

Multilateral CSA Notice of Publication and Request for Comment Proposed Amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices*

July 3, 2014

Introduction

The securities regulatory authorities in Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut (collectively, the **Participating Jurisdictions** or **we**) are publishing for a 60-day comment period proposed amendments to Form 58-101F1 Corporate Governance Disclosure (**Form 58-101F1**) of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **Proposed Amendments**).

The Proposed Amendments would require non-venture issuers to provide disclosure regarding the following matters on an annual basis:

- director term limits,
- policies regarding the representation of women on the board,
- the board's or nominating committee's consideration of the representation of women in the director identification and selection process,
- the issuer's consideration of the representation of women in executive officer positions when making executive officer appointments,
- targets regarding the representation of women on the board and in executive officer positions, and
- the number of women on the board and in executive officer positions.

The Proposed Amendments were previously published for comment by the Ontario Securities Commission (**OSC**) on January 16, 2014 for a ninety-day period ending on April 16, 2014. The comments received by the OSC on the Proposed Amendments are available at www.osc.gov.on.ca/en/24538.htm. Staff of the Participating Jurisdictions and the OSC are coordinating their efforts in developing proposals relating to the matters described herein.

The text of the Proposed Amendments is published in Appendix A to this notice and is also available on websites of the Participating Jurisdictions and the OSC, including:

www.lautorite.qc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca
nssc.novascotia.ca
www.msc.gov.mb.ca
www.osc.gov.on.ca

Substance and Purpose

The Proposed Amendments would require non-venture issuers to provide disclosure on an annual basis in the areas set out below relating to the representation of women on boards and in senior management. The Proposed Amendments would apply to all non-venture issuers reporting in the Participating Jurisdictions and in Ontario.

The Proposed Amendments are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in senior management of non-venture issuers. This transparency is intended to assist investors when making investment and voting decisions.

Background

The Participating Jurisdictions are publishing the Proposed Amendments in the context where gender diversity in decision-making functions is the subject of increased interest and debate in Canada and elsewhere. In recent years, numerous governments and regulators around the world have in particular been concerned by the under-representation of women on the boards of publicly-traded companies. Certain jurisdictions have adopted or are considering adopting guidelines and/or disclosure requirements regarding gender diversity, notably the United States, the United Kingdom, Australia and several European countries.

Summary of the Proposed Amendments

The Proposed Amendments would require disclosure regarding the representation of women on boards and in executive officer positions using a “comply or explain” approach. This is consistent with existing corporate governance disclosure requirements for non-venture issuers in Form 58-101F1. We think that corporate governance matters can effectively and flexibly be addressed with a “comply or explain” disclosure model.

A. Disclosure regarding director term limits or an explanation for the absence of such limits

We think that regular renewal of board membership contributes to the effectiveness of a board. Director term limits can promote an appropriate level of board renewal and in doing so provide opportunities for qualified board candidates, including those who are women.

We also recognize that there is a risk of loss of director independence where a director serves many years on a board and that in turn may compromise the board’s ability to effectively supervise and challenge management of the issuer. However, there are different views on the appropriate term limit for a director and that a “one size fits all” approach may not take into account the particular circumstances of each issuer and its board. As a result, we think that boards which adopt director term limits should have the flexibility to set limits which take into account their particular circumstances.

Therefore, we are not proposing mandatory director term limits. Proposed Item 10 of Form 58-101F1 would require that non-venture issuers disclose whether or not the issuer has adopted term limits for the directors on its board. If the issuer has not adopted term limits, it should explain why it has not.

B. Disclosure of policies regarding the representation of women on the board or an explanation for the absence of such policies

The ability to recruit qualified directors is critical to an effective board. We think that it is important to consider a broad pool of qualified directors when considering possible new board candidates. Corporate decision-making benefits from a diversity of opinions and viewpoints. This diversity is enhanced when leadership roles are filled with individuals who have different professional experience, education, skill and genders, as well as other individual qualities and attributes.

Proposed Item 11(a) of Form 58-101F1 would require that non-venture issuers disclose:

- whether the issuer has adopted a policy for the identification and nomination of women directors, or
- if the issuer has not adopted such a policy, why it has not.

If an issuer has adopted such a policy, proposed Item 11(b) of Form 58-101F1 would require the issuer to disclose:

- a short summary of its objectives and key provisions,
- the measures taken to ensure that the policy has been implemented effectively,
- annual and cumulative progress by the issuer on achieving the objectives of the policy, and
- whether and, if so how, the board or its nominating committee measures the effectiveness of the policy.

