

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

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Sent via Email

Dear Sirs & Mesdames,

RE: CSA Notice and Request for Comment – Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices (Form 58-101F1) and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines (NP 58-201) (collectively, the Amendments)

Ontario Teachers' Pension Plan Board (Ontario Teachers') welcomes the opportunity to provide our comments to the Canadian Securities Administrators (CSA) on the proposed amendments to Form 58-101F1 and NP 58-201.

With CAD\$249.8 billion of net assets (as of June 30, 2023), Ontario Teachers' is Canada's largest single-profession pension plan, managing the pensions of 336,000 active and retired teachers in the province of Ontario. We believe that "good governance is good business" and through a thoughtful and pragmatic approach we have built a reputation as a global leader in promoting effective boards and governance in companies and across markets.

GENERAL COMMENTS

We agree with the CSA that the feedback received on prior diversity consultations affirms that diversity on boards and in executive officer positions is a critical component of good corporate governance and an important consideration in investment and voting decisions. As a result, there is not only strong investor support, but also an imperative, to expand the existing disclosure regime beyond gender diversity.

Moreover, we agree with the CSA's commitment to ensuring the Amendments provide investors with the information they need to make informed investment and voting decisions and we support the main objectives outlined in the Amendments: to increase transparency, provide investors with decision-useful information and to provide guidance to issuers on corporate governance related practices to board nominations, board renewal and diversity.

We acknowledge that disclosures of diversity beyond gender relies on self-disclosure. We recognize there can be challenges with voluntary self-disclosure and expect these will be addressed over time by building inclusive corporate cultures that provide employees and directors with a safe environment to self-identify. Until that time, we recognize that whatever Amendments the CSA adopts there may be limitations to the completeness of data beyond gender disclosure. Regardless of the limitations, we believe the existing disclosure regime must move beyond gender, particularly if the objectives of the Amendments are to be met. In addition, the recent experience in Canadian gender diversity disclosure requirements shows us that a less prescriptive regulatory approach to diversity disclosure is not as effective in achieving the desired results in a timely manner.

ONTARIO TEACHERS' SUPPORT ADOPTING FORM B

The adoption of FORM B provides the best opportunity to meet the main goals of the Amendments, by providing investors with decision-useful information and the transparency they need to make informed investment and voting decisions. Following are comments to support our view.

a. FORM B ensures investors will receive consistent and comparable disclosures

Investment decision-making and stewardship activities, which include monitoring, proxy voting and engagement, rely on information that is accessible, complete, consistent and comparable. The tabular format of FORM B with reporting against a set of common designated groups delivers reliable and useful information as all reporting issuers disclose data in a similar format and detail. Adopting FORM A may lead to disclosures that are inconsistent, incomplete and/or dissimilar across reporting issuers which runs contrary to the CSA's stated commitment and objectives of the Amendments.

The FORM B reporting against the specified designated groups (i.e., designated groups identified under the *Canadian Business Corporations Act* (CBCA) plus LGBTQ2SI+) provides a transparent

and consistent reporting framework aligned with current legal definitions. The result is a more common diversity reporting regime across all Canadian issuers.

The voluntary disclosure of groups proposed in FORM A would likely lead to inconsistency and lack of transparency given the varying definitions of diversity that could potentially be disclosed. This would bring added burden to investors while not enhancing the quality of the disclosure.

The consistency in FORM B reporting of targets (if any) and other measurable goals are more comprehensive than the disclosure requirements of FORM A. As a result, FORM B provides the information necessary for investors to assess and monitor issuers' intentions and timeframe to address diversity beyond gender. This information informs investment and stewardship decisions.

It should be noted that FORM B does not propose issuers adopt a particular quota, target or diversity strategy. Rather, it seeks to provide investors decision-useful information needed to assess an issuer's commitment and progress on diversity in a transparent, consistent and comparable manner not provided for in FORM A.

b. FORM B does not encourage a "tick the box" approach

Ontario Teachers' recognizes some commentators may favour FORM A because the designated groups identified in FORM B encourages a "tick the box" approach to diversity. We believe otherwise.

Adopting FORM B disclosure is less likely to lead to a "tick the box" exercise, as there is no expectation requiring representation from each of the designated groups nor should the designated groups be restricted to those currently identified in FORM B.

