



PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

ASSOCIATION
CANADIENNE DES
PROSPECTEURS ET
ENTREPRENEURS

September 28, 2023

The Secretary
Ontario Securities Commission

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers

Re: Consultation on National Instrument 58-101 - Disclosure of Corporate Governance Practices

The Prospectors & Developers Association of Canada (PDAC) is the leading voice of the mineral exploration and development industry, which supports 719,000 people in direct and indirect employment, and contributes more than \$100 billion to Canada's GDP every year. The industry is also the largest private sector industrial employer on a proportional basis of Indigenous Peoples in Canada, and a key partner of Indigenous businesses.

Representing over 7,000 individual and corporate members both in Canada and around the world, PDAC's work centers on supporting a competitive, responsible, and sustainable mineral industry. The mineral industry is the largest group of public issuers in Canada, accounting for 1/3 of all companies listed on Canadian exchanges and more than half of the issuers listed on the TSX Venture exchange.

This letter provides several key recommendations to the Canadian Securities Administrators (CSA) regarding National Instrument 58-101 (NI 58-101). First, we recommend that CSA takes a hybrid approach between Form A and Form B. In such an approach, mandatory disclosure will be required on all designated groups (as per Form B), but the disclosure could be provided in a narrative format (As per Form A), in a relatively flexible and non-perspective manner that enables each issuer to best describe the unique context of diversity in which it operates. In addition, we think that venture issuers should be exempt from mandatory disclosure in the future, but we do encourage CSA to provide venture issuers with a voluntary scheme of disclosure as guidance.

In the accompanying appendix, we respond to the consultation questions that reflect diverse perspectives from issuers, investors and other professionals who make up PDAC committees.

Please find the attached Appendix with responses to CSA's questions and we welcome continued engagement as this consultation progresses. I welcome you to contact Jeff Killeen, PDAC's Director, Policy & Programs (jkilleen@pdac.ca) if there are questions or clarifications required on the contents of this letter.

Sincerely,

Lisa McDonald

Executive Director
Prospectors & Developers Association of Canada (PDAC)



Appendix A - Responses to Questions

Board nominations

- 1. The Proposed Amendments would require the disclosure of the skills, knowledge, experience, competencies and attributes of candidates that are considered and evaluated. Does this requirement raise concerns for issuers regarding disclosure of confidential or competitively sensitive information? Please explain. (Please refer to the table entitled “Board Nominations” in Annex A for a description of this proposed requirement)**

The requirement to disclose candidate details does raise some concerns with respect to both a public issuer and individual board candidates. In particular, in *Annex A* under Board Nominations it states the Proposed Amendments would require disclosure of, “*The skills, knowledge, experience, competencies and attributes of candidates that are considered when evaluating a candidate.*”

We emphasize that any requirements related to disclosure of personal attributes must be flexible as prescriptive disclosure could create compromising situations or privacy risks for individuals and barriers to inclusion of diverse candidates in the Canadian corporate board landscape. Individuals with particularly unique personal attributes may prefer not to publicly disclose such attributes while still providing unique perspective and skills to a company.

Prescriptive disclosure requirements could also expose information that is typically confidential and may represent a competitive advantage for a public issuer, such as strategic planning or critical skills, or any other information that if exposed would directly benefit competitors.

CSA must allow public issuers to present candidate information in a non-prescriptive way that will protect privacy, competitiveness and enable a public issuer to address unique situations.

Approach to diversity

- 2. We are consulting on two alternatives with respect to the requirement to provide disclosure on the approach to diversity (Form A and Form B). Which approach best meets the needs of investors for making investing and voting decisions? Which Form best meets the needs of issuers in describing their approach to diversity at the board and executive officer level? Do either of the approaches raise concerns for issuers? Are there certain requirements in either form that you find preferable to the equivalent requirement in the other form? Please explain.**

The approach to diversity expressed in Form B that requires issuers to look on various “designated groups” would be more informative for investors as it provides a more comprehensive perspective of the issuer. However, some aspects of Form B raise concerns. In our view, the requirement to establish targets and present this information in a tabular format is overly prescriptive and CSA should develop a hybrid model that combines elements from Form A and Form B.

For example, mineral industry issuers often work explicitly in regions with total absence of certain designated groups and an optimal Board may reflect representation from certain groups that greatly outweigh others. In such scenarios, targets and tables may unfairly impugn public issuers, particularly as issuer market valuations can be highly sensitive to passive trading and comparative data models. A narrative format provides greater breadth to explain the specific context of an issuer. Despite being well intentioned, in certain circumstances we anticipate that even if a narrative accompanies a tabular format, the market will ignore or underweight narrative and penalize a company for a perceived lack of progress on diversity.



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To address the ambivalence described above, we recommend CSA take a hybrid approach where a mandatory disclosure will be required on all designated groups (as per Form B) but a narrative format (as per Form A) will enable each issuer to best describe the unique context of diversity in which they operate.

- 3. Is information on the diversity approach and objectives of issuers with respect to executive officer positions useful for investors? Does this requirement raise concerns for issuers? Please explain. (Please refer to the table entitled “Approach to Diversity – Executive Officer Positions” in Annex A for a description of this proposed requirement)**

Information on diversity approach and objectives of issuers with respect to executive officer positions would provide some usefulness to investors as the positive impact of diversity among senior management on company performance is well established. Assessing the diversity approach and objectives of a company will help investors to understand the degree of corporate commitment and effort regarding these matters. That said, such a requirement could add regulatory burden.

- 4. Should issuers be required to disclose data about specified designated groups, consistent with the approach in Form B? Or should issuers be required to disclose data about women only and the identified groups for which they collect data, consistent with the approach in Form A? Please explain. (Please refer to the table entitled “Concept of Diversity” in Annex A for a description of “designated groups” and “identified group”)**

Consistent with the recommendations in [PDAC’s letter](#) to the Ontario Securities Commission (OSC) on June 23, 2021, our view is that non-venture issuers should be required to disclose data about the specified designated groups. The rationale for expanding the current mandatory disclosure requirements to other historically underrepresented groups is the notion that “*what’s get measured gets done*”. Therefore, we believe requiring disclosure on underrepresented groups will increase diversity of board and executive officer positions in Canada and as noted above, we recommend a hybrid approach between the two Forms.

- 5. Would it be beneficial to require reported data to be disclosed in a common tabular format? Does this requirement raise concerns for issuers? Please explain.**

Refer to our answer to Question 2.

- 6. For CBCA-incorporated issuers, are there issues or challenges in providing both CBCA disclosures and the disclosure proposed under either Form A or Form B? Please explain.**

CSA must ensure that any new required NI 58-101 disclosures do not trigger additional reporting burdens under CBCA disclosure requirements.

Application to venture issuers

- 7. Should we consider developing similar disclosure requirements for venture issuers in a second phase of this project? If so, should any changes be made to the proposed disclosure requirements to reflect the different stages of development and circumstances of venture issuers? Please explain.**

While we believe that it would be beneficial for venture issuers to provide as much disclosure as possible on their business, we think diversity related disclosure for venture issuers should remain voluntary.



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The mineral exploration and mining sector represents more than half of TSX Venture issuers. These are commonly very lean companies with small number of employees, often less than 10 employees in total and with small boards. From that perspective, venture issuers capacity to diversify boards and executive officer positions is much more limited, and a comparison of diversity objectives and performances between ventures and non-venture may only act to widen the valuation gap between these issuer cohorts.

In this context, CSA should look to develop a diversity guidance model or voluntary scheme for Venture issuers that enshrines flexibility and focuses on transitioning from the Venture to the main TSX exchange.