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The Secretary
Ontario Securities Commission
20 Queen Street West
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Email: comments@osc.gov.on.ca

Dear Sir or Madam:

**Re: OSC STAFF CONSULTATION PAPER 58-401**

Please find attached my comments to the proposed disclosure requirements regarding women on boards and in senior management. My comments are based on my research that will be published in two forthcoming papers: "New Rationales for Women on Boards" in the *Oxford Journal of Legal Studies* and "Women on Boards: Lessons for Germany" in the *European Business Law Review*.

My submission has been very loosely footnoted in order to make it easier to read. If there is interest in obtaining sources for the statements that I make or the papers that contain the research, please let me know.

Feel free to contact me if you require any further information.

Yours truly,

Barnali Choudhury

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**COMMENTS ON OSC STAFF CONSULTATION PAPER 58-401- DISCLOSURE REQUIREMENTS REGARDING WOMEN ON BOARDS AND IN SENIOR MANAGEMENT**

1. Given the unequal distribution of men and women at senior levels of business, any proposal put forward to increase the number of women on boards is laudable and the OSC should be congratulated for putting forward these proposals. My comments on the proposed provisions are intended only to strengthen them.

*What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?*

2. Increasing disclosure requirements for issuers is not a costless endeavour. Moreover, since securities filings for listed companies tend to already number in the hundreds of pages, there is an ever present danger of information overload. The disclosure requirements regarding women on boards should be mindful of these limitations. Consequently, disclosure requirements in this area should focus on the information that is most relevant to investors.

3. Investors have reported that disclosure of the diversity of boards reveals information on corporate culture and governance practices that allows them to make more informed voting and investment decisions. [1] They also have suggested that this information can demonstrate how companies recruit talent and retain staff.[2] Accordingly, disclosure information regarding women on boards should focus on information that is reflective of corporate governance practices, recruitment, and retention.

4. One way to approach disclosure of these issues is to require companies to reveal the number of women at different levels of the company, existing policies and measures in place to advance women in companies (both at board level and within the company in general), and proposed policies and targets for advancing women to senior positions in the business (including at board level). In this way, investors can be given information, both from a numerical and a narrative perspective, on the existing status of women in the company, the advancement process for women, and finally the issuer's future proposed actions in this area.

5. Disclosure requirements, such as these, address both the existing and the future status of women within the company, thereby revealing information on corporate governance and recruitment issues. More importantly, they also address the "pipeline" issue or the supply of women in the company who can eventually advance up the company's hierarchy to take up senior positions. Many companies have expressed concerns about the lack of women to fill senior positions in business, some even using it as a justification for not appointing women to their boards. Thus, the pipeline issue remains one of the most important aspects of any initiatives promoting women on boards and directly addresses investor concerns about retention.

[1] See e.g., S.E.C., Proxy Disclosure Enhancements, 74 Fed. Reg. 68343 (Dec. 23, 2009).
[2] Ibid.

*Are the proposed scope and content of the model disclosure requirements appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.*

6. In general, the proposed disclosure requirements are appropriate, although some changes are suggested. These pertain to the measurement requirement and the terminology used.

7. First, the proposed measurement requirement should be more specific. It currently proposes that issuers "disclose the proportion (in percentage terms) of: female employees in the whole organization, women in senior executive positions, and women on the board". It also does not define senior executive position, but alludes to the fact that it generally refers to any upper level executive position. Given the pipeline problem, however, the issuer should be specifying the number of women either at every level of the company, or if that is too onerous, at least the number of women occupying positions at every level of management. This is because the women in positions of lower management and middle management are more likely to be the women who will progress up the corporate hierarchy to ultimately take up positions at the senior executive level. Eventually, these are the individuals who will be the contenders for positions at the board level.

8. Moreover, a shortage of women in management − which will be revealed if companies are required to disclose this statistic − signifies a company which may not be recognizing the importance and the value of gender equality at the leadership level. For this reason, the OSC should mandate, at a minimum, that companies disclose the number of women at every level of management within the company either as a whole number or as a percentage of the total number of employees in the firm. For an even more illustrative picture of gender issues within the firm, the company could also be required to disclose the number of women at every level of the organization.

9. Second, it is unclear why the proposed disclosure requirements are limited only to gender diversity. While this is no doubt a result of the limited mandate given by the Ontario government to the OSC, it would be more beneficial in a multicultural province like Ontario to encourage attempts to foster diversity on boards that extend beyond gender. Minorities represent over 16 percent of the population of Canada and 43 percent of the population of Toronto.

10. In this regard, the Australian Stock Exchange's disclosure requirements are instructive. The ASX disclosure rules require companies to disclose diversity policies and define diversity to include, gender, age, ethnicity and cultural background. They also set separate measurable targets/requirements for gender diversity alone, ensuring that issues of women on boards are properly addressed. In fact, defining diversity in a broad manner has encouraged Australian companies to set diversity policies that extend far beyond the black letter requirements of the disclosure rules, resulting in broad diversity policies.[3]

[3] See generally KPMG, *ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of 31 December 2011 Year end disclosures* (2012).

