

September 26, 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

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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

Jurisdictions of the Canadian Securities Administrators,

NEI Investments is a Canadian asset manager specializing in responsible investing, with over CAD \$11 billion under management. With over 35 years of firm experience, NEI is committed to providing Canadian investors with a broad range of responsible investment solutions. The company delivers disciplined, active asset management with a focus on environmental, social, and governance factors. NEI also manages and operates a proprietary active ownership program, and has been a signatory of the United Nations' Principles for Responsible Investment for more than 15 years. NEI Investments is a wholly owned

subsidiary of Aviso Wealth. With over \$105 billion in assets under administration and management, Aviso Wealth is one of the largest independent wealth services suppliers for the Canadian financials industry.

We appreciate the opportunity offered by the Canadian Securities Administrators (CSA) to provide comments on the 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 ('Proposed Amendments').

General Comments: Diversity on boards and executive teams is a critical investment issue.

NEI Investments is a proponent of board and executive officer diversity. An intentional approach to furthering diversity within a company, with an emphasis firstly on the board and leadership, is an important part of facilitating a more inclusive, and ultimately more innovative and productive workplace. Research shows that diverse companies perform better than companies that lack diversity. Companies in the top-quarter for gender diversity and ethnic/cultural diversity have been found to outperform their peers.¹ As such, we believe boards should mirror the diversity of the workforce and society within which the company operates and should consider aspects of identity such as: gender, age, ethnicity, Indigenous status, sexual orientation, cultural identity and disability.²

We note that within eight cities in Canada research indicates women, racialized persons, Indigenous peoples, members of the LGBTQ2SI+ community, and persons with disabilities are underrepresented on boards – and for some of these groups individuals are rarely members of boards.³ NEI considers the risks to society, business and our investments that stem from systemic inequality, of which a lack of corporate diversity is but one symptom.

Strong corporate leadership on board and executive diversity is an important lever to address the broader challenge of inequality. Boards and executive teams should have access to the best talent. We believe including individuals for consideration that have formerly been underrepresented in the nominations and executive appointment process ultimately expands the pipeline of capable candidates for consideration for leadership at the company.

We also note NEI has been involved in recent discussions on diversity in Canada. NEI made an individual submission, and was a signatory to a submission put forward by a group of Canadian investors to the Ontario Capital Markets Modernization Taskforce final report, with recommendations on corporate board diversity.⁴ We are also a founding signatory to the Canadian Investor Statement on Diversity and Inclusion.⁵

¹ As noted in 1) a NEI Investments Report entitled "All Aboard: Increasing Corporate Diversity" (February 2018) authored by Jamie Bonham and Rosa van den Beemt and 2) a McKinsey & Company reported entitled "Delivering through Diversity" (January 2018) authored by Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, Lareina Yee.

² As noted in our Proxy Voting Guidelines that are publicly available on our website.

<https://www.neiinvestments.com/responsible-investing/responsible-investing-expertise/reports/proxy-voting.html>

³ As noted in a Toronto Metropolitan University, Diversity Institute publication entitled Diversity Leads 2020 – Diverse Representation in Leadership: A review of Eight Canadian Cities (August 2020).

⁴ NEI's individual submission, and submission as part of a group of investors are both accessible on our website under our 2020 submissions: <https://www.neiinvestments.com/responsible-investing/responsible-investing-expertise/program-overview/advocacy-collaboration.html>

⁵ <https://www.riacanada.ca/investor-statement-diversity-inclusion/>

Consultation Responses

We have included our responses to the questions cited in the CSA Notice and Request for Comment below.

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. (Please refer to the table entitled “Board Nominations” in Annex A for a description of this proposed requirement)

The disclosure of the skills knowledge, experience, competencies and attributes of candidates is useful for investors

The disclosure of the skills, knowledge, experience, competencies and attributes of candidates is very useful information for investors and we support its disclosure. We believe the consideration of the diversity of skills, knowledge, experience, competencies and attributes of candidates on the board provides important context as we consider the appropriate composition of the board and whether the requisite skills and perspectives are in place to adequately oversee material issues for the company. For example, with this information we are better able to understand if an appropriate number of directors have relevant experience in sustainability issues and any other skill sets beneficial to the business’ operations, or if the board reflects the diversity of the communities it operates in and/or services. Many companies in North America already disclose a skills matrix for their directors in their proxy statements; we do not perceive it to be onerous to require companies to enhance this disclosure.

