

**ASC NOTICE OF AMENDMENTS TO  
NATIONAL INSTRUMENT 58-101 *DISCLOSURE  
OF CORPORATE GOVERNANCE PRACTICES***

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**December 15, 2016**

**Introduction**

The Alberta Securities Commission (ASC) is implementing amendments (the **Amendments**) to National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) and Form 58-101F1 *Corporate Governance Disclosure* (**Form 58-101F1**). The Amendments, which were published for comment on September 14, 2016, will come into force on December 31, 2016.

The text of the Amendments is attached as Annex “A” to this Notice and will be available on the ASC’s website at: [www.albertasecurities.com](http://www.albertasecurities.com)

**Substance and purpose of the Amendments**

The Amendments adopt the disclosure requirements implemented by members of the Canadian Securities Administrators (CSA) other than the ASC, the British Columbia Securities Commission and the Prince Edward Island Office of the Superintendent of Securities on December 31, 2014.

The Amendments establish disclosure requirements with respect to the representation of women on the boards of directors and in executive officer positions of Alberta’s non-venture issuers as well as with respect to term limits or other mechanisms of board renewal for board directors.

The Amendments require non-venture reporting issuers to disclose the following information when filing Form 58-101F1:

1. whether or not the issuer has adopted a policy for the identification and nomination of women directors, and if so, a short summary of the policy’s objectives and key provisions;
2. whether or not the issuer’s board or nominating committee considers the level of representation of women on the board in identifying and nominating board candidates;
3. whether or not the issuer considers the level of representation of women in executive officer positions in the appointment of executive officers;
4. whether or not the issuer has adopted any targets (numbers or percentages) regarding women on the issuer’s board or in executive officer positions of the issuer, and if so, what those targets are;

5. the number and proportion (in percentage terms) of directors on the issuer's board who are women;
6. the number and proportion (in percentage terms) of executive officers of the issuer who are women; and
7. whether or not the issuer has any term limits or other mechanisms of board renewal in place for its board of directors, and if so, a description of those director term limits or other mechanisms of board renewal.

Further, to the extent that an issuer has not adopted the above mechanisms, policies, or targets, or does not consider the representation of women, it is required to disclose its reasons for not doing so.

The purpose of this disclosure is to provide investors with information that may be useful in making their investment and voting decisions. To the extent issuers are currently reporting issuers in any other CSA jurisdiction (other than British Columbia or Prince Edward Island), the adoption of the Amendments in Alberta will not result in any new requirements.

The ASC appreciates that non-venture reporting issuers have varied backgrounds and operate in diverse industries. The Amendments require disclosure which is intended to solicit the information investors and stakeholders may find useful in making their investment decisions while providing issuers with the flexibility to address these issues as they best see fit for their particular circumstances.

### **Summary of written comments received by the ASC**

The comment period for the Amendments ended on October 14, 2016 and the ASC received written submissions from 23 commenters. The comment letters can be viewed on the ASC website at [www.albertasecurities.com](http://www.albertasecurities.com).

We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex B and a summary of their comments, together with our responses, is contained in Annex C.

### **Summary of changes to the Amendments**

After considering the comments received in respect of the Amendments, we have made no changes to the published materials.

## **Questions**

Please refer your questions to either of:

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## **Contents of Annexes**

This Notice contains the following annexes:

- Annex A – Amendments
- Annex B – List of Commenters
- Annex C – Summary of Comments and Responses of the ASC

## ANNEX A

### AMENDMENTS TO

#### NATIONAL INSTRUMENT 58-101 *DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES*

1. *National Instrument 58-101 Disclosure of Corporate Governance Practices is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definition:*

“major subsidiary” has the same meaning as in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*; .

3. *Form 58-101F1 Corporate Governance Disclosure is amended by adding the following items:*

**10. Director Term Limits and Other Mechanisms of Board Renewal –**

Disclose whether or not the issuer has adopted term limits for the directors on its board or other mechanisms of board renewal and, if so, include a description of those director term limits or other mechanisms of board renewal. If the issuer has not adopted director term limits or other mechanisms of board renewal, disclose why it has not done so.

**11. Policies Regarding the Representation of Women on the Board –**

- (a) Disclose whether the issuer has adopted a written policy relating to the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not done so.
- (b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:
  - (i) a short summary of its objectives and key provisions,
  - (ii) the measures taken to ensure that the policy has been effectively implemented,
  - (iii) annual and cumulative progress by the issuer in achieving the objectives of the policy, and
  - (iv) whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.

**12. Consideration of the Representation of Women in the Director Identification and Selection Process –**

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. 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, disclose the issuer's reasons for not doing so.

**13. Consideration Given to the Representation of Women in Executive Officer Appointments –**

Disclose whether and, if so, how the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.