11. Similarly, the OSC's disclosure rules on requiring a "policy regarding the representation of women on the board and in senior management" could be rephrased to require companies to disclose "diversity policies targeting board level and senior management positions". Moreover, diversity could then be defined as including, but not limited to, gender, race, national or ethnic origin, or age. As in the Australian context, this could be a vital step towards companies developing policies to foster not only women, but also other minorities, at the board and other senior levels of business. At the same time, the measurement requirements for disclosing the number of women at different levels of the business would still remain, thereby ensuring that the separate issue of women on boards, which affects women across the range of other minority categories, is specifically addressed.

*What are effective policies for increasing the number of women on boards and in senior management?*

12. While using disclosure to prompt normative changes in business behaviour has been effective in some areas of business, it is unlikely that this tactic alone will be enough to increase the number of women on boards and in senior management. Results of disclosure requirements pertaining to gender diversity in the U.K. and Australia confirm this.

13. For instance, despite disclosure requirements in the U.K., women still account for only 17 percent of board members on FTSE 100 companies and only 13 percent of board members on FTSE 250 companies. Moreover, six percent of FTSE 100 and just under 30 percent of FTSE 250 boards still remain exclusively male.[4] Even more striking, only 13 percent of companies set targets for increasing the number of women on boards[5] and 37 companies categorically stated that they would not be setting targets.[6]

14. Still improvements have been made in the U.K. as the number of women on boards has increased by approximately 5% since the disclosure requirements were introduced. Nevertheless, it is unclear whether disclosure rules were instrumental in increasing the number of women on boards. It seems more likely that the constant attention by the media of this issue as well as the threat of quotas at the European Union level were more likely responsible for increases to women at the board level.

15. In this regard, it is noteworthy that the Ontario/Canadian media are not giving the women on boards issue the same level of attention as the British press and that there is no threat of quotas looming in the background. Thus, any disclosure requirements that are ultimately adopted by the OSC will require initiatives to complement these requirements. Possible complements include launching a marketing campaign to promote the measures, including involving a high media presence, or following Australia's approach described below.

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[4] Ibid 11, 13, 37.

[5] Grant Thornton, *Corporate Governance Review 2012: The chemistry of governance, A catalyst for change* (2012), 18.

[6] Ibid.

16. Like the U.K., Australia has experienced progress in increasing the number of women at the board level after introducing its disclosure rules on diversity on boards. However, it is unlikely that this progress is a result of the disclosure rules alone. Indeed, a recent study revealed that Australian companies' compliance with the disclosure rules has been weak.[7] Only 19 percent of companies complied with the basic disclosure requirements, although 60 percent did disclose a commitment to diversity.[8]

17. Instead, Australia's successful promotion of women at board level at a rapid pace is attributed by some to the Australian Institute of Company Directors' mentoring program. This program matches qualified board candidates to chairmen or experienced directors of ASX 200 listed companies. The mentors then work with the mentees for a year to help them develop connections with influential business leaders, improve their knowledge and skills, increase their understanding of governance issues in listed companies and gain insight into the process of selecting and appointing new directors. The hope is that this year-long mentorship will help the mentee gain a board position, although this is not a guaranteed objective of the program.

18. The Australian Institute of Company Directors also offers scholarships for women who wish to undertake training to support their directorship careers as well as a skills-building and development training program called "Board Ready". The latter initiative is offered to companies to help them develop their senior managers into board candidates thereby creating a pipeline of qualified women.[9]

19. While there may be concerns that mentoring programs perpetuate the existing patriarchal model since most mentors are male, these programs still manage to highlight the numerous qualified women that are capable of taking on board positions. As many directors have lamented the lack of supply of qualified women, mentoring programs can bring qualified women to the attention of influential mentors. Furthermore, they provide opportunities for women to gain a toehold into the mostly male dominated networks of boards.

20. Similarly, the OSC may wish to complement its disclosure requirements by partnering with another organization to facilitate both women's ascent to board level as well as companies' abilities to bring these women into their organizations. Possible partners include *Women On Board® Canada*, recently acquired by Catalyst Inc., or the Canadian Board Diversity Council, both of which run mentoring programs. The OSC's formal support of one or either of these programs could spur greater corporate interest in using these programs to increase the number of women in their company at board level.

21. Finally, to maximize the intended effects of promulgating these disclosure requirements the OSC should adopt an appropriate enforcement/monitoring mechanism to enforce or monitor

[7] Pru Bennett, *Australia's Female-less Boardrooms*, BlackRock Australia (Feb. 2012), https://www.blackrockinvestments.com.au/content/groups/australiansite/documents/literature/women-in-boardroom.pdf.

[8] Ibid, 1.

[9] See e.g., Australian Institute of Company Directors, Board Ready Program, http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Board-Ready-Program.

the comply or explain approach. Australian companies, which operate on a comply or explain basis as well, have often offered vague or uninformative descriptions of their diversity policies which formally comply with the disclosure rules, but do not assist investors in a meaningful way. A better approach would be for enforcement/monitoring bodies, in determining whether a company has complied with any prescribed gender or diversity disclosure rules, to check whether the information provided is sufficiently detailed, informative and meaningful. This would move the role of enforcement or monitoring from simply box checking to ensuring that the information investors are seeking is actually being provided.