

September 29, 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

Attention:

Me Phillippe Lebel
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Executive Director, Legal Affairs
Autorité des marchés financiers
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The Secretary
Ontario Securities Commission

comments@osc.gov.on.ca

Re: 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

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments on the CSA's Notice and Request for Comment: Proposed Amendments to Form 58-101F1 – *Corporate Governance Disclosure* (**58-101F1**) of National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (**NI 58-101**) and proposed changes to National Policy 58-201 – *Corporate Governance Disclosure Guidelines* (**NP 58-201**); collectively, the **Amendments** or the **Consultation**.

PMAC represents over 310 investment management firms registered to do business in Canada as portfolio managers (**PMs**) with the members of the Canadian Securities Administrators (**CSA**). PMAC's members encompass both large and small firms and manage total assets in excess of \$3 trillion of assets as fiduciaries for institutional and private client portfolios. As of 2022, just under half (46%) of PMAC's members serve institutional clients. Although many of our members are both institutional investors and Canadian public companies, this letter is being submitted from our position as representing Canadian institutional asset managers (investors).

PMAC's mission statement is "advancing standards". We are consistently supportive of measures that elevate standards in the industry, enhance transparency, improve investor protection, and benefit the capital markets as a whole.

GENERAL COMMENTS

PMAC applauds the Amendments to improve diversity disclosure beyond the representation of women, the proposed changes that provide guidelines related to board nominations and the introduction of guidelines on board renewal and board diversity. Not only will enhanced disclosure help investors make more informed decisions, but it is likely to precipitate other outcomes that we believe are beneficial. These include removing barriers and improving diversity on boards of directors and in senior management, which we believe enhances the quality and effectiveness of boards and management teams. Especially in the Canadian social context, we believe that a diverse workforce representing a broad range of experience brings different perspectives, which improves corporate culture, decision-making and encourages innovation. This helps to reduce corporate risk and contributes to superior products and services that better respond to the needs of Canadian clients, which will attract additional capital to the Canadian economy and make Canada more competitive internationally. We believe these outcomes are in the best interest of corporations, our capital markets and society as a whole.

KEY RECOMMENDATIONS

1. Increase diversity disclosure beyond women

PMs require clear, comprehensive, standardized, and comparable information in order to make informed investment decisions and to meet their fiduciary obligations to their clients. This includes information with respect to diversity beyond women. PMAC members' investment strategies, and their commitments to various environmental, social and governance (ESG) programs and initiatives¹ require them to consider factors such as diversity when making investment decisions. We also believe that the

¹ Such as the 30% Club Canada Chapter, Canadian Investor Statement of Diversity & Inclusion, CFA Diversity, Equity and Inclusion Code, Investor Leadership Network and UN Principles for Responsible Investment.

current disclosure requirements with respect to women should specifically be maintained.

We recommend that the disclosure form include an area for issuers to document the number of individuals that have *not* made voluntary disclosure (using a “prefer not to say” label, for example). Not only will this improve the integrity of the data, but it may also reflect the issuer’s efforts to obtain the information, the corporate culture and effectiveness of its governance processes. It will help investors better understand the disclosure data and improve decision-making accordingly.

2. Provide information regarding Board nominations, renewal processes and executive officer positions

PMAC supports the disclosure of the skills and competencies used in the board skills matrix. This disclosure allows investors to better understand the relevance of the candidate’s skills to the business and helps to ensure that the nomination process considers relevant factors, thereby avoiding a “tick the box” approach and/or tokenism. Similar disclosure should be provided with respect to board nomination, renewal, executive officer appointments. We agree that this disclosure should be tied to diversity, and should include any written strategy, policies and measurable objectives relating to diversity.

3. Present the information as proposed in Form and Policy B with the addition of information regarding executive officer appointments

While PMAC favours the disclosure approach outlined in Form and Policy B, we believe that information should also be provided with respect to the appointment of executive officers, as is proposed for Form and Policy A. Form B will provide specific, decision-useful information to investors in a tabular format that we believe will improve the consistency and comparability of the information, assisting investors in their investment and proxy-voting decisions. We believe that Form B will also minimize burden for issuers given that the requirements are clear and specific, while maintaining sufficient flexibility for companies to add additional categories and information (such as education, skills and competencies) that may be relevant to their business. We are concerned that Form A will not provide the detailed and consistent information that investors need to make informed decisions and may lead to added uncertainty and costs.