We understand and expect not all boards will have individuals who identify in each of the groups. Boards will likely have director representation in some, but not necessarily all, the designated groups listed in FORM B. The FORM B requirement of a written strategy to "*focus on a transparent articulation of the issuer's approach to diversity and the desired objectives*" provides the opportunity for an issuer to explain their diversity approach and how their diversity mix is appropriate for their circumstance. In our view the opportunity to provide such a narrative does not equate with a "tick the box" approach.

c. FORM B should allow for flexibility in defining designated groups

We recognize that some commentators may argue that the designated groups identified in FORM B may place arbitrary limits on how issuers incorporate diversity into their board and senior management. We understand diversity is evolving and that the designated groups identified in FORM B may be incomplete. Therefore, we recommend FORM B be amended to establish the current list of designated groups as a minimum requirement and provide issuers with the flexibility to expand the designated groups provided they include the required definition of the group.

d. Strategy and governance are integrated into disclosure under FORM B

By requiring answers to specific questions, FORM B allows for a greater reflection on governance, the integration of diversity into strategy and the means to achieve greater diversity. FORM A does not provide this guidance which may lead to more boilerplate/generic disclosures that lack the transparency and completeness that investors look for to assess how diversity fits into a company's strategy.

e. FORM B provides the basis for applying current and future proxy voting guidelines on diversity beyond gender

FORM B better achieves CSA's commitment that the Amendments provide investors with the information needed to make informed proxy voting decisions. The completeness, consistency and comparability of the FORM B disclosures allows investors to develop and execute proxy voting guidelines (now or in the future) that support an informed and pragmatic approach to voting. Furthermore, FORM B reporting allows investors to accurately assess year-over-year progress on diversity, resulting in a more effective monitoring of an issuer's progress on diversity.

f. FORM B best aligns with existing and future diversity disclosure regimes

Canadian companies operate within the global market and the disclosure associated with FORM B better positions Canadian issuers vis-à-vis their UK counterparts and those in the US, particularly given the NASDAQ [diversity] requirements and the increase in the number of US companies voluntarily reporting their EEO-1 data. It is our view that we will continue to see advancement in disclosure of diversity beyond gender and the FORM B Amendments are the logical next step in the evolution of diversity disclosure and better positions Canadian issuers relative to how we are expecting diversity disclosure to evolve in global markets. This is important because as global diversity disclosure expectations increase, the lack of completeness, consistency and compatibility of FORM A would not align with the expected evolution of diversity disclosure, putting Canadian issuers at a disadvantage and potentially creating doubt as to the extent to which Canadian capital markets value diversity.

g. FORM A creates an unintended burden for issuers and investors

We acknowledge that the CSA recognizes that neither FORM A nor FORM B increases regulatory burden. However, the adoption of FORM A creates disclosure inefficiencies which inevitably will cause unintended added burden or costs for issuers and investors. This burden arises when issuers choose diversity categories and disclosure formats that are not consistent across the market. Investors will require more information to execute their voting, make investment decisions and compare and assess progress on diversity. The unintended added burden or costs results through the efforts needed by investors to gather this information by contacting individual issuers to arrange one-on-one engagements with the board and/or management or to request additional information and through the need of issuers to respond to these requests.

h. FORM B should keep disclosure of executive officer diversity considerations

FORM B has excluded providing a narrative to explain how a company considers diversity when making executive officer appointments, a requirement included in the current gender diversity disclosure requirements. We believe this disclosure to be of importance to issuers and excluding this requirement lessens the transparency and the clarity of strategic approach otherwise provided in FORM B.

ROLE OF THE SECURITIES REGULATOR IN DEFINING DIVERSITY CATEGORIES

We note that FORM A's approach is based on a view that the CSA should not be selecting diversity categories, preferring to leave that to the issuer's determination, allowing issuers to decide what aspects of diversity are more beneficial to issuers. However, regulated disclosures are intended to provide investors decision-useful information, which is what the more detailed FORM B disclosures provide.

Allowing discretion to issuers in defining diversity runs counter to the CSA meeting the commitments and objectives set out for the Amendments, which include increasing transparency and providing investors with decision-useful information. Thus, like other disclosure requirements, there is a role for the CSA to provide guidance on the diversity attributes to report against.

Diversity reporting, like all other regulatory guidance, should be informed guidance. The designated groups under FORM B are not arbitrary, in that they are recognized by Canadian courts and under various legislations, including in the case of the CBCA disclosures, the *Canadian Employment Equity Act*. The use of these groupings establishes a common reporting framework that is essential in meeting the objectives of the Amendments. Furthermore, and as we mention above, there is no expectation that issuers must have representation in each of the designated groups and that issuers should retain flexibility should they wish to expand the list of designated groups.

CONCLUSION

Diversity – defined as the full spectrum of human attributes, perspectives, identities, and backgrounds – has positive impacts on the effectiveness of a board of directors and on the performance of an organization. As a pension plan, we have a responsibility to generate sufficient returns to provide retirement security to the teachers of Ontario, today and in the future. With this in mind, we constantly monitor our investments for an appropriate demonstration of a commitment to diversity across all its varied attributes. To effectively and efficiently assess and monitor diversity requires issuers to provide clear, complete, consistent and comparable information. We have reviewed the Amendments and believe that FORM B is the most practical option in this regard.

We thank you for the opportunity to provide our comments. We hope you find them informative and useful.

Sincerely,

A handwritten signature in black ink, appearing to read "Gill Brown", with a stylized flourish at the end.

Gillian Brown
Executive Managing Director, Capital Markets