



## NOTICE OF PUBLIC CONSULTATION

Consultation Paper on Diversity in the Capital Markets

**September 15, 2021**

On May 19, 2021, the Canadian Securities Administrators (CSA) announced that they will be conducting research and consultations to help determine whether, and how, the disclosure needs of Canadian investors, and corporate governance practices among public companies, have evolved since the gender diversity requirements (as set out in National Instrument 58-101 *Disclosure of Corporate Governance Practices*) were adopted.

As part of the consultation, the Nova Scotia Securities Commission and the New Brunswick Financial and Consumer Services Commission (FCNB) are seeking written comments to questions about the disclosure regime regarding diversity.

Your replies to the consultation questions will help determine whether, and how, the disclosure needs of Canadian investors, and corporate governance practices among public companies, have evolved since the “women on boards” disclosure requirements were first adopted in most CSA jurisdictions. The research and consultations are particularly important in light of the increasing attention being given to diversity in all segments of society, including business.

Diversity disclosure is receiving increased attention in the capital markets. Recently, the NASDAQ received approval from the U.S. Securities and Exchange Commission to require public companies listed on its exchange to provide additional diversity disclosure. As a result, this will affect the disclosure requirements of public companies listed on the NASDAQ. In the United Kingdom, the Financial Conduct Authority is requesting comments on annual disclosure requirements regarding gender and diversity targets as well as the make up of issuers’ boards of directors.

In Canada, distributing corporations organized under the *Canada Business Corporations Act* (the CBCA) are required to provide to shareholders at their annual general meetings, information about diversity in the senior management ranks and the composition of the board of directors.

In light of these developments, we are seeking input regarding diversity and general corporate governance disclosure, whether additional disclosure requirements may be necessary, how investors may use such information, and the impact on public companies to disclose the data.

Please provide your written comments by November 15, 2021 to:

New Brunswick:

Financial and Consumer Services Commission  
300-85 rue Charlotte Street  
Saint John, NB E2L 2J2  
Fax: (506) 658-3059  
Ella-Jane Loomis, Senior Legal Counsel: [Ella-Jane.Loomis@fcnb.ca](mailto:Ella-Jane.Loomis@fcnb.ca)

Nova Scotia:

Nova Scotia Securities Commission  
5251 Duke Street, Suite 400  
Halifax, N.S. B3J 1P3

Valerie Tracy, Securities Analyst: [Valerie.Tracy@novascotia.ca](mailto:Valerie.Tracy@novascotia.ca)  
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We cannot keep submissions confidential. Any submission received during the comment period may be disclosed in accordance with provincial legislation. A summary of the written comments received during the comment period may be published. 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.

We welcome your comments on the following discussion questions:

#### **A. General**

1. Is there a need for changes to the existing corporate governance regulatory regime that the CSA has put in place, or for other measures or further regulatory action by Canadian securities regulators in this area? For example, should we consider introducing additional corporate governance guidelines or additional or revised requirements?
2. The current regime only applies to non-venture (i.e. TSX-listed) issuers. Should the regime also apply to venture issuers?

#### **B. Use of Information by Investors**

3. The existing disclosure requirements are focused on the representation of women on boards and in executive officer positions. Do investors need information on diversity more broadly and, if so, what specific information are investors seeking? For example, do investors find the broader diversity disclosure required under the CBCA to be useful?

4. How is information relating to *gender* diversity incorporated into investors' investment and voting decisions or used to engage with issuers? How is information relating to *broader* diversity incorporated into investors' investment and voting decisions or used to engage with issuers?
5. If your organization has formal voting guidelines, do your proxy voting guidelines consider gender or diversity more broadly? If they consider diversity more broadly, what aspects of diversity do you consider?
6. Do issuers' diversity policies and practices help inform investment and voting decisions and, if so, how?

#### **C. Issuer Policies with Respect to the Director Nomination Process**

7. Does your organization have a diversity policy, and, if so, does it address gender or diversity more broadly? Why has your organization chosen that approach? Are diversity policies with respect to the director nomination process an effective way to achieve diversity on a board?
8. Have your board and executive recruitment practices changed in recent years and, if so, how?

#### **D. Diversity Data**

9. How can broader diversity data be collected in compliance with privacy laws? Are there other challenges in gathering data and providing disclosure in relation to board and executive diversity more broadly?
10. Are there benefits or detriments to issuers having to track different types of diversity? Are you aware of issuers using any of the disclosure data for their own purposes (e.g. benchmarking against peers)?

#### **E. Targets for Boards and Executives**

11. Are targets an effective mechanism for achieving diversity on boards and in executive roles? What are the benefits and challenges associated with targets?
12. If you think that targets are an effective mechanism for achieving diversity on boards and in executive roles:
  - a) Should recommended targets be set by the securities regulators?
  - b) What would be an appropriate target or targets for various groups? Should the target or targets vary by sector or size of issuer?
  - c) What is an appropriate length of time for an issuer to achieve a target?

#### **F. Term Limits for Directors**

13. Are director term limits an effective mechanism for achieving board renewal? What are the benefits and challenges associated with term limits?

14. If you think that term limits are an effective mechanism for achieving board renewal:
- a) Should recommended term limits be set by the securities regulators?
  - b) What would be an appropriate term limit? Does it vary by sector or size of issuer?
  - c) How could term limits work in the context of family-owned or controlled businesses?
  - d) What is an appropriate length of time for an issuer to implement term limits?