4. Harmonize disclosure requirements across Canada

We stress the importance of the CSA adopting a harmonized approach to diversity disclosure in order to meet the needs of investors and reduce regulatory burden for issuers.

5. Review the disclosure requirements on a regular and frequent basis

As diversity disclosure needs continue to evolve, the enumerated groups in Form B will not always be representative of all groups that issuers and investors will consider important to board and executive officer composition. Moreover, the requirements should be considered in the context of evolving international and other disclosure standards. We therefore recommend that a schedule be established for the regular review of the policy and form, for example every 3-5 years.

6. Consultation and dialogue

We emphasize the importance of continued and on-going consultation and dialogue with stakeholders and organizations representing the enumerated groups, such as Indigenous Peoples, the LGBTQ2SI+ and disabled communities.

DISCUSSION

Increase diversity disclosure beyond women

As investors, our members' disclosure needs have evolved significantly since 2014. PMAC members' investment strategies, and their commitments to various ESG programs and initiatives require them to consider factors such as diversity when making investment decisions.

As noted above, we also believe that encouraging disclosure will have the benefit of increasing diversity at the senior levels of Canadian issuers, which we believe is in the best interests of these corporations and their stakeholders.

We note the OSC's comment that during the commission's 2021 consultations:

...stakeholders overwhelmingly supported expanding the current 2014 Requirements to include other underrepresented groups beyond women. Stakeholders noted that investors are actively seeking information about the representation of other diverse groups on boards and in executive officer positions, which many believe should be consistent with the CBCA and human rights legislation.

Currently, in order to obtain the information needed with respect to diversity, investors must devote resources to requesting or locating the necessary information and must make assumptions about whatever information they obtain. The information is often inconsistent and may be unreliable, making comparisons between issuers difficult. This includes information about issuers' approaches to diversity such as objectives they may have with respect to increasing diversity on boards and senior management positions. This due diligence exercise is very costly

and results in an uneven playing field, given that smaller PMs may not have the capacity and resources to conduct the detailed inquiry available to larger firms.

We agree that any personal disclosure by board members and executive management should be voluntary. PMAC believes that asking issuers to report on the voluntary self-disclosure by individuals as belonging to designated groups beyond women balances individual privacy rights against investor needs to understand the full scope of representation at the board level and within the executive management of an issuer.

We recommend that the disclosure form include an area for issuers to document the number of individuals that have *not* made voluntary disclosure. Not only will this improve the integrity of the data, it may also reflect the issuer's efforts to obtain the information, the corporate culture and effectiveness of its governance processes. It will help investors better understand the disclosure data and improve decision-making accordingly.

The CSA should also continue to report on the disclosure statistics (as it does for women on boards and in executive officer positions) and conduct research to examine the broader policy impact of the disclosure requirements.

Provide information regarding Board nominations, renewal processes and executive officer positions, including diversity.

PMAC agrees with the enhanced guidelines for all issuers and the proposed guidelines on board renewal and board diversity. Identifying and recruiting the most qualified candidates to corporate boards contributes to good corporate governance. We believe that creating and disclosing the skills and competencies used in the board skills matrix will allow investors to better understand the relevance of the candidate's skills to the business and will help to ensure that the nomination process considers relevant factors, thereby avoiding a "tick the box" approach and/or tokenism.

The inclusion of objectives for achieving diversity on the board and in executive officer positions is also important information for investors. The disclosure should be tied to diversity, including the groups enumerated in Form B, for board nomination, renewal, and executive officer appointments, and should include any written strategy, policies and objectives relating to diversity.

Present the information as proposed in Form and Policy B with the addition of information regarding executive officer appointments

Subject to our comments below, PMAC favours the disclosure approach outlined in Form and Policy B, with the addition of disclosures with respect to executive officer appointments. Form B will provide, specific, decision-useful information to investors in a tabular format that we believe will improve the consistency and comparability of

the information, which will assist investors in their investment and proxy-voting decisions.

