

CSA SEEKS COMMENTS ON TWO NEW APPROACHES TO DIVERSITY DISCLOSURE

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The Canadian Securities Administrators (“**CSA**”) is seeking comments on the proposed amendments to the corporate governance disclosure rules and policies related to the diversity of directors and executive officers at public companies in Canada. The proposed amendments build on existing disclosure requirements for non-venture issuers outlined in Form 58-101F1 – *Corporate Governance Disclosure* (Form 58-101F1) of National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (NI 58-101) and propose changes to National Policy 58-201 – *Corporate Governance Guidelines* (NP 58-201) (collectively referred to as the “[Proposed Amendments](#)”).

Specifically, the CSA is soliciting feedback on two alternative approaches that reflect the provinces’ differing views on corporate governance disclosure. The two alternative proposals, “Form A” and “Form B”, have the same disclosure requirements for board nominations and renewals, and both require disclosure to go beyond the representation of women. However, the proposals under Form B are more robust. While Form A, endorsed by the Alberta, British Columbia, the Northwest Territories and Saskatchewan securities regulatory authorities, does not require a public company to disclose diversity numbers, Form B, which is endorsed by the Ontario securities regulator, mandates disclosure on specific “historically unrepresented groups.”

Nevertheless, if implemented, either approach would mandate non-venture issuers to provide enhanced and comprehensive disclosure on corporate governance. The public comment period ends on July 12, 2023.

Summary of the Amendments

Diversity Disclosure

As mentioned above, the existing disclosure requirements with respect to representation of women on boards and in C-suite positions have largely been maintained, however each of Form A and Form B contemplates different approaches to additional reporting associated with diversity.

Form A	Form B
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<p>Requires public issuers to disclose information regarding women and, if identified by the issuer, information regarding any identified groups (i.e. group of individuals with shared personal characteristic) that are part of the issuers' diversity strategy.</p>	<p>Requires disclosure of "designated groups" (i.e. persons who self-identify and voluntarily self-disclose as one or more of the following: Indigenous persons, LGBTQ2SI+ persons, and persons with disabilities, racialized persons, or women). This disclosure aligns with the disclosure requirements applicable to reporting issuers governed under the Canadian Business Corporations Act, with the addition of LGBTQ2SI+ persons. Please see McMillan's bulletin on Key Corporate Governance and Disclosure Developments in 2017 for more details.</p>
<p>Requires disclosure of the number and proportion of women on the board of directors and/or in C-suite positions, but maintains the current practice by not mandating disclosure in respect of any specific groups, other than women, unless data with respect to specific groups is collected by the reporting issuer.</p>	<p>Requires disclosure of demographic data for all designated groups.</p>
<p>Requires disclosure of the reporting issuer's strategy for achieving and/or maintaining diversity at the C-suite level.</p>	<p>Does not require reporting issuer to disclose the strategy for achieving diversity at the C-suite level.</p>
<p>Allows the reporting issuer to disclose data it chooses to collect, with respect to a specific group it identifies as being relevant for its diversity strategy, to be disclosed in a manner determined by the reporting issuer.</p>	<p>Requires that disclosure with respect to specified targets and demographic data be disclosed in a standardized tabular format, in order to facilitate ease of comparison for investors and collection of this data by securities regulators.</p>

Board Nomination and Renewal

With respect to board nominations and renewals, due to the growing recognition of the importance of board diversity, both Form A and Form B propose amendments that go beyond the current disclosure requirements, suggesting an increased emphasis on transparency and accountability. In that respect, each of, Form A and

Form B requires a board to disclose:

1. how it identifies and evaluates potential board candidates;
2. the written policy with respect to the director nomination process. If the board does not have written policy, an explanation of how the process is carried out. Form B requires additional disclosure on whether the written policy addresses the nomination of persons from designated groups;
3. the management of conflicts of interest that arise or could arise during the nomination process;
4. the use of a composition matrix outlining the board's current or desired mix of skills, knowledge, experience, competencies, and attributes, and disclosure of the same for candidates being evaluated; and
5. a description of the company succession planning and renewal mechanisms, including term limits.

Corporate Governance Guidelines

The Proposed Amendments include changes to NP 58-201 which provide suggested optimal, rather than mandatory, approaches regarding (i) the responsibilities of nominating committees; (ii) the written policy respecting the director nomination process; (iii) the use of a composition matrix; (iv) effective succession planning and the mechanism of board renewal, including term limits; (v) the written diversity policy and (vi) targets for achieving diversity on the board and in executive officer positions. Most of the proposed recommendations replicate governance practices that issuers typically adopt.

Conclusion

The CSA's proposed amendments to corporate governance disclosure rules and policies related to diversity, board nominations and board renewals are aimed at increasing transparency and accountability in corporate governance. The CSA is seeking public comment on the proposals, which are expected to provide enhanced, decision-useful information to investors. Stakeholders are invited to provide comments in writing on or before July 12, 2023.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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