SANGRA MOLLER LLP
Barristers & Solicitors

September 28, 2023

VIA EMAIL

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

Dear Sirs/Mesdames:

Re: Comments on *Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 – Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 – Corporate Governance Guidelines*

INTRODUCTION

This letter is submitted in response to the CSA Notice and Request for Comment on *Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices* (the "**Proposed Amendments**") *and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines* (the "**Proposed Changes**") issued by the Canadian Securities Administrators (the "**CSA**") on April 13, 2023.

We thank the CSA for its efforts in developing the Proposed Amendments and the Proposed Changes. Our responses with respect to the two alternatives (Form A 58-101F1 vs. Form B 58-101F1) are presented in this letter, along with our feedback on the specific questions posed.

As a general response to the CSA's request for comment, we favor the approach recommended in Form A version of Form 58-101F1 of the Proposed Amendments ("**Form A**"). In our view, Form A is the more appropriate tool to align with investors' increasing desire for clear, comprehensive,

standardized, and comparable information on board diversity, while still allowing issuers the flexibility to adapt their diversity goals to the realities of their businesses and maintaining disclosure burdens.

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.**

   In our view, the required disclosure of skills, knowledge, experience, competencies, and attributes considered (the "**Candidate Attributes**") when evaluating a board candidate is not a significant confidentiality concern for issuers. While disclosing specific information about candidates could potentially raise confidentiality concerns, the proposal in National Instrument 58-101's amendments seems to primarily focus on the disclosure of general information concerning Candidate Attributes. We believe that issuers should be able to manage their disclosure processes in a manner that does not jeopardize confidentiality or privacy concerns.

   Conversely, implementing more robust disclosure requirements for Candidate Attributes is likely to enhance the transparency and meaningfulness of the nomination process for directors, which, we believe, in turn, will enhance investor interactions with proxy disclosures.

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 practical benefits of building more diverse boards are becoming well-established. We believe that the less prescriptive Form A results in more nuanced and substantive diversity disclosure. This is because diversity-related risks and opportunities are not standard across industries and companies.

   There is no "one size fits all" approach to effective diversity disclosure or programs. We believe the Form B version of Form 58-101F1 of the Proposed Amendments ("**Form B**") risks turning the diversity disclosure process into a "check the box" exercise. Boards should be diverse in ways that are connected to the company's business, strategy, culture, geographic footprint, employees, customers, suppliers, and other stakeholders. Each issuer is best positioned to determine which identified groups of disclosures to report on. Form A will better capture how an issuer embraces diversity (and its evolving permutations) in its culture and how it incorporates diversity into its decision-making processes, which better represents the issuer's intrinsic value of meaningful diversity disclosure. Also, Form A will allow issuers more flexibility in adopting disclosure practices that respond to specific

investor demands in the area along with the requirements of proxy advisory services Institutional Shareholder Services and Glass Lewis, as well as other institutional investors.

If Form B were adopted, it is important that individuals have the option to "prefer not to say". In the absence of such option, some individuals might feel coerced or pressured to disclose information they are uncomfortable sharing.

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.**

   We believe disclosing the diversity approach and objectives of executive officer positions is equally significant as disclosing them for board members.

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.**

   See answer to question 2.

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.**

   We do not believe tabular disclosure is necessary in every instance. Tabular disclosure has the potential to detract from more significant reporting. While tabular disclosure can be beneficial, we maintain that issuers should have the flexibility to assess the meaningfulness of this method, taking into account investor demand and the policies of proxy advisory firms.

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.**

   We believe there may be challenges, but do not think it will create an unreasonable burden.

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.**

   We have not seen similar levels of investor demand at the venture level for robust diversity disclosure. We believe the additional burden of requiring such additional disclosure at this time from such issuers would not be justified.

CONCLUSION

Thank you again for allowing us to provide comments on the Proposed Amendments and Proposed Changes. We hope that the comments and suggestions set forth in this letter will further contribute to provide meaningful information to the market.

Sincerely,

Sangra Moller LLP