September 29, 2023

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
The Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service Newfoundland and Labrador
Office of the Superintendent of Securities, Department of Justice, Northwest Territories
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

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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 Responsible Investment Association (RIA) welcomes the opportunity to provide feedback on the proposed amendments (the Proposed Amendments) to Form 58-101F1 *Corporate Governance Disclosure* (Form 58-101F1) and National Policy 58-201 *Corporate Governance Guidelines* (NP 58-201) that would impact the annual governance disclosure required of non-venture issuers that are not investment funds, and commends the Canadian Securities Administrators for soliciting public input on this important initiative to foster transparency and diversity throughout Canada's capital markets.

The RIA is a Canadian investment industry association comprising more than 190 institutional members and over 500 individual members who practice and support responsible investing (RI) – defined as investments that incorporate environmental, social and governance (ESG) factors. Our individual members include financial advisors, consultants, and others, while our institutional members are mainly asset management firms and asset owners, including pension funds. Our institutional members collectively represent more than C$40 trillion in global assets under management (AUM). A list of our members is available online at www.riacanada.ca.

RI in Canada totals approximately $3 trillion in AUM, which represents close to 50% of all professionally managed AUM in Canada. The growth in RI reflects the business case for considering a portfolio's exposure to material ESG risks and opportunities. Climate change, executive compensation, human rights, and equity, diversity & inclusion (EDI) are just a few examples of ESG factors that are increasingly shaping investment decisions as they can have serious financial implications for companies and portfolios. In October 2020, the RIA launched the Canadian Investor Statement on Diversity and Inclusion (the Statement), committing signatories to integrating EDI into their investment processes and strengthening EDI practices within their own organizations. As of December 31, 2022, 53 institutional investor signatories representing over $5 trillion in global AUM had signed on to the Statement.

Please accept our comments on the Proposed Amendments to Form 58-101F1 and National Policy 58-201.

General Commentary on the Proposed Changes

We thank the CSA for granting the extension to the original submission deadline for this consultation. The extension allowed us to engage in broader consultation with RIA members and other industry stakeholders to inform our response. We note that our comments do not reflect the views of all RIA members; rather, they represent the views articulated by a majority of respondents to our internal consultations. References to the RIA's views should be interpreted accordingly.

As a general response to the Proposed Amendments, our consultation indicated significant support among the RIA's membership for the approach recommended in Form B. We believe that Form B will most effectively provide investors with the meaningful, comparable, and comprehensive information that they require to make effective investment decisions, make effective proxy voting decisions, and uphold the fiduciary duties they have to their clients. We also believe the standardized nature of Form B provides greater clarity for issuers and all other market participants. Finally, the RIA supports the CSA's proposed initiatives to enhance disclosure for board nominations and renewals.

Standardized Data

The RIA believes that Form B better aligns with investor needs for clear, standardized, and comparable information on the representation of women and historically underrepresented groups on boards and in executive officer positions. A standardized approach ensures that all investors can access data that is consistent across Canadian issuers, enabling a clear comparison of board-level and executive-level diversity between issuers and over time. Standardized disclosure leads to consistent reporting, which prevents investors from needing to decipher unclear data from unreliable sources, and issuers from having to provide a variety of different information types to various investors.

In addition to its standardized disclosure requirements, Form B provides issuers with the same flexibility as Form A to elaborate on unique circumstances. Both Form B and Form A continue to operate under a "comply or explain" approach, under which, if an issuer has not adopted a board diversity strategy, the issuer is required to provide narrative explanations of noncompliance with Form 58-101F1. Moreover, the two Forms both accommodate the evolution of issuers' diversity considerations over time, as issuers under both Forms have the option to voluntarily provide disclosure for additional groups that are part of their diversity strategies beyond any mandatory disclosure requirements; however, Form B requires that issuers provide reporting in respect of five "designated groups" [1], while Form A requires reporting only in respect of one[2].

The five designated groups submitted in Form B capably reflect the characteristics and values of Canadian society and its ambitions for corporate diversity.[3] The designated groups include four categories that have already been adopted as disclosure requirements under the *Canada Business Corporations Act* (the CBCA) [4], and this alignment will be beneficial to issuers and investors alike. Our members join prior commenters[5] in welcoming the important addition of a fifth category for LGBTQ2SI+ persons. We encourage the CSA to engage in the appropriate consultation with the LGBTQ2SI+ community to ensure any privacy or safety implications of voluntary self-identified disclosure are properly accounted for, as well as to ascertain their views on the potential inclusion of this category into mandatory disclosure.

It is critical that the CSA establish clear definitions of the five "designated groups" so that collected information is standardized and accurate. In finalizing these definitions, the CSA should examine results from other consultations that are related to terminology for historically underrepresented groups (for instance, the *Employment Equity Act* review consultation). Furthermore, we believe the CSA would benefit from regular review and consultation with respect to the five designated groups. The addition of a sixth category, consisting of those who elect not to disclose their information, would provide further accuracy about issuers' total response rates.