**14. Issuer's Targets Regarding the Representation of Women on the Board and in Executive Officer Positions –**

- (a) For purposes of this Item, a "target" means a number or percentage, or a range of numbers or percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date.
- (b) Disclose whether the issuer has adopted a target regarding women on the issuer's board. If the issuer has not adopted a target, disclose why it has not done so.
- (c) Disclose whether the issuer has adopted a target regarding women in executive officer positions of the issuer. If the issuer has not adopted a target, disclose why it has not done so.
- (d) If the issuer has adopted a target referred to in either (b) or (c), disclose:
  - (i) the target, and
  - (ii) the annual and cumulative progress of the issuer in achieving the target.

**15. Number of Women on the Board and in Executive Officer Positions –**

- (a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women.
- (b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all major subsidiaries of the issuer, who are women. .

**4. The Instructions of Form 58-101F1 are amended by adding the following sections:**

- (4) *An issuer may disclose any additional information that is relevant in order to understand the context of the information disclosed by the issuer under Item 15(a) or (b) of this Form.*
  - (5) *An issuer may incorporate information required to be disclosed under Items 10 to 15 by reference to another document. The issuer must clearly identify the reference document or any excerpt of it that the issuer incorporates into the disclosure provided under Items 10 to 15. Unless the issuer has already filed the reference document or excerpt under its SEDAR profile, the issuer must file it at the same time as it files the document containing the disclosure required under this Form. .*
5. This Instrument only applies to management information circulars and AIFs, as the case may be, which are filed following an issuer's financial year ending on or after December 31, 2016.
6. This Instrument comes into force on December 31, 2016.

**ANNEX B**

**LIST OF COMMENTERS**

1. Addenda Capital
2. AIMCo
3. Association of Women Lawyers
4. Judith Athaide
5. British Columbia Investment Management Corporation
6. Corrina Bryson
7. Canadian Coalition for Good Governance
8. Joanne David
9. Bonnie DuPont
10. Enmax
11. Ernst & Young LLP
12. Marian C. Hanna
13. Linda Hohol
14. Institutional Shareholder Services Inc.
15. Sue Lee
16. NEI Investments
17. Ontario Teachers' Pension Plan
18. Pension Investment Association of Canada
19. Sarah Raiss
20. Responsible Investment Association
21. Kathleen Sendall
22. Stella Thompson
23. TMX Group Limited

ANNEX C

SUMMARY OF COMMENTS AND RESPONSES OF THE ASC

No.	Topic	Summary of comments	Responses of Participating Jurisdictions
1.	Support for the scope and content of the overall proposal	<p>Twenty-three commenters indicated general agreement with the Amendments.</p> <p>Further, nine of those commenters specifically expressed support for the flexible or “comply or explain” approach.</p>	<p>We acknowledge these comments of general agreement.</p> <p>We acknowledge the comment and note that the Amendments do not require issuers to adopt policies, rather they allow issuers to determine the considerations and policies with respect to board appointments and the appointment of senior management that are appropriate to their particular circumstances.</p>
2.	CSA harmonization	<p>Ten commenters supported the ASC in adopting the Amendments and furthering a harmonized framework for the required disclosure..</p>	<p>We acknowledge these comments of support and note that we have not proposed any changes to the Amendments in order to ensure a harmonized framework.</p>
3.	ASC mandate	<p>Five commenters expressed support for the view that the Amendments fall within the ASC’s mandate.</p>	<p>We acknowledge these comments of support and note that the purpose of the Amendments is to increase transparency in respect of the matters addressed in the Amendments so that investors can make informed investment decisions, an objective that falls within the ASC mandate.</p>
4.	Disclosure to facilitate investment decisions	<p>Eight commenters noted that the information that will be disclosed as a result of the Amendments is important to investors and will assist them in making informed investment decisions.</p>	<p>We acknowledge these comments of support.</p>
5.	Support for disclosure regarding director term limits and other mechanisms of board renewal	<p>Eight commenters supported requiring disclosure regarding director term limits or other mechanisms of board renewal.</p>	<p>We acknowledge these comments of support.</p>
6.	Benefits of director term limits and other mechanisms of board renewal	<p>Three commenters noted certain benefits associated with board renewal including the associated discussion regarding succession planning, facilitating the removal of underperforming directors, and avoiding “group think”.</p>	<p>We acknowledge these comments.</p>

