



April 10, 2018

Ms. Nazma Lee
Senior Legal Counsel
British Columbia Securities Commission
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Dear Ms. Lee:

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

We are writing in response to the BC Securities Commission (BCSC) request for comments on 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.¹

With approximately C\$6 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best environmental, social and governance (ESG) practices into their strategies and operations.

In addition to submitting the comments below, we would like to draw attention to the submission by the Canadian Coalition for Good Governance (CCGG), of which NEI Investments is a member.

Advancing board diversity

Our view of the duty of a public company board is grounded in the stakeholder theory of the firm, which holds that the purpose of the company is to create value for all its stakeholders, including shareholders.² We believe that, to fulfil its duty effectively, the board of a public company must consist predominantly of well-qualified independent directors who do not depend on the company for any benefit or consideration beyond reasonable remuneration for their board work, and who contribute to a diversity of identity and expertise that allows for more complete oversight of the risks and opportunities facing the company. Our proxy voting guidelines therefore include provisions to withhold our vote from nominating committee members at Canadian companies if a board lacks diversity.³ Board diversity forms an important topic for our corporate

¹ https://www.bcsc.bc.ca/Securities_Law/Policies/PolicyBCN/PDF/BCN_2018-03_February_26_2018/

² More information can be found in our Responsible Investment Policy:
<https://www.neiinvestments.com/documents/Marketing/RI%20Policy.pdf>

³ More information can be found in our Proxy Voting Guidelines:
<https://www.neiinvestments.com/documents/FlippingBooks/Proxy%20Voting%20Guidelines%202016/index.html>



engagement dialogues with companies in our holdings, and is an on-going theme within our public policy interventions.⁴ In 2017, NEI Investments adopted a diversity policy for its own board, including a 30% gender diversity target.⁵

Against this background, we appreciate BCSC's decision to open this consultation. We urge it to adopt diversity disclosure requirements, and ensure they are harmonized to those of the Participating Jurisdictions to the present Disclosure Requirements. This will minimize the cost to companies, as the same disclosures will meet the requirements of other jurisdictions to which an issuer may be obliged to report.

We also welcome BCSC's request for input on ways that the current diversity disclosure regime could be enhanced. We noted in a recent submission to the Canadian Securities Administrators on possible relaxation of the director independence requirements that we believed priority should instead be given to consultation on further efforts to promote diversity disclosure and practice.⁶ We encourage BCSC to work together with the Participating Jurisdictions to further enhance the present Disclosure Requirements and supplement them with good practice guidance.

Responses to consultation questions

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

For BCSC to adopt diversity disclosure requirements that are harmonized with the Participating Jurisdictions should present no hardship or additional regulatory burden for issuers, since based on a rapid review of Bloomberg and SEDAR information, it appears that there are no non-venture companies domiciled in BC that are not already obliged to report to a Participating Jurisdiction.

In the course of dialogue with dozens of companies on enhancing board diversity, we have not heard of meaningful challenges with providing information that meets the letter of the requirements. There is, however, wide variation in the quality of the disclosure. Some issuers provide valuable company-specific narrative on their perspective on diversity, its linkage to corporate strategy, and what is being done to address diversity at various levels of the organization. Other issuers provide boilerplate disclosure that leaves us uncertain as to whether the board has given serious consideration to the diversity question. In particular, we are concerned when boards, while paying lip service to the importance of diversity, claim that their non-diverse boards are already meritocracies, and give this as an excuse not to set goals or targets. Therefore we would support development of corporate governance guidelines including good practice guidance on diversity (see the response to Question 4 below).

⁴ More details of our engagement activities in relation to board diversity can be found in our recent report, *All Aboard: Increasing Corporate Board Diversity* <https://www.neiinvestments.com/documents/Research/All-Aboard-Increasing-Corporate-Board-Diversity.pdf>

⁵ <https://www.neiinvestments.com/documents/CSR/Board%20Diversity%20Policy.pdf>

⁶ <https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2018/CSA%20-%20Consultation%20Paper%2052-404%20-%20Approach%20to%20Director%20and%20Audit%20Committee%20Member%20Independence.pdf>

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2. What are the benefits of the Disclosure Requirements?

The key benefit of the Disclosure Requirements is to ensure board diversity is on every issuer's agenda of governance considerations, even if some issuers are yet to address the issue adequately.

