

6.1.3 Proposed Multilateral Instrument 58-101 Disclosure of Corporate Governance Practices

**PROPOSED
MULTILATERAL INSTRUMENT 58-101
DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES**

**Part One
Definitions and Application**

1.1 Definitions – In this Instrument,

“AIF” has the meaning ascribed to it in National Instrument 51-102;

“asset-backed security” has the meaning ascribed to it in National Instrument 51-102;

“CEO” means a chief executive officer;

“credit support issuer” has the meaning ascribed to it in section 13.4 of National Instrument 51-102;

“designated foreign issuer” has the meaning ascribed to it in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

“exchangeable security issuer” has the meaning ascribed to it in section 13.3 of National Instrument 51-102;

“implicit waiver” means the board of director's failure to take action within a reasonable period of time regarding a material departure from a provision of a code of business conduct and ethics;

“investment fund” has the meaning ascribed to it in National Instrument 51-102;

“MD&A” has the meaning ascribed to it in National Instrument 51-102;

“National Instrument 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“SEDAR” has the meaning ascribed to it in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“SEC foreign issuer” has the meaning ascribed to it in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

“U.S. marketplace” means an exchange registered as a ‘national securities exchange’ under section 6 of the 1934 Act, or the Nasdaq Stock Market;

“waiver” means the approval of the board of directors of a material departure from a provision of a code of business conduct and ethics, and includes an implicit waiver;

“venture issuer” means an issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America.

1.2 Meaning of Independence –

(1) A director is independent if he or she has no direct or indirect material relationship with the issuer.

(2) For the purposes of subsection (1), a “material relationship” is a relationship which could, in the view of the issuer's board, reasonably interfere with the exercise of a director's independent judgement.

(3) Despite subsection (2), an individual described in subsection 1.4(3) of Multilateral Instrument 52-110 *Audit Committees* (other than an individual described in clauses 1.4(3)(f)(i) or (g) of that instrument) is considered to have a material relationship with the issuer.

1.3 Meaning of Subsidiary Entity and Control –

(1) For the purposes of this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

- (a) it is controlled by,
 - (i) that other, or
 - (ii) that other and one or more persons or companies each of which is controlled by that other, or
 - (iii) two or more persons or companies, each of which is controlled by that other; or
 - (b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.
- (2) For the purpose of this Instrument, "control" means the direct or indirect power to direct or cause the direction of the management and policies of a person or company, whether through ownership of voting securities or otherwise.

1.4 Application – This Instrument applies to all reporting issuers other than:

- (a) investment funds;
- (b) issuers of asset-backed securities;
- (c) designated foreign issuers;
- (d) SEC foreign issuers;
- (e) exchangeable security issuers, if the exchangeable security issuer qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.3 of National Instrument 51-102; and
- (f) credit support issuers, if the credit support issuer qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in, section 13.4 of National Instrument 51-102.

**Part Two
Disclosure and Filing Requirements**

2.1 Required Disclosure –

- (1) Every issuer, other than a venture issuer, must include in its AIF the disclosure required by Form 58-101F1.
- (2) If management of an issuer solicits proxies from the security holders of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its management information circular a cross-reference to the sections in the issuer's AIF that contain the information required by subsection (1).

2.2 Venture Issuers –

- (1) Subject to subsection (2), if management of a venture issuer solicits proxies from the security holders of the venture issuer for the purpose of electing directors to its board of directors, the venture issuer must include in its management information circular the disclosure required by Form 58-101F2.
- (2) A venture issuer that is not required to send a management information circular to its security holders must provide the disclosure required by Form 58-101F2 in its AIF or annual MD&A.

2.3 Filing of Code of Business Conduct and Ethics –

- (1) Every issuer that has adopted a written code of business conduct and ethics must file a copy of such code on SEDAR no later than the date on which the issuer's audited annual financial statements must be filed, unless a copy of such code has been previously filed.
- (2) Any amendment to a code of business conduct and ethics that was previously filed under subsection (1) must be filed on SEDAR no later than 30 days after the final form of amendment has been approved by the board of directors.

- (3) If a board of directors grants, in favour of an officer or director of the issuer or a subsidiary entity of the issuer, a waiver of a code of business conduct and ethics that the issuer filed under this section 2.3, the issuer must promptly issue and file on SEDAR a news release that describes:
 - (a) the nature of the waiver;
 - (b) the name of the person to whom the waiver was granted;
 - (c) the basis for granting the waiver; and
 - (d) the date of the waiver.
- (4) For the purposes of subsection (3), where a waiver granted in favour of an officer or director is an implicit waiver, the news release referred to in subsection (3) must be issued and filed promptly upon the board becoming aware of such waiver.