The Consultation indicates that approximately 30% of TSX-listed issuers are incorporated under the *Business Corporations Act* (Canada) (CBCA) and, as such, are already collecting data and making certain disclosure with respect to the designated groups proposed under Form and Policy B, with the exception of LGBTQ2SI+. It is our understanding that the CBCA may be amended to add this disclosure.

We believe that Form B will also minimize burden for issuers given that the requirements are clear and specific, while maintaining sufficient flexibility for companies to add additional categories and information (such as education, skills and competencies) that may be relevant to their business.

The concept of diversity is complex; we believe that the Form B approach should not be viewed as a ceiling, but a floor. As the dialogue and disclosure around diversity evolves, more flexibility with categories could be integrated into Form B to respond to nuances in the concept of diversity that take into account particular circumstances, and respond to evolving international disclosure standards. Disclosure approaches should also take into account the importance of intersectionality and distinguish designated groups that have more than one identity and typically experience a lack of inclusion. The disclosure must be meaningful and any potential for tokenism should be avoided.

Harmonize disclosure requirements across Canada

It is clear that all of the participating provinces took a thoughtful and considered approach to the proposed Amendments. While it is valuable to see the different rationale, perspective and approaches recommended in different regions, we stress the importance of the CSA adopting a harmonized approach to diversity disclosure in order to meet the needs of investors and reduce regulatory burden for issuers. The implementation of requirements that fracture the reporting framework across the country would lead to increased burden, lower quality information and a lack of comparability among issuers. This result would not be desirable for either investors or issuers.

Periodic review

It is also important to periodically review the Policy and Form, as concepts and understanding of diversity are rapidly evolving, as are disclosure standards within Canada and internationally. We recommend a review period of every 3-5 years.

Consultation and dialogue

We emphasize the importance of continued and on-going consultation and dialogue with stakeholders and organizations representing the enumerated groups, such as Indigenous Peoples, the LGBTQ2SI+ and disabled communities. For example, we believe the Roundtable discussion held by the Ontario Securities Commission (OSC) in September 2023 was a successful example of public discussion of the issues raised in the Consultation and their broader impact.

CONSULTATION QUESTIONS

Board nominations

1. The Proposed Amendments would require the disclosure of skills, knowledge, experience, competencies, and attributes of candidates that are considered and evaluated [for board nomination]. 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)*

We do not believe that the disclosure of skills, knowledge, experience, competencies and attributes of candidates that are considered and evaluated for board nomination gives rise to concerns regarding the disclosure of confidential or competitively sensitive information. As noted above, many issuers already disclose this information, and any diversity-related disclosure would be strictly voluntary.

PMAC believes that it is important for issuers to disclose the process used to identify and evaluate new candidates for board nomination. This includes whether there is a nominating committee, and whether there are written policies with respect to board nomination and diversity.

It is also good practice to disclose the skills, knowledge, experience, competencies, and attributes that issuers use to consider and evaluate candidates for the board. In its [Best Practices for Proxy Circular disclosure](#), the Canadian Coalition for Good Governance (CCGG) encourages issuers to disclose board competencies and skills so that stakeholders can better understand the relevance of the board matrix skills, including those that are diversity-related, to the issuer's business.

We agree with the proposed Form B requirement to disclose whether the nomination process considers the designated groups. This information would help investors understand the issuer's commitment to diversity, equity and inclusion and its approach to improving diversity at the board level. Although Form B would not mandate this disclosure with respect to executive officers, we believe that this information should be included; it would be useful to investors as it may demonstrate that the issuer is making efforts with respect to diversity, even if those efforts are

not yet reflected on its board and in its executive management ranks. It also would hold the issuer accountable when it comes to increasing diversity within its workforce.²

We believe that the current requirement to disclose whether the board has a nominating committee, and the responsibilities, powers, and operation of the nominating committee, should be maintained. It is best practice in terms of governance to have a nomination committee and its existence and operation is important information for investors.