C. Disclosure of the board's or nominating committee's consideration of the representation of women in the director identification and selection process or an explanation for the absence of such consideration

We think that the process of board appointments should be more transparent. NI 58-101 already contains a disclosure requirement to describe the process by which the board identifies new candidates for board nominations. Issuers, however, are not generally disclosing whether the representation of women on the board is considered in the director identification and selection process in response to this requirement. In our view, issuers should disclose meaningful information about the appointment process and, in particular, how the board or nominating committee addresses gender diversity in the director identification and selection process. That disclosure should include the steps the board or the nominating committee takes to ensure that a diverse range of candidates is considered. Those steps could include, among other things, whether the issuer uses external recruitment firms for the identification of board candidates, relies on the existing board members' personal networks and whether the existing number of women on the board is a factor considered in assessing potential new board candidates.

Proposed Item 12 of Form 58-101F1 would require that non-venture issuers disclose:

- whether and, if so how, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, or
- if the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, the issuer's reasons for not doing so.

D. Disclosure of the consideration given to the representation of women in executive officer positions when making executive officer appointments or an explanation for the absence of such consideration

A focus on diversity in employee recruitment, development and promotion can facilitate identifying, developing and promoting employees with a broad range of skills and expertise needed to execute an issuer's corporate goals. Intentionally accessing a broad pool of talent, including women, will encourage the development of a more diverse range of candidates qualified for executive officer positions, which may in turn lead to improved direction, leadership, growth and performance of reporting issuers.

We believe that investors and other stakeholders would benefit from having greater transparency into whether an issuer considers the representation of women in executive officer positions when making executive officer appointments as this may be representative of the issuer's approach to diversity more generally.

Proposed Item 13 of Form 58-101F1 would require that non-venture issuers disclose:

- whether and, if so how, the issuer considers the level of representation of women in executive officer positions when making executive officer appointments, or
- if the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, the issuer's reasons for not doing so.

E. Disclosure of targets adopted regarding the representation of women on the board and in executive officer positions or an explanation for the absence of such targets

We think that aspirational targets adopted by issuers can result in a higher level of representation of women on boards and in executive officer positions. We also believe that it is the interest of issuers to set their own targets so that they can effect change through means best suited to their particular circumstances. In our view, a "target" would mean a number or percentage, or a range of numbers and percentages, adopted by the issuer, of women on the issuer's board or in executive officer positions of the issuer by a specific date. Proposed Item 14(a) of Form 58-101F1 incorporates this definition of a "target".

Transparency regarding the targets set by issuers to investors and other stakeholders will provide for some level of accountability by issuers and that in turn may result in measurable change in the levels of representation of women on boards and in executive officer positions.

Proposed Item 14(b) of Form 58-101F1 would require non-venture issuers to disclose whether the issuer has adopted target(s) regarding women on the issuer's board and if not, why it has not.

Proposed Item 14(c) of Form 58-101F1 would require non-venture issuers to disclose whether the issuer has adopted target(s) regarding women in executive officer positions of the issuer and if not, why it has not.

If the issuer has adopted target(s) referred to in either proposed Item 14(b) or (c) of Form 58-101F1, proposed Item 14(d) of Form 58-101F1 would require non-venture issuers to disclose the annual and cumulative progress of the issuer in achieving its target(s).

F. Disclosure of the number of women on the board and in executive officer positions

We think that measurement is a critical component of our proposed disclosure model as reporting on an issuer's gender diversity profile can be an indication of the effectiveness of the policies and strategies referred to above and facilitates accountability by the issuer. This type of reporting also provides greater transparency to investors and other stakeholders and enables them to make comparisons among issuers.

Proposed Item 15 of Form 58-101F1 would require that non-venture issuers disclose:

- the number and proportion (in percentage terms) of directors on the issuer's board who are women, and
- the number and proportion (in percentage terms) of executive officers of the issuer, including all subsidiary entities of the issuer, who are women.

The Proposed Amendments also include an amendment to the Instructions to Form 58-101F1 to permit issuers to disclose any additional information that is relevant in order to understand the context of the information provided in response to proposed Item 15 of Form 58-101F1.

Request for Comments

We welcome your comments on the Proposed Amendments.

In addition to any general comments you may have, we also invite comments on the following specific questions:

1. Are the scope and content of the Proposed Amendments appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.
2. Should the Proposed Amendments be phased in, with only larger non-venture issuers being required to comply with them initially? If so, which issuers should be required to comply with the Proposed Amendments initially?
3. Do you agree that the Proposed Amendments requiring non-venture issuers to provide disclosure regarding term limits will encourage an appropriate level of board renewal? What other measures do you think will encourage an appropriate level of board renewal?

4. In support of disclosure regarding director term limits, should there be greater transparency regarding the number of new directors appointed to an issuer's board and whether those new appointees are women?
5. Proposed Item 15(b) would require non-venture issuers to disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all subsidiary entities of the issuer, who are women.
 - a. Do you agree with the proposed disclosure of this information for all subsidiary entities of the issuer?
 - b. Are there any potential challenges to collecting the information from all subsidiary entities of the issuer; if so, please explain.
 - c. Alternatively, should the proposed disclosure requirement be limited to include such information for only certain subsidiaries of the issuer? If so, please provide an explanation or suggestions as to how to potentially limit such information in order to result in disclosure that is beneficial to investors. For example, one option to determine which subsidiary entities to include (or exclude) for purposes of this disclosure could be to use the concept of a "major subsidiary" of an issuer (which is a defined term in NI 55-104 *Insider Reporting Requirements and Exemptions*).

Please submit your comments in writing on or before September 2, 2014. If you are not sending your comments by email, please send an electronic file containing the submissions (in Microsoft Word format).

Address your submission to the Participating Jurisdictions as follows:

Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Government of the Northwest Territories
Legal Registries Division, Department of Justice, Government of Nunavut

Deliver your comments **only** to the address below. Your comments will be distributed to the Participating Jurisdictions.

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the website of the *Autorité des marchés financiers* at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Questions

Please refer your questions to any of the following:

Autorité des marchés financiers
Martin Latulippe
Director, Continuous Disclosure
514 395-0337, ext. 4331
Martin.Latulippe@lautorite.qc.ca

Financial and Consumer Services Commission
(New Brunswick)
Ella-Jane Loomis
Legal Counsel, Securities
506 658-2602
ella-jane.loomis@fcnb.ca

Nova Scotia Securities Commission
Heidi Schedler
Enforcement Counsel
902 424-7810
SCHEDLHG@gov.ns.ca

*Office of the Superintendent of Securities,
Newfoundland and Labrador*
Don Boyles
Superintendent of Securities (by interim)
709 729-4501
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*Legal Registries Division, Department of
Justice, Government of Nunavut*
Louis Arki
Director, Legal Registries
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*Office of the Superintendent of Securities,
Government of the Northwest Territories*
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Manager, Securities & Corporate
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867 920-8984
donald_macdougall@gov.nt.ca

APPENDIX A
AMENDMENT INSTRUMENT
FOR
FORM 58-101F1 CORPORATE GOVERNANCE DISCLOSURE

1. **Form 58-101F1 Corporate Governance Disclosure is amended by this Instrument.**

2. **Form 58-101F1 is amended by adding the following after Item 9:**

10. *Term limits* (Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut only) – Disclose whether or not the issuer has adopted term limits for the directors on its board. If the issuer has not adopted term limits, disclose why it has not.
11. *Policies regarding the representation of women on the board* (Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut only) –
- (a) Disclose whether the issuer has adopted a policy for the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not.
 - (b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:
 - (i) a short summary of its objectives and key provisions,
 - (ii) the measures taken to ensure that the policy has been implemented effectively,
 - (iii) annual and cumulative progress by the issuer on achieving the objectives of the policy, and
 - (iv) whether and, if so how, the board or its nominating committee measures the effectiveness of the policy.
12. *Consideration of the representation of women in the director identification and selection process* (Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut only) – Disclose whether and, if so how, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer’s reasons for not doing so.
13. *Consideration given to the representation of women in executive officer appointments* (Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut only) –

Disclose whether and, if so how, the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.

14. *Issuer's targets regarding the representation of women on the board and in executive officer positions* (Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut only) –

- (a) For purposes of this Item, a “target” means a number or percentage, or a range of numbers and percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date.
- (b) Disclose whether the issuer has adopted target(s) regarding women on the issuer's board. If the issuer has not adopted such target(s), disclose why it has not.
- (c) Disclose whether the issuer has adopted target(s) regarding women in executive officer positions of the issuer. If the issuer has not adopted such target(s), disclose why it has not.
- (d) If the issuer has adopted target(s) referred to in either Item 14(b) or (c), disclose the annual and cumulative progress of the issuer in achieving its target(s).

15. *Number of women on the board and in executive officer positions* (Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut only) –

- (a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women.
- (b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all subsidiary entities of the issuer, who are women.

3. **Form 58-101F1 is amended by adding the following after the paragraph 3.1 in the Instructions:**

(4) An issuer may disclose any additional information that is relevant in order to understand the context of the information disclosed by the issuer under Item 15(a) or (b) of this Form.

(5) An issuer may incorporate information required to be disclosed under Items 10 to 15 by reference to another document. The issuer must clearly identify the reference

document or any excerpt of it that the issuer incorporates into the disclosure provided under Items 10 to 15. Unless the issuer has already filed the reference document or excerpt under its SEDAR profile, the issuer must file it at the same time as it files the document containing the disclosure required under this Form.

4. **This Instrument only applies to disclosure required to be prepared under Part 2 of National Instrument 58-101 *Disclosure of Corporate Governance Practices* and included in documents required to be prepared, filed, delivered or sent under National Instrument 51-102 *Continuous Disclosure Obligations* for periods relating to financial years ending on or after ●.**
5. **This Instrument comes into force on ●.**