The Canadian Advocacy Council for Canadian CFA Institute Societies
ADVOCATING THE CFA INSTITUTE'S CODE OF ETHICS AND STANDARDS

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BY EMAIL

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Dear Sirs/Mesdames:

Re: BC Notice 2018/03 - Consultation on Disclosure Requirements in National Instrument 58-101 *Disclosure of Corporate Governance Practices* relating to Women on Boards and in Executive Officer Positions (the "Notice")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Notice. The CAC has made board diversity, gender balance and sound corporate governance a priority. Across the country, CFA societies hold *Women in Investment Management* events with the aim of improving investor outcomes by encouraging diversity in the profession. While gender balance is not the sole focus of diversity, we generally believe that this initial focus will yield results applicable to other dimensions of diversity.

The CAC does not favour either an exclusively principles-based nor exclusively rules- based approach to corporate governance. The CAC recognizes the importance of public consultation with respect to this Notice because it continues to view women on boards and in executive officer positions, and more generally, boards with members of a diverse set of backgrounds, expertise and perspectives, as a key pillar to the capital markets. Further, the CAC appreciates that diverse boards are likely to improve independence from management, better mitigate conflicts of interest, and ensure that board members are better able to debate a number of positions in complex financial transactions and other activities. We are also convinced that diverse boards lead to greater talent

[1]The CAC represents more than 15,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 155,000 members in 165 countries, including more than 148,900 CFA charterholders and 149 member societies. For more information, visit www.cfainstitute.org.

selection, higher quality boards, more purposeful representation and mitigate against groupthink. Further, our comments work well with the recent CSA Consultation Paper 52-404 - *Approach to Director and Audit Committee Member Independence*. Increasing board diversity could reduce the difficulty some market participants have expressed with respect to finding independent directors.

Much research has been done on the value of gender diversity. In a publication relating to Women in Investment Management, CFA Institute notes that studies have shown that companies with the most women on boards outperform those with the least women on boards by 26% on return of invested capital, the top quartile group of companies with the highest share of women had a 41% higher return on equity than the group with no women, and the more gender diverse companies exceed by 56% the group with no women in terms of operating results.[3] Further, there have been studies that appear to show that companies with high ESG (environmental, social & governance) scores that have diverse boards and policies on diversity and women in management, experience less price and earnings volatility and a higher return on equity over companies with lower ESG scores.[4]

We would like to make the following comments with respect to each of the questions raised in the Notice.

1. *Please discuss any experiences and challenges over the past three years with providing the information mandated by the Disclosure Requirements.*

   We are not aware of any specific challenges faced by non-venture issuers with respect to complying with the Disclosure Requirements summarized in the Notice. However, we query whether disclosure is sufficient to increase representation of women on boards or whether there are other mechanisms that regulators can implement such as encouraging companies to make best efforts to connect with industry associations that are focused on women seeking board positions. In addition, the Disclosure Requirements could be enhanced to include other metrics of board diversity that reflect the wider stakeholder community, not solely based on gender.

2. *What are the benefits of the Disclosure Requirements?*

   We understand that the Disclosure Requirements have placed pressure on management and boards to develop gender diversity policies and turn their time and attention to the issue in order to satisfy the Disclosure Requirements.

   We recognize that the Disclosure Requirements have led to some improvement in the representation of women on boards. In particular, certain participating

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[3] Credit Suisse Research Institute, "The CS Gender 3000: Women in Senior Management" (September 2014); Catalyst, "The Bottom Line: Corporate Performance and Women's Representation on Boards (2004–2008)" (1 March 2011) and Sandrine Devillard, Sandra Sancier-Sultan, and Charlotte Werner, "Why Gender Diversity at the Top Remains a Challenge," McKinsey Quarterly (April 2014).
[4] Bank of America Merrill Lynch *Environmental, Social & Governance (ESG) Women: the X-factor* (7 March 2018) at p. 5.