Voluntary, self-identified disclosure should mitigate concerns around disclosure of personal information

We have heard issuers express some concern around privacy of individuals in collecting data on personal attributes. We recognize these concerns, as many investors including NEI must consider diversity on our own boards and leadership teams, and within our workforces. We continue to encourage consideration for how these challenges can be mitigated while adhering to applicable privacy laws. This is why we believe that truly voluntary self-identified disclosure must be a cornerstone of any approach on enhanced diversity disclosure. We also encourage companies to consider how aggregated disclosure on certain personal attributes could preserve anonymity for directors and executives. If this self-identified disclosure is in fact voluntary then this should mitigate against potential concerns for Canadian companies in international markets who may be limited in collecting this data due to legal restrictions, and with respect to directors that may face risks in other markets from their disclosure in Canada. We would encourage the CSA to undergo robust consultation with members of the LGBTQ2SI+ community and other communities of underrepresented persons as applicable, to understand any implications of required corporate disclosure.

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.

Form B is generally better suited to meet our needs as an investor

We believe Form B will allow for more consistent and comparable disclosure than Form A. For context, NEI considers gender diversity in our decision on whether to support nominating committee members when voting. Since 2020, we have also been considering ethnic/racial diversity on boards. We have formalized targets with respect to both gender and ethnic/racial diversity in our publicly available proxy voting guidelines. Beyond these targets, we encourage boards to “adopt or enhance board diversity policy to promote diversity beyond gender” where “[a]spects of diversity beyond gender include: age, ethnicity, Indigenous status, sexual orientation, cultural identity and disability.” While self-identified information is growing, corporate disclosure on diversity beyond gender is generally still inadequate. This hinders our ability to consistently address board diversity beyond gender as the information we have is limited, and in the case of ethnic and racial diversity, where the data is not readily available, we may be led to rely on the appearance of diversity (which we recognize is a limited approach).

Form B mandates disclosure with consideration of historically underrepresented groups and would require disclosure to be presented in a standardized tabular format (we indicate our support for this format in question 5). In doing so, Form B introduces and defines the “designated groups” that issuers would have to disclose information on beyond gender: Indigenous Peoples, LGBTQ2SI+ persons, racialized persons, persons with disabilities. Form A provides guidance on groups that could be considered “identified groups” but allows issuers to define these groups themselves, which we believe limits comparability of information and does not standardize disclosure across historically underrepresented groups. Further, we perceive that Form A would be limited in its ability to encourage companies to take action to address the diversity data gaps, as issuers would only be required to disclose if the issuer first opted to collect such data. We believe that Form B will result in more consistent and practical disclosure. Form B also provides issuers with the option to provide additional disclosure beyond the four defined “designated groups” if they believe this added disclosure will provide relevant context around their company-specific diversity considerations.

We believe that in effect, Form A would lead to a marginal increase in disclosure of representation data from issuers as they seemingly would only have to disclose if they chose to define an ‘identified group’ that forms a part of their strategy on diversity. We do not believe this option would provide us with the information we need given current data gaps.

Considerations for enhancing the approach under Form B

Though we note some limitations with Form A, we support its stated intention to disclose on the diversity approach and objective with respect to executive officer positions. Under Form B there is no proposed requirement to include consideration of diversity when making executive officer appointments. The rationale given is that this would be too burdensome for issuers. However, given our understanding of Form B, issuers would be expected to provide representation metrics for executive officers, as well as information about targets and any other measurable objectives. It seems that most of the heavy lifting would already be done, and that presumably it would not require much more effort to expect that an issuer would have a policy to support its collection of voluntary self-identified data and its targets. We believe this consideration could be incorporated into Form B or any other eventual requirements.

We also note that both Form A and Form B propose that 6(c) of Form 58-101F1 be deleted. 6(c) notes that “if the board has a nominating committee, describe the responsibilities, powers, and operation of the nominating committee.” We believe this is important information for investors, and as it is currently required disclosure, we do not see any benefit from removing this requirement for ongoing disclosure.

We believe explicit mention as proposed under 6(c) would ensure that sufficient detail is included on this issue.