No.	Topic	Summary of comments	Responses of Participating Jurisdictions
7.	Support for disclosure of policies regarding the representation of women on the board	Five commenters supported requiring disclosure of policies regarding the representation of women on the board.	We acknowledge these comments of support.
8.	Support for mandatory policies regarding the representation of women on the board	One commenter suggested that the adoption of formal written policies should be required. The commenter noted that the lack of a policy can easily be explained leaving shareholders no better off than prior to a new rule being implemented.	We are adopting a flexible “comply or explain” approach and have not mandated any policies or practices. We believe that issuers should be able to decide whether a formal, written policy is the appropriate approach in light of their particular circumstances. Investors can make their own assessment of the issuer’s approach based on the disclosure provided.
9.	Support for disclosure of consideration of the representation of women in the director identification and selection process	Five commenters supported requiring disclosure regarding the consideration of the representation of women in the director identification and selection process.	We acknowledge these comments of support.
10.	Additional disclosure regarding director identification and selection	One commenter supported bolstering the “comply or explain” regime with an explicit requirement for disclosure of search criteria, such as the board skills matrix.	Form 58-101F1 currently requires disclosure respecting the process by which the board or nominating committee identifies new candidates for board positions. The Amendments will further require an issuer to 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. The resulting disclosure requirements will afford issuers with the flexibility to adopt a variety of approaches to director identification and selection.
11.	Support for disclosure of the consideration given to the representation of women in executive officer appointments	Five commenters supported requiring disclosure of the consideration given to the representation of women in executive officer appointments.	We acknowledge these comments of support.

No.	Topic	Summary of comments	Responses of Participating Jurisdictions
12.	Support for disclosure of targets	Six commenters supported the requirement for non-venture issuers to disclose whether or not they have adopted targets for women on the board and, if not, why not. The same six commenters also supported this disclosure requirement regarding targets for women in executive officer positions.	We acknowledge these comments of support.
13.	Mandated or recommended targets or quotas	Two commenters were in favour of mandated targets or quotas.	The purpose of the Amendments is to provide investors with information that may be useful in making their investment and voting decisions. The Amendments do not mandate the adoption of targets or quotas, but rather require disclosure of whether targets are in place and, if so, the details of those targets. The Amendments are intended to allow issuers to adopt policies and practices that are tailored to their particular circumstances.
14.	Recommended targets	One commenter was in favour of the ASC developing a preferred target and that the ASC prepare and disclose a list of Alberta issuers that meet that target.	<p>The Amendments are intended to allow issuers to adopt policies and practices that are tailored to their particular circumstances.</p> <p>Developing a “preferred target” falls outside the disclosure-based objective of the Amendments. We believe the objectives of the Amendments, to enhance transparency for investors, will be achieved without the need for the ASC to undertake additional reporting.</p>
15.	Support for disclosure of number of women on the board and in executive officer positions	Four commenters supported requiring disclosure of the number of women on the board and the same four commenters supported requiring disclosure of the number of women in executive officer positions.	We acknowledge these comments of support.

No.	Topic	Summary of comments	Responses of Participating Jurisdictions
16.	Support for review of compliance	Four commenters supported a review of compliance with the disclosure requirements contained in the Amendments after issuers have provided this disclosure for three annual reporting periods. Three commenters supported a follow-up review without specifying a timeframe.	We acknowledge these recommendations and note that the jurisdictions that adopted these requirements in 2014 have conducted two annual compliance reviews. To the extent the ASC participates in any future reviews of compliance with the Amendments, the key objective of that review, from an ASC perspective, will be to assess the effectiveness of the disclosure requirements in achieving their stated purpose of increasing transparency in respect of the matters addressed in the Amendments so that investors can make informed investment decisions.
17.	Support for additional measures if progress insufficient following review	Three commenters recommended revisiting the comply or explain approach, one recommended revisiting the requirements and four recommended implementation of additional measures if there has been insufficient progress in increasing gender diversity following implementation of the disclosure requirements.	We acknowledge these comments, but point out that the ASC's stated purpose of the Amendments is to increase transparency in respect of the matters addressed in the Amendments so that investors can make informed investment decisions. To the extent an issuer is found to be non-compliant with the disclosure requirements, the ASC will take steps to ensure that the issuer complies. If the problem is widespread, a possible outcome would be the publication of staff guidance on compliance with the disclosure requirements.
18.	Support for compliance by venture issuers	One commenter expressed the view that the disclosure requirements should apply to venture issuers in addition to non-venture issuers.	Venture issuers are welcome to provide this information voluntarily. We do not believe it is appropriate to extend the disclosure requirements to venture issuers given their particular circumstances.
19.	Broader concept of diversity	Three commenters suggested that the scope of the Proposed Amendments should be expanded from gender diversity to diversity more broadly.	We acknowledge that there are many forms of diversity. At this time, the Amendments are limited to gender diversity, particularly given the desire for a harmonized disclosure regime. However, issuers are welcome to provide disclosure regarding diversity in general.

<b>No.</b>	<b>Topic</b>	<b>Summary of comments</b>	<b>Responses of Participating Jurisdictions</b>
20.	Support for ASC reporting	<p>One commenter suggested that the ASC should compile and publish a list of issuers that have no female directors or executive officers.</p> <p>The same commenter further suggested that the ASC compile and publish a list of Alberta issuers that have a diversity policy and that have added a woman to their board that year and a description of the steps the issuer took to add them.</p>	<p>The Amendments require disclosure relating to gender diversity rather than mandating gender diversity. The ASC's stated purpose of the Amendments is to increase transparency so that investors can make informed investment decisions. The disclosure required is intended to meet this purpose without requiring additional reporting on the part of the ASC.</p>