We also believe that the Amendments respecting conflicts of interest will encourage issuers to consider potential conflicts and develop procedures to manage conflicts, resulting in better governance.

Approach to diversity

2. [The CSA] 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?

We believe that Form B represents the best way to deliver diversity-related information to investors. As investors, PMAC's members are looking for decision-useful, comparable, consistent, verifiable, comprehensive, and standardized information. We believe that prescribing the specific groups in respect of which issuers are required to make disclosure, beyond women, will encourage issuers to improve representation of these groups on their boards of directors, and will allow investors and the public to monitor their progress in this regard.

The tabular presentation format of the disclosure proposed in Form B will assist investors and the public to obtain rigorous data, metrics, plans and objectives on diversity and make an "apples to apples" comparison between issuers with respect to the information that is consistent over time.

It is our view that not only will the enhanced disclosure help investors make more informed decisions, but it is likely to align with other reporting initiatives, allowing Canadian issuers operating internationally to better collect, structure and analyze data on diversity. Ultimately, this would make the Canadian economy more competitive in the global capital markets.

² In addition, we note that the International Sustainability Standards Board (ISSB) has issued inaugural standards, including S1 General Requirements for Sustainability-related disclosures, which are intended to establish a global baseline of sustainability reporting and designed for interoperability across jurisdictions. In its near-term agenda priorities, the ISSB asked the public whether it should begin researching disclosures with respect to diversity, equity and inclusion.

Which form best meets the needs of issuers in describing their approach to diversity at the board and executive officer level?

The more prescriptive nature of Form B will clarify and simplify the disclosure process for issuers. We believe it is desirable to harmonize the designated groups with the CBCA, with the addition of LGBTQ2SI+ persons (we understand that the CBCA may soon be amended to add LGBTQ2SI+ persons). Harmonization with the CBCA will reduce the disclosure burden for issuers. Form B provides issuers with sufficient flexibility to provide additional context and information with respect to the disclosures if necessary.

Do either of the approaches raise concerns for issuers?

- a. Issuers may have concerns that the diversity information is not readily available, or they may be concerned that their level of representation is falling short of expectations.

We believe that mandating specific disclosure with respect to the nomination process and representation of specific groups on boards and in executive management, beyond women, will provide issuers with an opportunity to engage with stakeholders including their boards, executive management, other employees, investors and the public on diversity, equity, and inclusion issues, which ultimately may enhance the corporate culture. “Groupthink” poses a serious risk for corporate boards of directors and may negatively affect the long-term value of issuers. Attracting and retaining a diverse workforce can lead to better decision-making, risk reduction, improved products and services, and can attract investment, all of which are in the corporations’ best interest.

Developing policies, guidelines, and objectives with respect to diversity, equity and inclusion is likely to improve diversity within the organization. Demonstrating awareness and sensitivity on these issues will encourage disclosure and dialogue. Provided the information is held in a secure sensitive manner, and aggregated to protect confidentiality, board members, management and employees will be more likely to voluntarily disclose the information.

- b. Issuers may be concerned that disclosure may give rise to legal, ethical or privacy considerations.

The requirement that diversity information be based on voluntary self-disclosure by directors and executive officers should sufficiently address legal, ethical and privacy concerns. We recommend that the disclosure form include

an area for issuers to document the number of individuals that have not made voluntary disclosure, so that investors can better understand the disclosure data.

We understand that for issuers operating internationally, there may be sensitivities with respect to diversity disclosure. We believe that a flexible “comply or explain” approach will allow issuers to explain the reasons why it may not be able to obtain the diversity information voluntarily, or why it would not be desirable to make the disclosure.

[Are there certain requirements in either form that you find preferable to the equivalent requirement in the other form? Please explain.](#)

Whereas Form A would require the same information on the diversity approach and objectives with respect to executive officer positions as would be required for the board, it appears that Form B would not require this disclosure. We agree with the British Columbia Securities Commission, the Alberta Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan and the Office of the Superintendent of Securities Northwest Territories that this disclosure should be included, as it would be beneficial for investors.