Notably, we are supportive of the following Proposed Amendments that feature under both Form A and B:

1. A written policy respecting the nomination process (though we believe the Form A approach is more limited in that the policy should reference diversity as noted under Form B);
2. Disclosure of term limits or other board renewal mechanism; and
3. The use of the comply or explain mechanism, which would apply, as we understand – where there is no written policy or strategy with respect to board diversity (as applicable under Form A or Form B), or no targets as for any identified groups for boards and executive officers under Form A, or designated groups under Form B (we understand from Annex D that under Form B the requirement would apply to boards and executive officers as we believe it should).

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. (Please refer to the table entitled “Approach to Diversity – Executive Officer Positions” in Annex A for a description of this proposed requirement)

Information on the diversity approach and objectives of issuers with respect to executives is useful

We consider disclosure of diversity throughout the organization, including at the executive level, to be extremely useful. This allows us to better assess the organization’s broader approach to fostering workplace diversity, equity and inclusion. We typically observe that more senior levels of the organization tend to be less diverse than more junior levels. While we do not currently have explicit targets for executive officer diversity that we apply to our proxy voting decisions, as we would with board diversity, we would often consider this information as inputs in our evaluations and engagement efforts on diversity, equity and inclusion. For example, we note the utility of required disclosure on employment equity for federally regulated private sector employers under the *Employment Equity Act*. We continue to meet with companies across sectors on diversity and workforce inclusion issues.

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, 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”)

Issuers should be required to disclose data on specified designated groups as consistent with Form B

We believe that disclosure across defined designated groups would be more helpful for investors. In order to meet this investor need for enhanced disclosure on diversity beyond gender, a decision will inevitably have to be made on how to define underrepresented groups for which disclosure should be required, whether that determination is made by our securities regulators or by the company itself. In the current landscape where companies disclose on a voluntary basis, disclosure is fragmented, inconsistent and difficult to compare across peers. This hinders the utility of information for investors. Multiple definitions of designated groups could lead to more questions from investors seeking to better understand the data and ensure it is more comparable.

The specified designated groups as defined under Form B are not arbitrary. Four of these designated groups, including women, are as defined under the *Canada Business Corporations Act* (CBCA), which is itself grounded in the four designated groups as defined under the *Employment Equity Act*. Form B also proposes to include the LGBTQ2SI+ community as a designated group, though the LGBTQ2SI+ community is currently not included in the CBCA diversity requirements (as noted under question #1, we believe consultation with the LGBTQ2SI+ community will be required). Given that federally incorporated companies must already disclose diversity information under the CBCA, this facilitates a consistent approach within capital markets by extending disclosure requirements to all issuers. We encourage regular review of these designated groups to ensure they are appropriately defined and aligned with applicable legislation.

Specified designated groups does not limit disclosure beyond these groups

We also note that though designated groups are specified under Form B, disclosure is not limited to these groups under this option. If an issuer determines that these groups alone do not provide fulsome context on the diversity of the company's board and executives, the issuer could complement the required information with additional context on diversity beyond the designated groups. This combination of required disclosure, with the flexibility to provide additional context will prove useful in allowing investors to receive more comparable disclosure that still captures relevant company-specific context.

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.

Reporting through a tabular format would be helpful

A tabular format would contribute to making the disclosure more comparable and easily accessible for investors. We are supportive of this approach as it would make it easier for us to navigate and use the required disclosure that could be more readily integrated into our investment decision-making.

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.

NEI does not have any comments on this question.

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.

It is appropriate to begin with applying these requirements to non-venture issuers. While enhanced diversity disclosure requirements should eventually also extend to venture issuers, we expect that some requirements may have to be adapted, or phased in, in order to be implemented by venture issuers.

Conclusion

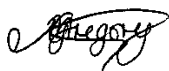
We appreciate the opportunity to provide comments on this consultation. Enhanced diversity disclosure is necessary for investors as the current state of disclosure leaves us with considerable gaps in information. The ability of CSA members to agree to a single position would send an important message to the market about the importance of this disclosure given the impact of diversity on issuers, investment

decision-making and the market broadly. We would encourage best efforts by the CSA to come to a consensus, and again highlight our preference for the approach taken under Form B.

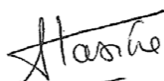
Sincerely,



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