Although we did not identify any issuers that would be affected in practice if BCSC were to adopt the present Disclosure Requirements, nevertheless we believe adoption would be a positive step. It would signal to BC-domiciled companies, in particular to the mining companies, the importance of addressing the diversity challenge, and contribute to BC's reputation as a domicile for responsible mining companies.

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While some companies in the sector have made notable efforts, mining continues to lag on board gender diversity: in 2017 46% of mining companies had no women on the board, although this represented a significant improvement on the previous year. The apparent correlation between board diversity and better corporate performance has been much discussed. Although our own research into diversity and performance at Canadian companies bears out this correlation, we emphasize that women should not have to outperform men to deserve a seat at the board table. Nevertheless, we believe that weak board diversity poses a special risk for mining companies in light of the changing expectations and challenges they face. Lack of diversity encompasses both diversity of identity (gender, ethnicity and other personal attributes) and diversity of expertise - particularly with regard to environmental and social risks and opportunities that are highly material to mining, as reflected in the specialized disclosure requirements for the sector under NI 43-101.⁷ In widening the search for directors to include diverse candidates, we believe issuers should consider looking beyond current and former corporate CEOs and traditional company networks to include consideration of well-qualified candidates with other leadership backgrounds including academia, public service or the not-for-profit sector.

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?

To the extent that companies are using them to provide company-specific information on diversity policy, targets and practices, rather than relying on boilerplate responses, the Disclosure Requirements are providing us with necessary information and there are no requirements in the current framework that are not useful for our decision-making. We recognize that boilerplate response to disclosure requirements is a wider problem, and believe that the general principle of providing information that is specific to the circumstances of a company should be emphasized in all disclosure requirements.

To reiterate a suggestion we have made in previous submissions, we would value an additional requirement to disclose where responsibility has been assigned for the implementation of the diversity policy or policies (noting that companies may have separate policies for diversity on the board, among senior management and in the general workforce, or these may be combined). This would be helpful to investors seeking to engage companies on diversity matters.

⁷ https://www.bcsc.bc.ca/Securities_Law/Policies/Policy4/Group/?group=43%20101

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It would be helpful to clarify how many levels of management, relative to the CEO, should be included for the purposes of disclosure on diversity within senior management. In this context we note that information on a company's diversity policies, targets and performance at different levels from the bottom to the top is necessary to determine whether that company is developing a pipeline of diverse talent, rather than acquiring diverse senior management developed elsewhere.

We also draw attention to the emerging issue of gender pay equity as an area for attention in future iterations of the diversity disclosure requirements.

(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?

From the corporate engagement perspective, the Disclosure Requirements have allowed us to enhance the sophistication of our proxy voting decision-making, exercising discretion in the application of diversity-related guidelines at companies which lack diversity but are disclosing efforts to address the issue, as well as obtaining valuable information for dialogue with companies.

We have long included diversity considerations within our proxy voting guidelines, not only in relation to gender but also other aspects of identity diversity.⁸ Our guidelines lead us to withhold support from members of the nominating committee of the board at Canadian companies where there is no representation of women on the board, although we may override this guideline where there is evidence that the issuer is taking steps to address this gap through a strong, time-bound commitment to enhance diversity. Information provided under the Disclosure Requirements is a key input to our deliberations on how and when to exercise our diversity guidelines. Boards providing meaningful and convincing disclosure on the progress of their efforts to enhance diversity can benefit in terms of director election vote outcomes, even if they have not yet succeeded in recruiting any women. Our votes withheld from director candidates for diversity reasons have decreased substantially since the Disclosure Requirements were introduced - a reflection in part of the impact of dialogue on our holdings - while the number of instances where we have made a positive vote decision based on diversity considerations has increased. We are considering ratcheting up our expectations for representation of women and minority groups in the next iteration of our guidelines, and the attention that we give to issuer diversity disclosure, policy and practice will only increase in future. We note in this context that more and more institutional investors are following similar diversity voting guidelines.⁹

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?

Based on our research, we believe additional impetus is needed, beyond the present diversity disclosure requirements adopted by the Participating Jurisdictions, to ensure that companies with non-gender diverse

⁸ Our proxy voting guidelines can be found here:

<https://www.neiinvestments.com/documents/FlippingBooks/Proxy%20Voting%20Guidelines%202016/index.html>

⁹ Examples of institutional investors that have updated their proxy voting guidelines to include specific diversity voting considerations include RBC Global Asset Management <http://funds.rbcgam.com/investor-information/assets-custom/pdf/rbc-gam-proxy-voting-guidelines.pdf> and BCI <http://read.uberflip.com/i/785259-20097-proxyvotingguidelines-rebrand-secured/7?m4=> Vanguard Group and BlackRock have also made diversity a key aspect of their governance agenda.

