September 23, 2022

Manuel Dussault, Acting Director General
Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street Ottawa ON K1A 0G5

Re: NEI Investments' Submission to the Corporate Governance Consultation: Improving Diversity and Facilitating Electronic Communications in Federally Regulated Financial Institutions

Dear Mr. Dussault,

With approximately C$10 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. As part of our investment process, we utilise sustainability-related financial information, including diversity disclosures, to better inform our investment decisions and guide our corporate proxy voting and engagement activities.

We firstly want to thank the Government for the opportunity to comment on the Corporate Governance Consultation. Our comments are only directed to the questions where we seek to provide input. We have not referenced the questions in this letter where we do not seek to make any comments.

2. Are the scope and content of the CBCA's disclosure requirements appropriate for financial institutions? Please explain.

Though there are larger questions around how the *Canada Business Corporations Act* (*CBCA*) disclosure requirements could be reviewed or enhanced on an ongoing basis, we believe that the scope and content of its requirements would be appropriate for financial institutions to adhere to. Firstly, the consistency of approach towards diversity disclosure would be beneficial for users of information, particularly for investors who are assessing publicly traded financial institutions. The *CBCA*'s disclosure requirements, if applied to broader financial institutions, would allow users of reporting information to receive more consistent and comparable data on diversity.

Additionally, as an investor that considers diversity, equity and inclusion (DEI) across sectors, there are DEI themes that we believe are sector agnostic in Canada. These DEI themes include those noted in the *CBCA* diversity disclosure requirements: representation, diversity policies and targets. We currently use a series of data providers, complemented by our own qualitative assessment and manual research in order to collect and aggregate this information. Yet still, data and disclosure gaps remain. The scope and content of *CBCA* disclosure requirements is appropriate and should be applicable to financial institutions. As applied, this diversity disclosure would assist in filling the existing data gaps.

However, as mentioned above, there is a larger question at play around whether the *CBCA* requirements can or should go further (as discussed in question 3) given that there is no 'one size fits

all' approach to all aspects of diversity, equity and inclusion. Different companies and financial institutions will face unique DEI challenges, and as a result will have to employ DEI strategies that meet those unique realities. *CBCA* disclosure in its current format would help lay the foundation for diversity disclosure, but companies should be encouraged to build on this foundation in order to provide more fulsome disclosure.

3. Are the four designated groups outlined in the CBCA model (i.e., Indigenous peoples, members of visible minorities, persons with disabilities, and women) adequate for capturing the information investors and the public require in order to assess the state of diversity on the boards and senior management of financial institutions? If not, how should this be modified?

The 4 designated groups are important groups to be explicitly referenced in relation to diversity in federally regulated financial institutions, though the Government will have to consider what other underrepresented person groups should also be explicitly considered. We believe it is important to explicitly consider representation of groups that have been marginalized and disproportionately underrepresented in leadership of financial institutions and businesses in Canada – such as the person groups identified under the *CBCA*. Representation of these groups should be addressed at a minimum. We note though that there are other underrepresented or marginalized groups (including the LGBTQ2s+ community as one example) that are not named as designated person groups under the *CBCA*. As a result, financial institutions should also be encouraged to consider diversity beyond these *CBCA* designated groups to encourage other forms of diversity in their businesses and related reporting. The Government may want to consider what guidance it could provide with respect to enhanced reporting beyond the designated person groups. Future reviews with respect to the enhancement of *CBCA* disclosure requirements should include robust and expansive stakeholder consultations with a focus on further defining what disclosure should be required with respect to other person groups, or encouraging diversity disclosure beyond the designated groups.

Additionally, we note that federally regulated financial institutions also include foreign entities. As such the Government may have to consider how underrepresented or marginalized groups should be defined, in the context of these institutions. For instance, "visible minorities" is currently defined as "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour". The Government may need to consider the applicability of this definition for diversity disclosure for foreign domiciled executives and boards.

4. For investors and owners of FRFIs, are the CBCA diversity disclosures adequate to inform your investment/voting decisions for directors?

We currently consider representation, and the presence of adequate policies and targets in relation to diversity when we vote and when we make investment decisions. As such, the *CBCA* diversity disclosure requirements are helpful in informing our investment and voting decisions.

However, there are limits to the data disclosed under the *CBCA* as 1) it is focused on boards and senior management, and doesn't address broader diversity in the workplace 2) the data with respect to representation of individuals across person groups is highly dependent on the response rate of

directors and senior management and 3) there is no explicit focus on encouraging disclosure of inclusion and equity metrics. We realize that inclusion and equity related metrics are harder to define in a way that would apply consistently to companies across sectors. We also realize that for this reason, company specific context will continue to be useful. That said, we should also move towards the goal of articulating more consistent and comparable expectations on inclusion and equity. Inclusion and equity are important considerations with respect to the culture of the workplace – whether an entity can not only attract, but retain talent from different backgrounds, can also speak to the efforts underway to be anti-harassment and anti-discrimination.

7. What are the benefits and limitations of introducing targets to achieve broader diversity goals? Should federally regulated financial institutions be required to set their own targets, or should Government introduce suggested targets or guidance in this area?

We believe that targets should be a requirement. Without targets, progress on accelerating diversity in corporate Canada is slow – perhaps even stagnant. We do not define targets as quotas. We see targets as a necessary way of encouraging businesses and financial institutions to set measurable goals that they can track their progress towards attaining, just as they would any other material aspect of the business. Targets are commonly accepted in business.

That said, we believe that the Government should provide clear guidance on what a well-articulated and meaningful target would consist of. The Government should provide suggested targets, or a target range, for each designated person group. For example, we would suggest a target range of 40% to 60% for gender representation as best practice. This range allows for the ambition of gender parity while also being inclusive of non-binary individuals. This also provides more flexibility for boards than a simple 50% target. Similarly, we note the Government's 50/30 Challenge has set a voluntary ambition of achieving 30% representation of equity deserving groups on boards and senior management. This could be used as the suggested target for diversity considerations outside of gender.

Financial institutions could then define targets as appropriate at that institution, giving a clear indication of how they applied the Government's guidance. In instances where institutions choose targets outside of the suggested range or diverge more broadly from Government's guidance, they should explain why they feel the chosen trajectory is more appropriate for the institution. This comply or explain approach would be consistent with previous efforts to increase diversity and would provide investors with valuable insights regarding a company's diversity journey.

8. In your view, do director term limits create more opportunities to recruit diverse candidates? What are the potential challenges to achieving this outcome?

a. Should federally regulated financial institutions be required to set their own term limits, or should Government prescribe term limits?

We believe board renewal is an important part of the discussion on board diversity, and can facilitate fresh thinking on boards.

We note that some in the investment community have discussed the approach taken in the United Kingdom in defining term limits for directors being considered independent. This approach allows a company to keep longer term, experienced directors while putting the onus on the company to ensure other independent directors are added to the board. Since most investors employ some strategy for voting against a level of non-independence on the board, this should effectively limit the number of directors with longer terms. An approach such as this one would mitigate some of the concerns that we hear from various boards, particularly smaller companies, with respect to the need to preserve experience on the board.

We share support for such an approach as one way of balancing the need for experience and fresh thinking on boards.

We would also note that we consider average board tenure, instead of the tenure of each director on the board, as part of our current proxy voting process. We do not automatically vote against non-independent directors unless we have concerns about the overall level of independence on the board or if the average tenure on the board exceeds 12 years. The consideration of the overall board composition (whether through the board's independence level or the distribution of tenure) allows us to afford companies some flexibility in keeping longer-tenured directors on the board. However, if our limit on the average tenure of the board is triggered, that would then allow us to detect and vote against extremely long-tenured directors on the board.

Overall, we would encourage the Government to employ an approach that encourages board refreshment, while providing some flexibility around directors' tenure and term limits. A helpful approach would allow companies to benefit from experience, while deterring extremely long tenured directors on boards.

9. What are the benefits and limitations of introducing a prescribed form for reporting?

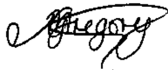
The benefit of a prescribed form of reporting is consistency and comparability. Reporting that is consistent and comparable is appreciated by users of information as it allows them to more readily evaluate and compare companies and financial institutions. Prescribed reporting also clarifies the expectations that companies should meet, and in so doing should simplify and add predictability to reporting requirements. In the context of ESG issues – comparability of data has been lacking. As a result, there has been a general movement to facilitate more comparable and standardized data to align and make clear requirements in a way that is beneficial to all stakeholders.

That said, the drawback to consistency and comparability is a lack of nuance. Numbers require context. That context may be different from company to company, or financial institution to financial institution. It is important that in this movement towards comparability, the value of company specific context and data is not lost. This is particularly acute in an area like diversity, equity and inclusion that is very much tied to additional company specific ideals such as leadership and culture. As noted in our response to question 2, *CBCA* disclosure in its current format would help lay the foundation for diversity disclosure, but companies should be encouraged to build on this foundation in order to provide robust disclosure.

Thank you again for the opportunity to comment on the Corporate Governance Consultation. Please do not hesitate to contact us if you believe further dialogue on any of the issues raised within this letter would be helpful.

Sincerely,

Adelaide Chiu, CPA, CFA | VP, Responsible Investing & ESG Services, NEI Investments



Michela Gregory |Director, ESG Services, NEI Investments

cc.

Jamie Bonham | Director, Corporate Engagement, NEI Investments

Hasina Razafimahefa | Senior Manager, ESG Evaluations and Proxy Voting, NEI Investments