

## 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](http://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](http://www.lautorite.qc.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)  
[www.osc.gov.on.ca](http://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*).

#### *Authority for Amendments*

The following provisions of The Securities Act, 1988 (Saskatchewan) (the Act) provide the Financial and Consumer Affairs Authority of Saskatchewan (the Authority) with the authority to adopt the proposed amendments:

- Paragraph 154(1)(r) of the Act authorizes the Authority to make regulations governing disclosure obligations pursuant to Parts XIV (Continuous Disclosure) and XV (Proxies and Proxy Solicitation) and the regulations.
- Paragraph 154(1)(u) of the Act authorizes the Authority to make regulations requiring registered holders or other persons or companies on behalf of whom the securities are held to comply, in whole or in part, with Part XIV and Part XV, including varying the application of those Parts to reporting issuers, recognized clearing agencies, registered holders, registrants and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders by prescribing additional requirements.
- Paragraph 154(1)(ii) of the Act authorizes the Authority to make regulations respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required pursuant to or governed by the Act, and the regulations and all documents determined by the regulations to be ancillary to the documents.

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](http://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

*Financial and Consumer Affairs Authority of Saskatchewan*  
Tony Herdzik  
Deputy Director – Corporate Finance  
306 787-5849

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  
dboyles@gov.nl.ca

*Legal Registries Division, Department of  
Justice, Government of Nunavut*

Louis Arki  
Director, Legal Registries  
867 975-6587  
larki@gov.nu.ca

tony.herdzik@gov.sk.ca

*Manitoba Securities Commission*

Wayne Bridgeman  
Acting Deputy Director – Corporate Finance  
204 945-4905  
[wayne.bridgeman@gov.mb.ca](mailto:wayne.bridgeman@gov.mb.ca)

*Office of the Superintendent of Securities,  
Government of the Northwest Territories*

Donn MacDougall  
Manager, Securities & Corporate  
Legal Registries  
867 920-8984  
[donald\\_macdougall@gov.nt.ca](mailto:donald_macdougall@gov.nt.ca)