**Part Three
Exemptions and Effective Date**

3.1 Exemptions –

- (1) The securities regulatory authority or regulator may grant an exemption from this rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

3.2 Effective Date – This Instrument comes into force on •.

Form 58-101F1
Corporate Governance Disclosure Required in an AIF

1. Composition of the Board —

- (a) Disclose whether or not the chair of your board of directors is an independent director. If your board of directors has a lead director that is an independent director, state that fact and describe the lead director's roles and responsibilities. If your board has neither a chair that is independent nor a lead director that is independent, state that fact and explain why your board believes this to be appropriate.
- (b) Disclose whether or not a majority of directors are independent. If a majority of directors are not independent, explain why the board considers this to be appropriate.
- (c) Disclose whether or not your independent directors hold separate, regularly scheduled meetings. If the independent directors do not hold separate, regularly scheduled meetings, explain why the board considers this to be appropriate.

2. Board Mandate — Disclose the text of the written mandate for your board of directors. If your board does not have such a written mandate, state that fact and explain why it considers this to be appropriate.

3. Position Descriptions —

- (a) Disclose whether or not your board has developed written position descriptions for the following roles
 - (i) chair,
 - (ii) chair of each board committee, and
 - (iii) director.

If not, explain how your board assesses the performance of the individuals who occupy these roles.

- (b) Disclose whether or not your board and CEO have developed a written position description for the role of CEO. If not, explain how your board assesses the performance of the CEO.

4. Orientation and Continuing Education —

- (a) Briefly describe what measures, if any, your board of directors takes to orient new board members regarding
 - (i) the role of your board, its directors and the committees of the board, and
 - (ii) the nature and operation of your company's business.

If your board does not have such orientation measures in place, state that fact and explain why it considers this to be appropriate.

- (b) Briefly describe what measures, if any, your board of directors takes to provide continuing education for its members. If your board has no continuing education provisions in place, state that fact and explain why it considers this to be appropriate.

5. Code of Business Conduct and Ethics — Disclose whether or not your board of directors has adopted a code of business conduct and ethics for its directors, officers and employees. In addition:

- (a) disclose whether or not your board of directors monitors compliance with its code of business conduct and ethics; if not, explain why your board considers this to be appropriate; and
- (b) if your board of directors has granted a waiver (including an implicit waiver) from a provision of the code of business conduct and ethics in favour of a director or officer, briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, the basis for granting the waiver and the date of the waiver.

If a code of business conduct and ethics has not been adopted, explain why your board considers this to be appropriate.

6. Nomination of Directors —

- (a) Disclose whether or not your board of directors has a nominating committee. If it does not have a nominating committee, explain why and describe the process by which the board identifies new candidates for board nomination.
- (b) Disclose whether or not the nominating committee is composed entirely of independent directors. If all members of the nominating committee are not independent directors, explain why your board considers this to be appropriate.
- (c) Disclose the text of the nominating committee's charter. If the nominating committee does not have a charter, state that fact and explain why the board considers this to be appropriate.

7. Compensation —

- (a) Disclose whether or not your board of directors has a compensation committee. If it does not have a compensation committee, explain why and describe the process by which the board determines compensation for your company's directors and executive officers.
- (b) Disclose whether or not the compensation committee is composed entirely of independent directors. If all members of the compensation committee are not independent directors, explain why your board considers this to be appropriate.
- (c) Disclose the text of the compensation committee's charter. If the compensation committee does not have a charter, state that fact and explain why your board considers this to be appropriate.

- 8. Regular Board Assessments —** Briefly describe the manner in which your board of directors regularly assesses its own effectiveness and performance, the effectiveness and performance of each committee of the board, and the effectiveness and performance of each board member. If your board does not regularly make such assessments, state that fact and explain why your board considers this to be appropriate.

INSTRUCTION:

This Form applies to both corporate and non-corporate entities. Where this Form refers to a particular corporate characteristic, such as a board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity.

Form 58-101F2
Corporate Governance Disclosure Required in
the Management Information Circular of a Venture Issuer

1. Composition of the Board —

- (a) Disclose whether or not the chair of the board of directors will be an independent director. If the board of directors will have a lead director that is an independent director, disclose that fact and describe the lead director's roles and responsibilities. If your board will have neither a lead director that is independent nor a chair that is independent, explain why your board believes this to be appropriate.
- (b) Disclose whether or not a majority of directors and proposed directors will be independent. If a majority of directors and proposed directors will not be independent, explain why your board considers this to be appropriate.
- (c) Disclose whether or not your independent directors hold separate, regularly scheduled meetings. If the independent directors do not hold separate, regularly scheduled meetings, explain why the board considers this to be appropriate.

2. Board Mandate — Disclose the text of the written mandate of your board of directors. If your board does not have such a written mandate, state that fact and explain why it considers this to be appropriate.

3. Code of Business Conduct and Ethics — Disclose whether or not your board of directors has adopted a code of business conduct and ethics for its directors, officers and employees. In addition:

- (a) disclose whether or not your board of directors monitors compliance with its code of business conduct and ethics; if not, explain why your board considers this to be appropriate; and
- (b) if your board of directors has granted a waiver (including an implicit waiver) from a provision of the code of business conduct and ethics in favour of a director or officer, briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, the basis for granting the waiver and the date of the waiver.

If a code of business conduct and ethics has not been adopted, explain why your board considers this to be appropriate.

INSTRUCTION:

This Form applies to both corporate and non-corporate entities. Where this Form refers to a particular corporate characteristic, such as a board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity.