

September 28, 2023

To: 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

Subject: Feedback on Form 58-101F1 (Form A and B)

I attended a CSA session some time ago. For context, I serve on 3 public company boards but would suggest this is personal feedback as none of the companies have reviewed this write-up. I support Form A for the following reasons:

1. As shown below, most of the boxes in Form B for the vast majority of companies will remain blanks based upon a lack of statistically relevant population groups (other than female).
2. Form B is likely to lift recruiting and retaining costs for Directors and increase unintended consequences as boards grapple with point 1 to try and “check the box” (witness the Mullen Trucking example below).

Detail:

1. Men and women are each about 50% of the population; from a recruiting perspective we have a solid pool of candidates to draw upon after recognizing there are a listed of desired skills that matter a lot to a properly functioning board and company.
2. Winnowing the list of diversity to a handful of selected items as shown for Form B (table below) strikes me as challenging. First, on definition: Why are these the only defining characteristics of diversity and where does it stop? For instance, what about mixed-race people (as are my children)? Too, how is a company expected to define and prove someone has a disability? What about someone who identifies as two-spirited – how can that be proven? More importantly, why might I as a recruiting board-member, need to ask someone if they are homosexual or transgender (which I am not legally allowed to do for employees) or disabled? Should we as a given board turn a great potential board member away because they are say, transgender, but who doesn't want to be on public record, which means we can't check the box in the table? I'm belaboring the point, which is the same for all the categories: does Form B truly constitute decision useful, material information for investors upon which they can improve investment outcomes? **Finally, remembering that experience, education and skill set do count in diversity also, the gene pool that a given board can draw upon for a given characteristic gets very small, very quickly.** Some bullets on population statistics I dug up on population sizes are below for consideration. **The majority of the Form B boxes will be blanks for most companies**, because the populations don't support anything else when skills matrix demands also come into play. Too, the boxes provide no context on the pool of available humans (Presuming a 10-person board, is a 10% disabled component with a 10% indigenous component good or bad, relative to the total population? Finally, 10-person boards have “lumpy % weights”. Does the resignation of a single person mean the investing community should withhold votes for the Governance Chair because the diversity weights just shifted? These points make Form B very hard to support.

- a. **The math of a simple-man conclusion is below** using “45 years or older” as a loose starting experience level for recruiting, **of the LGBTQ2+ population in Canada, an estimated 77% of the public companies will report a blank in this box.** The math will be similar for the other groups. **A secondary conclusion is that a small number of highly sought-after candidates will drive up recruiting costs and absolute costs** of hiring board members - I have empirical evidence of same in board recruiting exercises over the past 2 years.
3. I recently spent a few days in Toronto in 1x1 meetings with some of the largest money-managing institutions in Canada (I have the privilege of 20+ year relationships with some of these individuals). They are becoming quite concerned (in private conversation) about the pace and push for diversity beyond male/female but feel the issue is “not addressable” publicly given the cancel culture of the day. To paraphrase a couple meetings, ESG investing priorities have morphed from peak ESG-furor of 2 years ago – they are now: 1. Make money for their investors, 2. manage risk 3. with ESG in mind – i.e., they will own companies who are conducting themselves well and trying to improve but are willing to be patient as it takes time to do the right thing.
- a. A press release from Mullen Trucking’s AGM is below on why things have perhaps already advanced to the point of silliness. In short, the very capable female chair of the Compensation, Nomination and Governance committee was forced to resign as the % females went below the 30% threshold as the company had broadened its board diversity in other important ways (forcing her to resign obviously lowers the % female directors further – a comedic tale worthy of a sitcom episode). Mullen rightly did not accept her resignation and it is challenging to see how any of the many hours the CEO and board would have spent dealing with this added any value, to anyone. Mullen took the approach it believed was best; companies need that flexibility in my view, alongside broad regulatory guide rails of course. <https://www.newswire.ca/news-releases/mullen-group-ltd-announces-rejection-of-director-resignation-857566414.html>. **The Form B approach in my view will exacerbate the risk of events like this and add cost and time with no discernable benefit.**

Form B

	<i>[insert year]</i>	<i>[insert year]</i>	<i>[insert year]</i>
Number of directors on the issuer’s board who self-identify as:			
Women			
Indigenous peoples			
LGBTQ2SI+ persons			
Persons with disabilities			
Racialized persons			
Number of individuals that are members of more than one designated group			
Total number of the directors on the issuer’s board			

Simple man logic:

Illustrative Example	Over 45 yrs
Canadian population > 45 Years old (m)	17430 (A)
Listed companies	3922 (B)
Avg. board seats per company	10 (C)
Total Board Seats	39220 (D)=(B)x(C)
% of Canadian pop who is a board member	0.23% (E)=(D)/(A*1000)
Which means 1 in X are board members	444 (F)=1/(E)
LGBTQ2+ population > 45 Years old (m)	405 (G)
Total implied LGBTQ2+ board members	910 (H)=(G*1000)/(F)
% of implied board seats	2.3% (I)=(H)/(D)
Co's with zero LGBTQ2+ Board Members	3012 (J)=(B)-(H)
% of Co's with zero LGBTQ2+ Board Members	77% (K)=(J)/(B)

- The LGBTQ2+ population estimate of “over 45 individuals” is based upon a Canadian population estimate of 38.9 million (Statista) and Statistics Canada data that suggests about 4% identify as such while about 26% are over 45 (backs up the estimate of 405,000 members in this group). The above math is illustrative for all the groups chosen for Form B (other than female), which will be variants of the same conclusion. Per the below sources by way of a second example, Indigenous people represent about ~5% of the population but only about 1/3 are >45 years old – the conclusion is therefore quite similar (many blanks in the boxes). Various chosen statistics can always be disputed, but the direction and ultimate conclusion won’t change much.

Sources:

- <https://www.statista.com/statistics/444858/canada-resident-population-by-gender-and-age-group/> - Assumed total Canadian population of 38.9 million (Statista)
- <https://tradingeconomics.com/canada/listed-domestic-companies-total-wb-data.html#:~:text=Listed%20domestic%20companies%2C%20total%20in,compiled%20from%20officially%20recognized%20sources>
- <https://5050wob.com/faqs-about-corporate-boards/#:~:text=Boards%20usually%20have%20between%207,3000%20companies%20is%208.9%20members>
- <https://madeinca.ca/lgbtq-rights-statistics-canada/>
- <https://www150.statcan.gc.ca/n1/daily-quotidien/210615/dq210615a-eng.htm>
- <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/g-a004-eng.htm> - this shows Indigenous people tend to be “younger than 45” which lowers the available pool of board candidates – about 1/3 of the population is >45 years old

A few other supporting statistics:

- 4% of the population in Canada is LGBTQ2+ <https://www150.statcan.gc.ca/n1/daily-quotidien/210615/dq210615a-eng.htm>
- ~5% is Indigenous – <https://www.google.com/search?q=%25+of+canadian+population+that+is+indigenous&rlz=1C1>

[CHBF_enCA969CA969&oq=%25+of+canadian+population+that+is+indigenous&aqs=chrome..69i57j0i22i30i390i650i3.8039j0j7&sourceid=chrome&ie=UTF-8](https://www150.statcan.gc.ca/n1/pub/12-581-x/2022001/sec3-eng.htm)

- Racialized population represents about 16% of the population
<https://www150.statcan.gc.ca/n1/pub/12-581-x/2022001/sec3-eng.htm>
- Caucasians are apparently about 70% of the Canadian population (but only ~13% of global population) <https://en.wikipedia.org/wiki/Canadians#:~:text=Of%20the%2036.3%20million%20people,69.8%20percent%20of%20the%20population.>
- 22% of the population is apparently disabled – this seems high to me and will obviously have many “shades of grey” categories, some of which will preclude a given human joining a board <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2022062-eng.htm>

Thanks for your consideration.

Steve Larke, CFA