Although our members agreed that women should be delineated as a category within the disclosure requirements, there were differing opinions regarding how the other four designated groups (Indigenous peoples, LGBTQ2SI+ persons, racialized persons, and persons with disabilities) should be organized. Many members believe that the information disclosed for each member of the four categories should be reported individually, as opposed to having the data amalgamated. Some members emphasized in particular that grouping Indigenous peoples with other designated groups goes against the spirit of the Truth and Reconciliation Commission's *Calls to Action*[6] and risks equating Indigenous rights (as captured by section 35 of the *Constitution Act, 1982*[7]) with equality rights (as captured by section 15 of the *Canadian Charter of Rights and Freedoms*[8]). These

[1] Indigenous peoples, LGBTQ2SI+ persons, racialized persons, persons with disabilities, and women.
[2] Women.
[3] *See* Responsible Investment Association, *Canadian Investor Statement on Diversity & Inclusion*. https://www.riacanada.ca/investor-statement-diversity-inclusion/. *See also* 30% Club, *30% Club Canadian Investor Group: Updated Statement of Intent March 2022*. 30% Club Canadian Investor Statement of Intent Update 2022 FINAL.docx (30percentclub.org).
[4] CBCA s. 172.1; CBCR s. 72.2.
[5] *See* LGBTQ+ Corporate Directors Canada Association, *Comments regarding Proposed Amendments to Form 58-101F1 and National Policy 58-201*, July 10, 2023. Jane Griffith (LGBTQ+ Corporate Directors Canada) letter of July 10, 2023 re Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines (osc.ca)
[6] See "Call to Action 92" within *Calls to Action*, Truth and Reconciliation Commission of Canada. https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf.
[7] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35.
[8] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 15.

members highlighted that investors want, and would benefit from, disclosure regarding Indigenous membership on issuers' boards and C-suites, as this indicates such issuers' better corporate understanding of constitutionally protected Indigenous rights, titles and interests and their interaction with the issuer's operations.

However, other members believe that combining the four categories into one group provides issuers with additional flexibility and opportunity in setting and meeting their diversity targets. One point of consensus among RIA members is a desire for clarity from the CSA regarding the mechanisms in place to account for potential "double counting". Specifically, there is concern that a respondent who satisfies multiple designated groups may be counted as multiple people in the standardized table required by Item 6.4 of Form B, which may potentially result in an inadvertent misrepresentation of the issuer's representation of diverse persons.

It should be noted that although Form B was the overwhelming preference among our members, this preference was not unanimous. Members in support of Form A highlighted its flexibility and shared their desire to ensure that any disclosure requirements are not unduly costly, prescriptive or burdensome. However, other Members are of the opinion that neither option goes far enough in their mandatory disclosure requirements: for example, Members referenced their support of the proposed Ontario Capital Markets Modernization Taskforce requirements, which include mandatory target-setting for TSX-listed issuers.[9] Ultimately, we believe that Form B achieves a strong balance between enabling informed and efficient capital allocation decisions, reducing regulatory fragmentation, and limiting the burden of reporting on issuers. The proposed disclosures in Form B closely align with the existing disclosure requirements under the CBCA, which helps to consolidate disclosure requirements across corporate and securities regulatory landscapes.[10]

Self-Identification

Both Form A and Form B present a risk of incomplete data when based on voluntary self-disclosure, as some individuals may feel unsafe in disclosing, or may otherwise not wish to disclose, their gender identity, sexual orientation, race, or disabilities. This risk is valid, and while we respect that there may be individuals who choose not to disclose their membership in a designated group for personal reasons, we see the current practices of many Canadian companies and their global peers as an indication that the benefits of disclosure for issuers outweigh the risks, particularly in the context of assessing investments.

We believe the designated groups are broad enough, and the information is presented in a sufficiently aggregated manner, that the confidentiality of any one person's responses is sufficiently protected. The use of categories that are well-defined by regulators and consistent with Canadian employment law reduces the risk that issuers may use other categories which may be even more intrusive to members of designated groups.

Approach to Diversity – Executive Disclosure

Although the Proposed Amendments currently require disclosure on the diversity approach and objectives with respect to board member positions, only Form A requires the same disclosure with respect to executive officer positions, while the CSA notes that Form B does not require such

[9] *See* Ontario, Capital Markets Modernization Taskforce, *Final Report*, January 2021. https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf.

[10] Approximately 29% of TSX-listed issuers are incorporated under the CBCA and are currently required to provide the broader diversity disclosures required by the CBCA.

disclosure as it would be “granular” and “may increase regulatory burden without corresponding benefit for investors”. However, there is appetite among RIA members for Form B to require the same disclosure for executive officers as there are for board members, despite the CSA’s concerns of an increased regulatory burden.

Board Nominations
The RIA supports the CSA’s proposed guidelines on disclosure for board nominations. Since this information is generally not of a particularly sensitive nature, we do not believe that its disclosure should raise any concerns on the part of issuers. However, steps should be taken to ensure that the required disclosure is not so onerous as to obligate issuers to disclose competitively sensitive information.

Board Renewal
We support the CSA’s proposed guidelines on disclosure for board renewals. Investors seek transparency with respect to how issuers’ board renewal policies align with their investment strategies, and this transparency is best provided through the creation and implementation of effective, forward-thinking succession plans.

However, RIA members have differing opinions with respect to the extent of desired disclosure. Certain members would require disclosure of, and explanations for, any instance where a board has not adopted standard renewal mechanisms or has waived term limits, while other members believe that board renewal disclosure should be left broad in an aggregate or summary form.

Conclusion
In conclusion, the Responsible Investment Association, on behalf of the members of Canada’s investment industry who practice and support responsible investing, expresses its support for the increased transparency of diversity initiatives throughout the boardrooms and executive offices of Canadian reporting issuers. We believe that this objective can best be met through the amendment of Form 58-101F1 as presented in Form B.

If you have any questions regarding the above, please feel free to contact Patricia Fletcher, Chief Executive Officer (patricia@riacanada.ca) or Mary Robinson, Director of Research & Investor Networks (mary@riacanada.ca).

Yours truly,

Patricia Fletcher, ICD.D
Chief Executive Officer
Responsible Investment Association (RIA)