

Via email

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**Multilateral CSA Notice of Publication and Request for Comment  
Proposed Amendments To Form 58-101F1 *Corporate Governance Disclosure of  
National Instrument 58-101 *Disclosure of Corporate Governance Practices.****  
<http://nssc.novascotia.ca/sites/default/files/docs/Request%20for%20Comments%20NI%2058-101%20July%203,%202014.pdf>

The Small Investor Protection Association (SIPA [www.sipa.ca](http://www.sipa.ca) ) was founded in 1998 and is registered in Ontario as a national non-profit organization. Its mission is the protection of small investors.

SIPA welcome the opportunity to participate in this important consultation. It has conducted considerable research on this matter – see REFERENCES. We offer the following commentary:

**DEFINITION:** Diversity is the variation of social and cultural identities among people existing together in a defined employment or market setting, social and cultural identity refers to the personal affiliation with groups that research has shown to have significant influence on peoples' major life experiences. These affiliations include gender, race, national origin, religion, age cohort and work specialization, among others .Primary categories of diversity include age, race, ethnicity, gender ..., secondary categories of diversity include education, experience, income, marital status,.. Source: <http://www.sosyalarastirmalar.com/cilt1/sayi4/sayi4pdf/marimuthu.pdf#page=11&zoom=auto,-70,10>

SIPA believes that small investors'/shareholders' choices of directors should not be constrained by targets or worse, quotas as to who can serve as a Director. Corporate democracy is a fundamental right for shareholders who own the Company and bear the risks. SIPA supports the right of shareholders to demand the most qualified Directors to provide sound corporate stewardship and governance without being bound by a constraint as to a human attribute selected, no matter how well intentioned, by securities regulators. A broad diversity policy enables this right while a policy based on formalized female

diversity targets unfairly limits the pool of available choices open to small investors. We do however accept that regulators can prohibit certain individuals from acting as Directors or Officers based on evidence of being untrustworthy.

SIPA strongly recommends that , if regulators are insistent about creating quotas for directors/people, that the gender diversity issue be broadened to include diversity in general . We do support a requirement for corporations to publicly disclose their diversity policy, while rejecting the power of regulators to enforce any particular policy or quotas. We believe Director diversity can assist Canadian companies in certain industries with their domestic and global expansion initiatives. As an aside, their active role on Board Committees such as the Strategy Committee or HRCC is where their influence can be most felt.

SIPA urge regulators to consider the regulatory burden placed on small companies (say with less than \$50 or \$100 million in sales, even if TSX listed) with small boards and lean resources in complying with the proposal. Such companies have more than enough challenges dealing with an ever increasing competitive landscape.

"Comply or explain" runs the very real danger of leading to a quota system which has a dubious history of success. Within a defined Board size, targets and quotas for a select human category implicitly sets a target /quota for other categories making a mockery of democratic principles and potentially discriminating against top performers in the other categories. Some people and ethnic groups recoil when the word "quota" is mentioned. For this reason, we are reluctant to support the disclosure of targets regarding the representation of women on the Board and in executive officer positions or an explanation for the absence of such targets. We would be reluctant supporters of disclosing the level of diversity amongst the Directors/Board recognizing that human categorization could be problematic, potentially leading to issues of political correctness, discord and even human rights and ultimately impaired corporate performance.

The CSA should provide some research to examine the potential of unintended consequences adverse to women or the incorporation of the enforcement of quantitative targets. It was only a few years ago that executive pay disclosure was hailed as the holy grail ,yet many now cite this mandated regulatory disclosure as the root cause for the explosion in executive compensation .

**Question:** Is it the intention of the CSA/OSC to introduce sanctions/ fines if targets are not met? Does this not fly in the face of fundamental shareholder democracy principles? How will these two principles be reconciled? What rationale will the CSA/OSC accept if targets are not met? It should also be recognized that it is shareholders who elect Directors notwithstanding the nominees put forward by the Board/Nomination Committee.

As part of the drive to have more gender diversity on boards, the CSA should support the broader issue of increased proxy access for shareholders since greater access to the nomination process will enable shareholders to bring forward female ( and ethnic ) candidates if Boards continue to lag with introducing appropriate reforms. We see this process as an im-

portant change agent that is wholly congruent with corporate democracy principles. Similarly, regulators should review the role that securities lending plays in thwarting corporate democracy. It is our conviction that such lending has the potential to stall or even derail diversity initiatives since often the ensuing voting is based on short term considerations.

SIPA does not believe the CSA should be getting involved with any aspect of executive management diversity. Management and the Board should be left to deal with human resource issues tailored to the requirements of their business, subject of course to non-discrimination and compliance with existing laws governing the hiring and fair treatment of employees. The CSA should instead focus its attention on the many chronically unaddressed regulatory investor protection reforms needed by small investors saving for their retirement.

Boards should ensure that the recruitment process for board candidates is professional ensuring that input beyond the board members own circle of relationships is obtained . New nominees should be brought forward who bring different perspectives to the board not only based on gender but based on other different experiences and skills, views and backgrounds . Disclosure of this process should be made public.

We believe that term limits, recognizing the possible downsides, can be a useful way to keep a board fresh and open opportunities for women and others but caution that small companies and senior Director considerations (ageism/age discrimination) concerns should be taken into account to ensure this worthy objective doesn't backfire.

We note parenthetically that it is hard to imagine however, how a significant or controlling shareholder can be excluded from the Board because of gender or any targets, since it is her/his capital that is at risk.

SIPA does not disagree with the required disclosure of policies regarding the representation of women on the board or an explanation for the absence of such policies but it does oppose the imposition of such policies from outside. SIPA believes such disclosure should include diversity in general and not be limited to gender. There are many other segments of Canadian society that can lay claim to under representation on Canadian Boards. This broader perspective is a reflection of Canadian demographic realities and is already a recognized emerging issue.

This consultation is an opportunity to mention another aspect of stewardship-mutual fund governance. It seems to us that a security purchased by over 10 million Canadians with over \$1 trillion of Canadian's retirement and other savings invested ought to have a stronger governance regime than Independent Review Committees provide. This, for small investors at least, is a far higher regulatory priority than gender diversity. We strongly recommend regulators deal with the truly major issues first, as a matter of top priority.

SIPA also recommends that the CSA issue guidance to asset managers such as mutual funds, who use proxy advisory firms to help them make corporate voting decisions

including board member election, on behalf of investors. SIPA feels institutional investors should be required by regulation to routinely review their policies to ensure they are acting in their investors' best interests and that no conflicts of interest exist.

The speed of the regulatory approval process as regards regulatory prospectus exemptions, gender diversity and equity crowdfunding is impressive yet SIPA fails to understand why reforms regarding client best interest and mutual fund fees, which impact on the retirement income security of Canadians, remain mired in regulatory quicksand. We encourage the CSA to urgently reverse this situation.

Permission is granted for public posting.

If any questions do not hesitate to contact Mr. Kivenko or myself.

Yours truly,

On behalf of SIPA

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