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September 29, 2023

VIA EMAIL

The Secretary
Ontario Securities Commission
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Mr. Philippe Lebel
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British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
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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

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 "Proposed Amendments")

Thank you for the opportunity to submit our comments to the Canadian Securities Administrators (the "**CSA**") with regards to the Proposed Amendments.

Our comments below address some, but not necessarily all, of the potential issues arising from the Proposed Amendments. In addition, some of our comments regarding the Proposed Amendments are general in nature and made at a high level, and are consequently less granular and more conceptual.

The comments provided herein reflect the *personal views of the signatories of this letter*, do not reflect the views of our firm or of our clients, and are submitted without prejudice to any position that may in the future be taken by our firm on its own behalf or on behalf of any client.

Fasken Martineau DuMoulin LLP is a leading international law firm that has a history dating back to 1863. Fasken has extensive expertise in advising issuers and their financial advisors on national, international and cross-border capital market transactions, including corporate governance issues. The firm's clients include, among others, public companies involved in a multitude of industry sectors, investment funds, investment dealers and brokers, financial institutions and financial advisors. While we submit these comments in our *personal capacity* and not on behalf of our firm, we include the foregoing information as an indication of the depth of capital markets experience informing the viewpoints expressed herein.

Terms used but not otherwise defined herein have the meanings ascribed thereto in the Proposed Amendments.

With respect to board nominations, disclosure of "the skills, knowledge, experience, competencies and attributes of candidates that are considered when evaluating a candidate" provides meaningful information regarding the board nomination decision-making process undertaken by organizations and such disclosure is generally viewed as a best practice. However, to address issues such as the risk of disclosing competitively sensitive information, the language under Section 6(g) may need to be clarified to indicate that such information may be disclosed on an aggregate or general basis rather than on any individual basis.

Regarding the approach to diversity, we applaud the CSA for its efforts in reviewing the current disclosure regime to identify the best approach "to increase transparency about diversity, including diversity beyond women, on boards and in executive officer positions, and provide investors with decision-useful information that enables them to better understand how diversity is addressed by an issuer." However, we do not express a view as to which approach, whether Form A or Form B, is most appropriate or optimal. We solely want to emphasize two points:

- The principal underlying objective of the CSA in whichever approach it adopts should be to *promote efficiency* in the capital markets. As such, the CSA should avoid unnecessary or unbeneficial burdens on listed companies, while allowing for a reasonable degree of comparability of the disclosure provided by issuers across Canada. Consistent with the CSA's mandate to harmonize regulation, the CSA should work with the Canadian provincial and territorial securities regulators to seek unanimity in the approach adopted across the nation. Consider, for example, adopting a hybrid approach incorporating a mixture of Form A and Form B.

- The CSA should be encouraging listed issuers to provide *meaningful disclosure*. We caution against an overly rigid or overly formalized approach that might steer issuers

> toward a mere "box checking" exercise, as this can dilute or oversimplify the diversity information being provided to investors. It may also encourage only superficial compliance and therefore be counterproductive to the policy goals of diversity disclosure. By contrast, capital markets and stakeholders are likely be better served by an approach that allows issuers flexibility to tailor diversity disclosure to their particular business, history, ambitions and strategy. We encourage the CSA to continue their work with the objective of reaching the best compromise between achieving such level of flexibility and providing investors with the baseline information they need.

Overall, given the complexity of the ESG landscape (e.g., various available ESG-related reporting frameworks and standards) that issuers and investors currently face, reasonable harmonization of the disclosure regime at the national level would help avoid an additional layer of complication. Such harmonization would also reduce reporting costs for issuers as well as promote better understanding by investors when reviewing diversity disclosure.

We add two ancillary comments. First, the approach chosen should be compatible with the current requirements under the *Canada Business Corporations Act* (CBCA) – even if different – so that CBCA issuers will not be penalized or unduly disadvantaged under the new rules. In other words, the requirements should not be contradictory. Second, we believe that reporting data in a tabular format (although *not necessarily a standardized* tabular format) may increase efficiency when assessing the information disclosed and is therefore worthy of consideration.

Separately, we note the proposed removal of current Section 6(c) of Form 58-101F1 with respect to the responsibilities and powers of the nomination committee. Why is this the case while the description of the compensation committee's responsibilities and powers would remain required under Section 7(c). This removal also appears to be in contradiction with the addition of a provision in the Proposed Changes to National Policy 58-201 *Corporate Governance Guidelines* indicating which responsibilities should be under the nomination committee's purview.

With respect to the section entitled "Diversity and Targets" in the Proposed Changes to National Policy 58-201 *Corporate Governance Guidelines*, we request that the CSA consider supplementing the guidelines to also address the monitoring of progress towards any targets established by an issuer's board of directors.

As to the application of the Proposed Amendments to venture issuers, the current securities disclosure regime already provides for differentiation between venture and non-venture issuers. This regime recognizes that additional reporting requirements applicable to non-venture issuers may be too burdensome for smaller issuers. Accordingly, continuation of that current framework which differentiates the requirements for venture issuers would be appropriate with regards to the Proposed Amendments.

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Thank you in advance for your consideration of the above commentary. Should you have any questions or wish to discuss the above commentary, please contact the undersigned.

Yours truly,

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