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boards adopt policies and practices that could lead to change. Currently, it is the more gender-diverse boards that are most proactive in this respect. For example, among Canadian companies with no women on the board in 2016, only 8.5% had a policy to address lack of diversity, compared with 20% of boards with one female director, and 36% of boards with two or more women. Likewise, the presence of women on boards correlates with the adoption of diversity targets: less than 2% of boards with no women had set a diversity target, compared to just under 7% of boards with one woman director, and over 26% of boards with two or more women. Among boards that had a least one woman director and had set a target, the average representation of women on the board was 27%.

We would therefore welcome the development of corporate governance guidelines regarding gender diversity-related governance good practices. We believe these guidelines should be integrated to NP 58-201, as this is a context that is already familiar to boards and management of public companies. Specific suggestions to enhance the current guidelines would include:

- Adding references to diversity and representation of women to the section “Composition of the Board”, alongside the current recommendations for over 50% representation of independent directors on the board (sections 3.1 and 3.2). In this context, we note the widespread support for 30% as the board gender diversity goal towards which companies should be working.
- Adding recommendations that companies should:
 - adopt and disclose a robust diversity policy;
 - adopt and disclose time-bound diversity goals, targets or representation maintenance levels as appropriate to their current diversity situation, and report on their progress in achieving them.

Companies would benefit from additional good practice guidance on what constitutes a robust diversity policy. In particular, too many companies claim to value and take into consideration diversity, while defending the absence of any actual diversity on their board by making reference to “meritocracy”. The meritocracy defence suggests a fundamental misunderstanding of what investors are asking for. It is implicit that boards should focus on merit, but research suggests a diverse board is also a superior board. This makes it difficult to understand how merit could be the only determinant for a board that has never nominated a female candidate. Given the number of highly-qualified female candidates already serving on boards or in management, it seems clear that what non-diverse public company boards lack is the ability to identify and attract qualified women candidates.

Through numerous dialogues with companies on this issue, we have found that resistance to setting diversity targets may be rooted in a conflation of targets with quotas. By setting a diversity target, a company is acknowledging that diversity is a desirable outcome and making a commitment to credible efforts towards achieving that outcome. This should ensure that the issue stays on the company agenda and is taken into consideration as a matter of course in the board refreshment process. In setting targets, companies are not being asked to appoint unqualified directors simply to achieve a diversity quota.

We prefer that diversity targets should not be articulated simply as a desired minimum percentage of women directors, but rather as a minimum percentage of both women and men. Targets referring only to representation of women reinforce the perception that male directors represent the norm, but also disregard

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the important fact that male directors are part of the gender diversity of a board. A future board that consisted solely of women directors would not be any more diverse than present all-male boards. The framing of targets in an inclusive way is more than a trivial matter of semantics: in our view, it helps to clarify the long-term objective of creating high-performance boards bringing together well-qualified candidates with diverse perspectives who can provide effective oversight of the full range of material issues facing companies. We have raised this in dialogue with several diversity leadership companies, which have subsequently adopted “gender-neutral” 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 nomination process sufficient, or would providing more specific guidelines be appropriate?

We believe it would be helpful to augment the current guidelines on nomination of directors in NP 58-201 with good practices relating to board diversity. In our view, the key to enhancing diversity lies in improving the quality of the director selection process, and expanding the pool of candidates that are considered.

Specific suggestions to enhance the current guidelines would include:

- Adding consideration of diversity to the nomination process recommendations in sections 3.12 and 3.14, alongside consideration of “competencies and skills”.
- Adding a section on good practices for building a diverse board, such as diversity and unconscious bias awareness-training for the nominating committee, and committing to always including some diverse candidates in the list of potential candidates for director vacancies.

We believe that unconscious bias - bias that we are not even aware of - plays a major role in preventing boards from enhancing diversity. Unconscious bias explains, at least in part, the inability or unwillingness of some boards to take a deeper look at why their idea of what constitutes a candidate of “merit” leads them to overlook diverse candidates that are clearly qualified, and being recruited by other boards. Everyone has unconscious bias of some sort: what is important is that we acknowledge and actively work to counteract such bias, and this is what we are pushing board directors to do in our dialogues.

As well as adding content on diversity, it would be appropriate to include discussion of board renewal mechanisms, including term limits, in the section on director nominations.

