



September 29, 2023

Submission to:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission, New Brunswick
Financial and Consumer Affairs Authority of Saskatchewan
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

Delivered via email to:

The Secretary, Ontario Securities Commission, comment@osc.gov.on.ca and
M^e Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs, Autorité des marchés financiers, consultation-en-cours@lautorite.qc.ca

**Re: Request for Comment on Proposed Amendments to Form 58-101F1 of National Instrument 58-101
Disclosure of Corporate Governance Practices and National Policy 58-201 *Corporate Governance Guidelines***

To whom it may concern:

Cenovus Energy Inc. (Cenovus) appreciates the opportunity to provide this submission in response to the Canadian Securities Administrators' (CSA) request for comment on proposed amendments and changes to Form 58-101F1 of National Instrument 58-101 *Disclosure of Corporate Governance Practices* and to make changes to National Policy 58-201 *Corporate Governance Guidelines*. We appreciate the CSA's thoughtful and balanced approach to diversity-related disclosure requirements and welcome continued consultation and dialogue on this topic.

Cenovus is an integrated energy company with oil and natural gas production operations in Canada and the Asia Pacific region, and upgrading, refining and marketing operations in Canada and the United States. The company is focused on managing its assets in a safe, innovative and cost-efficient manner, integrating environmental, social and governance considerations into its business plans.

Cenovus recognizes the benefits of diverse experience and background in helping boards and executive teams make better business decisions. In evaluating board composition and nominations, Cenovus's Board Diversity Policy requires consideration of skills, expertise, industry experience and all aspects of diversity, including groups designated under the *Canada Business Corporations Act* (CBCA). The policy sets out Cenovus's aspiration to have at least 40% representation from CBCA designated groups among non-management directors, including at least 30% women, by year-end 2025.

Cenovus's Board of Directors (Board) is mindful of the importance of having diverse representation of designated groups in senior management, and considers a variety of relevant factors, including diversity, in appointing an executive team that has the composition of skills, expertise and industry experience to be effective. Cenovus is

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also working towards a target to increase women in leadership roles (team lead, coordinator, supervisor positions or above) to 30% by year-end 2030. In 2022, Cenovus launched a voluntary self-identification survey for U.S. and Canadian employees, to help us better understand our workforce, and the company continues to advance its inclusion & diversity strategy to foster an inclusive workplace that attracts qualified talent from a range of diverse backgrounds.

For ease of reference, this letter reproduces in italicized text the question posed by the CSA to which Cenovus is respectively providing its feedback:

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.*

- Cenovus supports the CSA's interest in providing investors with decision-useful information that helps them understand the qualifications of directors, and how their skills, knowledge, experience, competencies and attributes impact the overall composition of the board. Provided that any information that may reasonably be considered by the issuer or individual directors as sensitive or confidential, if any, is exempt from disclosure other than on a voluntary, anonymous and non-identifiable basis, Cenovus does not have concerns with mandating that issuers provide this information.

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.*

- Cenovus believes Form A's approach to diversity best balances the needs of investors and issuers (whether such issuers are incorporated under the CBCA or otherwise) by mandating disclosure only about representation of women, and deferring to the issuer to determine what additional categories or diversity objectives they wish to report on based on the company's business, strategy and investor expectations. By allowing the issuer to tailor the disclosure to its circumstances, Cenovus believes that the disclosure provided in response to Form A will be more decision-useful to investors. Furthermore, Cenovus believes that the flexibility of Form A correctly recognizes that approaches to diversity may vary among issuers and change over time. It is important that issuers retain the ability to disclose their own approach in the manner they believe is appropriately responsive to the needs of their business, strategy and expectations of their investors, as such may evolve over time.
- The more prescriptive proposed Form B disclosure does not recognize that approaches to diversity may vary among issuers, and change over time, and prescriptive disclosure requirements including prescribed groups applicable to all issuers without regard to their circumstances, may be less helpful to investors. Further, unlike Form A, Form B's requirement to collect and publish voluntary self-identification data of underrepresented groups raises personal privacy and other concerns discussed under question 4.

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3. *Is information on the diversity approach and objectives of issuers with respect to executive officer positions useful for investors? Does this requirement raise concerns for issuers? Please explain.*

- The approaches to diversity in executive officer positions proposed under Form A and B are appropriate to the extent they provide transparent information that is useful to investors and are non-prescriptive.
- The disclosure required under Form A with respect to prescribed groups is more appropriate, as it permits issuers to disclose their own approach to diversity in the manner they believe is best for their business and decision-useful for investors.

4. *Should issuers be required to disclose data about specified designated groups, consistent with the approach in Form B? Or should issuers be required to disclose data about women only and the identified groups for which they collect data, consistent with the approach in Form A? Please explain.*

- Cenovus prefers Form A's approach, which provides issuers the flexibility to design practices and policies respecting how it will address diversity in its specific circumstances, and not requiring issuers to report data on any specific group other than women.
- Even though Form B's mandated disclosure regarding representation of underrepresented groups would be published on an aggregate basis, boards and executive teams are inherently small groups, so anonymity cannot be guaranteed. A board member's or executive officers' LGBTQ2SI+ status is personal information that they may prefer not to disclose publicly in a forum where anonymity cannot be guaranteed. We encourage the CSA to weigh the value to investors of the additional LGBTQ2SI+ disclosure against the risk of asking individuals to disclose potentially sensitive personal information in a non-anonymous public forum. Where individuals are not comfortable with voluntarily self-identification, the data published by issuers may be incomplete and inaccurate, which limits the comparative value of this information to investors.
- For these reasons, if the CSA proceeds with Form B, in the hopes of achieving consistent and comparable disclosure across issuers we strongly recommend harmonizing the CSA designated groups with the four designated groups defined under the CBCA and *Employment Equity Act*, and allowing issuers to choose to report on other groups material to their business.
- If implemented with the five prescribed groups, we recommend allowing a grace period for compliance with these requirements to allow issuers time to gather and disclose data on all five prescribed groups in a secure format, and thoughtfully craft and implement updates to their existing board nomination and executive appointment practices, before mandatory reporting is implemented.

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.*

- Cenovus generally supports consistent disclosure requirements for enhanced comparability by investors, while allowing issuers the discretion to tailor the disclosure to their circumstances or provide alternative compliant disclosure. A tabular format is appropriate for comparing information that is directly equivalent between issuers.

- Under Form B, the value of using a common tabular format is diminished due to the small sample size, and relying on self-identification (which, as noted above, may create privacy and security risks, and may be expected to result in under-reporting and/or limited response rates). Since the information provided may not be directly comparable from issuer to issuer, the tabular format under Form B may be misleading and is therefore less appropriate.

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.*

- Yes, overlapping regulatory requirements increase costs and contributes to less efficient capital markets. If Form B is implemented, we recommend adjusting the requirements to mirror the CBCA prescribed groups, including ensuring terminology and definitions are consistent.

Thank you kindly for the opportunity to comment. We appreciate the CSA's commitment to finding regulatory balance and support the CSA in finalizing rules that:

- provide meaningful and sufficiently comparable information that allows investors to assess an issuer's diversity at a point in time and over time, relative to its peers and the market more broadly;
- afford flexibility to issuers in describing their approach to diversity and director nominations; and
- appropriately consider and safeguard the personal privacy and safety of individuals from underrepresented groups.

Sincerely,
Cenovus Energy Inc.

/s/ Gary F. Molnar

Gary F. Molnar
Senior Vice-President, General Counsel & Corporate Secretary