jurisdictions noted in their review that the percentage of issuers with at least one woman on their board increased from 49% to 61% between 2015 to 2017. Nevertheless, there is still a lot of room for improvement since the percentage of board seats occupied by women overall is only at 14%.[5]

3. *With respect to how investors use the information provided under the Disclosure Requirements:*
   - *(a) Are the Disclosure Requirements providing investors with the information necessary to inform their investment and voting decisions? Are there any requirements that are not useful for such decision-making?*
   - *(b) How is information relating to gender diversity in the Disclosure Requirements incorporated into investors' investment and voting decisions? Do investors have formalized voting guidelines related to gender diversity?*

The information provided pursuant to the Disclosure Requirements raises awareness about board diversity and applies pressure on issuers to turn their mind to the issue. However, we query whether the Disclosure Requirements alone are sufficient to inform people's voting and investment decisions, from an investment management perspective, other than investors that have as part of their mandate a socially responsible investing focus. Research undertaken by CFA Institute shows that retail investors and institutional investors view gender diversity differently. In particular, 55% of institutional investors seem convinced that mixed gender teams lead to better investment performance results while only 25% of retail investors hold such view[6]. In our opinion, it would be valuable if regulators implemented mechanisms by which retail investors could be better educated on the requirements and statistics relating to board diversity with a view to making diversity a factor in their investment decision-making process. For example, funds could be used specifically to promote women leadership.

4. *With respect to corporate governance guidelines:*
   - *(a) Should Canadian securities regulators develop and implement corporate governance guidelines (similar to the guidelines in NP 58-201) regarding gender diversity-related governance practices, such as board policies regarding the representation of women, board renewal mechanisms and targets?*
   - *(b) There are currently guidelines regarding the nomination of directors in NP 58- 201. Are the existing guidelines in NP 58-201 on the director*

[5] See CSA Multilateral Staff Notice 58-309 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices*, 2017 at http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20171005_58-309_staff-review-women-on-boards.htm.

[6] CFA Institute "Study on Gender Diversity" (2018) unpublished.

nomination process sufficient, or would providing more specific guidelines be appropriate?

We believe regulators should develop and implement corporate governance guidelines regarding gender diversity related governance practices. In addition, regulators should encourage board term limits, as it could lead to greater diversity given the frequency of changes in the composition of the board. Board diversity should also be a factor in board succession plans. Boards need to be composed of members of different backgrounds and experiences that reflect the greater stakeholder communities. We understand that based on the experience of other countries that have imposed other requirements, such as gender quotas on boards, that it may be too early to conclusively determine whether such alternative methods are more effective that disclosure. However, we believe that the rewards outweigh the risks and that Canada should be leading the way on issues related to diversity and gender balance.

5. *Should issuers be required to disclose whether they have policies related to diversity other than gender? If so, should Canadian securities regulators develop and implement a corresponding corporate governance guideline regarding policies related to diversity other than gender?*

   Yes. Regulators may also want to focus on cognitive diversity (for example, differences in the way men and women categorize and see the world) and factors such as experience, backgrounds, cultures, and race, not solely gender. In particular, some studies have shown that effective teams are ones that have high cognitive diversity.[7]

6. *The Participating Jurisdictions may consider requiring issuers to present information in a standardized format for consistency and to permit staff to gather data in a more efficient manner. What are the benefits and challenges with providing the information required by the Disclosure Requirements in a prescribed format, such as a structured table or in an electronic format? Are there alternative ways to achieve consistency?*

   In our view, standardization ought to strike a delicate balance between putting unwieldly pressure on issuers against the benefits of consistency and comparison of information for investors. To the extent that standardization can be done without adding undue burden on issuers, a prescribed format would benefit investors as it would make information easier to find, analyze and influence investors' decisions.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider

[7] Credit Suisse, "Assembling a Dream Team: How Gender Diversity Can Strengthen Your Team" (May 2017).

our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for
Canadian CFA Institute Societies*

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