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?

Throughout the consultations that led to the adoption of the Disclosure Requirements, we have advocated for diversity disclosure requirements and good practice guidelines to embrace not only gender but also other attributes such as ethnicity, indigenous status, sexual orientation, disability and age.¹⁰ Therefore, we would certainly encourage securities regulators to expand work on diversity to include other aspects of identity diversity.

¹⁰ <https://www.neinvestments.com/documents/PublicPolicyAndStandards/2013/OSC%20Gender%20Diversity%20Proposals.pdf>

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To the extent that the director candidates concerned are willing to identify themselves voluntarily within the board environment, and respecting their right to privacy, we would value generalized disclosure on non-gender aspects of identity diversity. This would help us to operationalize an additional current proxy voting guideline in which we give consideration to a range of aspects of identity diversity on the board. We would not need to know which directors specifically are contributing to wider identity diversity, but only the extent to which aspects of diversity are present and whether diversity is increasing or decreasing in percentage terms. In the absence of such generalized disclosure, particularly on less obvious aspects of identity diversity, we are sometimes reduced to guesswork based on names, biographies or profile pictures. This is not only time-consuming, but inadvertently we may be penalizing nominating committee members on boards that do, in fact, include broader diversity.

We believe it is important that companies should be required to disclose gender diversity data separately from other aspects of diversity to which they may be (and indeed should be) giving attention. We recall in this context that the U.S. Securities and Exchange Commission chose not to define diversity in the release 33-9089 *Proxy Disclosure Enhancements*, but later acknowledged that this had created a situation in which investors were not necessarily being provided with the types of diversity disclosure that they were seeking.

Ultimately we would like to see non-gender diversity data disclosure that is comparable across companies, but as relatively few companies provide such disclosure at present, our initial recommendation is that companies should be asked to articulate clearly which aspects of non-gender identity diversity they are giving attention to, and to break out data accordingly.

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?

A standardized format that allowed investors to establish whether a company had diversity-related disclosures, indicated where they could be found, and highlighted key quantitative data, could indeed be helpful. Firstly, it would facilitate proxy voting. Consistency in the way companies present basic diversity information across the Canadian market would assist institutional investors, who must make vote decisions at each company in their holdings under considerable time pressure during proxy season. As explained earlier, at companies where the absence of diversity triggers our proxy voting guidelines to withhold votes from directors, we may exercise discretion if it appears that the company is making genuine efforts to address the situation by adopting meaningful policies and targets and putting in place nomination good practices that are likely to lead to increased diversity over time. It is therefore in the interest of these companies that investors (and their proxy advisors) should be able to locate diversity information easily and rapidly. Secondly, it might be helpful for investors seeking to establish an investment universe for thematic or impact responsible investment strategies that prioritize diversity leadership companies. Once again, it is clearly in the interest of these issuers that their diversity disclosures should be easy to locate.

However, in designing any such prescribed format, it would be important to ensure that it did not encourage boilerplate disclosure, prevent innovation in diversity disclosure and practice, or discourage the rich narrative

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that has been provided by Canada’s diversity leaders.¹¹ The focus should be on making it easier to locate disclosures and capture key quantitative data. For example, within a tabular format companies could be asked to provide a simple yes/no answer to the question of whether a diversity policy has been published, as well as direction to where the policy can be found. However, the content of the diversity policy and information on its implementation require company-specific narrative treatment in order to be meaningful.

Conclusion

We appreciate the opportunity to offer our perspective on the consultation paper. We urge BCSC to adopt diversity disclosure requirements that are harmonized with those of the Participating Jurisdictions, and we encourage BCSC and the Participating Jurisdictions to work together on enhanced disclosure requirements and good practice guidance that will stimulate more companies to address gender diversity effectively, as well as exploring other aspects of diversity. Please do not hesitate to contact me if you have any questions in relation to this submission.

Sincerely,
NEI Investments

A handwritten signature in black ink that reads "Michelle de Cordova".

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cc:
Board of Directors, NEI Investments
Responsible Investment Executive Committee, NEI Investments
Mr. Jamie Bonham, Manager, Corporate Engagement, NEI Investments
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¹¹ An example of what we mean by “rich” diversity narrative, within a sector facing diversity challenges, can be found in the Canadian National Railway proxy circular: <https://www.cn.ca/-/media/Files/Investors/Investor-Shareholder/information-circular-2018-en.pdf?la=en> (p27)