with respect to this consultation.

On its website the CSA describes itself as:

> …the umbrella organization of Canada's provincial and territorial securities regulators whose objective is to improve, coordinate and harmonize regulation of the Canadian capital markets.
>
> It aims to achieve consensus on policy decisions which affect our capital market and its participants. It also aims to work collaboratively in the delivery of regulatory programs across Canada…[43]

The key words in the above description are "improve", "coordinate", "harmonize" and "consensus".

It is clear that after nearly two years of extensive consultation and hard work on the part of CSA staff across the country,[44] including meetings with stakeholders and a roundtable discussion, Canada's provincial securities regulators have been unable to agree on a harmonized approach to diversity disclosures beyond women.

Despite stated intentions, the consultation structure has effectively created a horse race between two competing approaches to diversity disclosure regulation in Canada: one, Form A, which makes any diversity disclosures except for those related to women completely discretionary and which does not believe that securities regulators have a role in "defining to whom an issuer's approach must apply, other than women"[45] when determining an issuer's approach to diversity; and one, Form B, which requires disclosures with respect to identified designated under-represented groups within the Canadian population, along with providing issuers with the flexibility to disclose other kinds of diversity relevant to an issuer.

CCGG is concerned about the approach and the structure of the consultation in the context of its implications for how responses to this submission will be received and evaluated, what anticipated next steps are and the implications for future policy and rulemaking.

We see a path forward for a regulation based on integrating elements of both Form A and Form B and would strongly encourage the CSA, consistent with its mandate, to work diligently toward a harmonized approach to improved diversity disclosures. Failure to do so risks further bifurcating

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[43] See Canadian Securities Administrators (CSA), About Us, About Us - Canadian Securities Administrators (securities-administrators.ca).
[44] See Canadian Securities Administrators (CSA), Canadian securities regulators propose changes to corporate governance disclosure practices and guidelines, April 13, 2023. Also see, OSC Virtual Roundtable: Rethinking Diversity in Capital Markets, October 2021.
[45] See CSA Consultation, supra note 6, pg. 3127.

disclosures or creating different obligations in different jurisdictions, which adds burden to both issuers and investors.

Alignment with the ISSB

Finally, we note that since the publication of the Proposed Amendments, the International Sustainability Standards Board (ISSB) has published its inaugural standards, including S1 General Requirements for Sustainability related disclosures which are intended to establish a global baseline of sustainability reporting.[46] In addition, the ISSB has requested feedback on its near-term agenda priorities, which specifically included whether it should begin researching human capital which includes disclosures with respect to diversity, equity and inclusion.[47]

While we recognize that much work needs to be done by the Canadian Sustainability Standards Board and the CSA before the two existing ISSB standards are integrated into Canadian capital markets disclosure, the CSA has indicated it welcomes the release of the standards, and has signalled that it will work collaboratively with the CSSB and that "staff intend to conduct further consultations to adopt disclosure standards based on ISSB Standards, with modifications necessary and appropriate in the Canadian context".[48]

We anticipate that diversity, equity and inclusion disclosures will evolve as the ISSB standards mature and may even be a component of a future stand-alone human capital management standard. We acknowledge that the Proposed Amendments do not expressly follow the structure of the ISSB's S1, and to do so at this juncture would pre-empt the important work that the CSA and CSSB need to do, but in our view, CCGG's recommendations in support of a possible harmonized Hybrid Approach, which would combine an issuer derived, contextualized concept of diversity, backstopped by a baseline of consistent disclosures, is aligned with the building blocks approach taken by the ISSB and would represent a nascent step toward laying the foundation for ISSB aligned sustainability disclosures in Canada.

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[46] See ISSB's June 2023 release of IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information.

[47] See ISSB's Request for Information Consultation on Agenda Priorities, May 2023 at pg. 23-25.

[48] See Canadian Securities Administrators (CSA), Canadian Securities Administrators statement on proposed climate-related disclosure requirements, July 5, 2023, https://www.securities-administrators.ca/news/canadian-securities-administrators-statement-on-proposed-climate-related-disclosure-requirements/.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Chief Executive Officer, Catherine McCall, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville, at sneville@ccgg.ca.

Yours truly,

'Bruce Cooper'

Bruce Cooper
Chair, Canadian Coalition for Good Governance

CCGG Members 2023

- Alberta Investment Management Corporation (AIMCo)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépot et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- Capital Group Canada
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- Provident10
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management
- Teachers’ Pension Plan Corporation of Newfoundland and Labrador
- TD Asset Management
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- York University Pension