We do not believe that including the disclosure in Form B for the enumerated groups would pose a significant regulatory burden for issuers. Issuers are already required to “comply or explain” with respect to the consideration of women in executive officer appointments, and many issuers already make this disclosure with respect to other groups.

As noted above, we believe that Form B will provide specific, decision-useful information to investors in a tabular format that we believe will improve the consistency and comparability of the information, which will assist investors in their investment and proxy-voting decisions. We believe that tying the question regarding the issuer’s written policy respecting the nomination process and measurable objectives to the designated groups in Form B is the preferable approach.

We emphasize that the current disclosure requirements with respect to women should be maintained, and that it is desirable to expand the concept of diversity beyond women.

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)*

PMAC believes that the diversity approach and objectives information with respect to executive officers is useful to investors and the public. As noted above, we believe that a diverse workforce can lead to better corporate outcomes for the benefit of issuers, their communities and society. The diversity approach and objectives with respect to executive officers speaks to the corporate culture and the "pipeline" of talent an issuer is cultivating. It is also an important consideration for board succession planning. Many issuers already disclose this information and therefore we do not believe it to be competitively sensitive.

We therefore believe that disclosure of consideration of diversity when making executive officer appointments and in the issuer's approach to talent management would be beneficial and should be included in Form B.

4. Should issuers be required to disclose data about specified 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 "Approach to Diversity- Executive Officer Positions" in Annex A for a description of this proposed requirement)*

As noted above, PMAC supports the required disclosure of data about specified groups as proposed in Form B. We believe that this approach will improve the quality of the information provided and will encourage issuers to seek out board candidates from these under-represented groups. This requirement will align with federal and provincial human rights legislation, as well as international diversity-related standards. We are concerned that allowing issuers to select what information to provide could result in vague, lower-quality and potentially misleading disclosure, and could lead to "diversity-washing". A single harmonized set of disclosure expectations and uniform presentation of the information will avoid this outcome. This approach is similar to the CSA's approach to broader ESG and specific climate-related disclosures.

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.

We believe that the tabular presentation of the information will simplify the disclosure process for issuers. However, systems may need to be adapted to conform to the presentation format, which may take some investment of time and money by issuers. Issuers should also have the flexibility to add information or provide additional context to information that is presented in the table, as is the case with proposed Form B.

For investors, the more standardized and comparable the presentation of the reported data, the easier it will be for investors to understand and use the information in their decision-making processes. A uniform presentation of information will also make it easier for technology to be developed to assist with the reading and processing of information, as the use of technology in investment research increases.

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.

Other than as set out above with respect to the specified group LGBTQ2SI+ data, we believe that senior issuers are already very well positioned to disclose the data required under Form B and that this will not pose a material regulatory burden.

Application to venture issuers

7. Should [the CSA] consider developing similar disclosure requirements for venture issues 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.

Similar to the CSA's approach to proposed climate disclosure for issuers, we believe that it is appropriate to focus on senior issuers first and to allow venture issuers to learn from the disclosure of other, larger companies prior to consulting on whether to extend similar requirements to Canada's smaller publicly-traded companies. As was done with the NASDAQ board diversity rule, a staged implementation of the requirements could be considered. This could be achieved by allowing a transition period for companies listed on the TSX prior to a certain date, while requiring issuers listed in 2024 and beyond to comply immediately, and/or requiring larger cap issuers to comply first with a second set of smaller issuers to be subject to the disclosure requirements in the following year.

ADDITIONAL COMMENTS

PMAC again reiterates the importance of the CSA implementing a nationally harmonized corporate governance and diversity disclosure regime. Failure to harmonize the requirements will make it difficult for investors (and retail investors in particular) to understand the disclosure and will make the disclosure less reliable. As investing becomes more complex and more technology-driven, standardized, comparable, verifiable, comprehensive, and decision-useful information is essential for investors of all sizes and levels of sophistication.

CONCLUSION

Thank you for the opportunity to provide feedback on the Consultation. We appreciate the extension of the original comment period to allow for more meaningful and broad stakeholder engagement. We would be pleased to further discuss any of the feedback provided in this submission.

Sincerely,

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