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Attention: The Secretary

Gentlemen and Mesdames:

OSC Staff Consultation Paper 58-401: *Disclosure Requirements Regarding Women on Boards and in Senior Management* (OSC Consultation Paper)

This letter is submitted in response to the OSC Consultation Paper published on July 30, 2013. It reflects the views of a working group made up of issuers having a combined market capitalization of more than \$100 billion (the **Working Group**). We thank you for affording us the opportunity to comment on this important topic.

General

The Working Group believes that decision-making benefits from a diversity of opinions and viewpoints. This diversity is enhanced when leadership roles are filled with qualified individuals who have different professional experiences, industry-specific expertise, education, skills and individual qualities and attributes such as gender, age, ethnicity and cultural background. The Working Group generally supports the proposals described in the OSC Consultation Paper (the **OSC Proposals**) but believes that disclosure on diversity should have a broader scope.

In recent years, the proportion of women serving as directors of public companies has remained unchanged in Canada. Notwithstanding the fact that there are many board-ready potential female directors, less than 20% of directors of Canadian public companies are women¹. The Working Group is of the view that Canadian boards would generally benefit from a more diversified composition.

The Working Group believes that legislated quotas with respect to gender diversity would not be flexible enough, and that the “comply or explain” regime proposed by the OSC is an appropriate solution, in line with the traditional approach of the Canadian Securities Administrators (**CSA**). However, the Working Group is of the view that consideration for other types of differences such as age, ethnicity and national origin should also be encouraged by the OSC.

You will find below comments on each question set forth in the OSC Consultation Paper, with details of the views of the members of the Working Group. Some of our comments are repetitive due to the nature of the questions. We apologize for any redundancy.

¹ See for instance: Spencer Stuart, *Board Index 2012*, available at www.spencerstuart.com, at p. 16; Korn Ferry, *Corporate Board Governance and Director Compensation in Canada*, available at www.kornferryinstitute.com, at p. 30; TD Economics, « Get on Board Corporate Canada », available at www.td.com, at p. 2.
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1. *What are effective policies for increasing the number of women on boards and in senior management?*

The Working Group strongly believes that directors of public companies need to be appointed on the basis of merit. Canadian boards are under very high pressure to perform, and board nominations must be taken extremely seriously. Talent, experience and skills of potential candidates should be studied with great care and much effort should be spent to ensure that boards have what it takes to succeed.

In this context, not all issuers have policies in place regarding diversity at the board or senior management level. With respect to gender diversity, despite the fact that women's participation in the labour force has increased dramatically in the last century and that they now make up a significant portion of key candidate pools, representation of women on Canadian boards remains very low.²

The Working Group agrees that disclosure by issuers related to diversity is appropriate. In contrast, legislated quotas are not flexible enough and could result in the stigmatization of women in corporations across the country and potentially have an overall detrimental effect on certain organizations. Most of all, as some observers suggest, quotas could be described as the "antithesis of merit".³ In contrast, the "comply or explain" regime proposed by the OSC is much more flexible and would be the appropriate tool to bring awareness and transparency to diversity issues, while allowing non-venture issuers to fix goals in line with the realities of their businesses.

The Working Group is therefore of the view that a "comply or explain" regime can be an effective yet flexible approach for increasing the number of women on boards and in senior management. As opposed to quotas and their "one-size-fits-all" approach, a "comply or explain" model would require non-venture issuers to develop their own strategies and objectives and to decide how and to what extent diversity (including gender diversity) should be taken into account as a criterion for board nomination. Furthermore, the "comply or explain" regime is in line with the traditional position of the CSA with respect to governance, developed in National Instrument 58-101 – *Disclosure of Corporate Governance Practices*.

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

The Working Group believes that the scope of the disclosure requirements regarding diversity should be broader than solely gender diversity. With respect to gender diversity, the type of disclosure described in the OCS Consultation Paper seems appropriate. In addition, the Working Group is of the view that industry-specific disclosure related to diversity may be useful. For example, non-venture issuers should be allowed to explain the strategies that are put in place to recruit women in certain fields.

3. *Are the proposed scope and content of the model disclosure requirements prescribed in Part 4 of this consultation paper appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.*

The Working Group is of the opinion that the proposed scope of the OSC Proposals should be broadened to include other types of diversity. With respect to gender diversity, the content of the model disclosure requirements prescribed in Part 4 of the OSC Consultation Paper is generally appropriate. A multi-level approach covering disclosure of existing diversity policies and considerations of diversity in the selection process and measurements regarding diversity would make sense. However, some members of the Working Group were of the view that the current proposal related to disclosure of the Board's evaluation process could be interpreted as requiring that issuers disclose the impact of diversity on the effectiveness of the Board. The members of the Working Group believe that the intent of the proposal is probably more to provide how diversity

² See TD Economics, « Get on Board Corporate Canada », *ibid.*, at p. 2.

³ *ibid.*

is assessed, including through the annual evaluation of the effectiveness of the Board, if applicable. The wording would thus benefit from clarifications.

4. *What type of statistics, data and/or accompanying qualitative information regarding the representation of women in their organization should non-venture issuers be required to disclose? Should such disclosure be reported for the non-venture issuer only or for all of its subsidiary entities also?*

The requirements with respect to the type of statistics and accompanying qualitative information should be flexible enough to allow issuers to provide the information in a way that makes sense within their organization. The Working Group believes that disclosure should generally include all subsidiary entities and that statistics, data and/or accompanying qualitative information should be provided on a consolidated basis.

5. *What practices should we recommend for facilitating increased representation of women on boards and in senior management? For example, should we recommend that non-venture issuers have a gender diversity policy? If so, should we set out recommended content for the policy? Should non-venture issuers be required to comply with the recommended practices or explain why they have not complied (i.e. a "comply or explain" model of disclosure)?*

Very few non-venture issuers publish gender policies that specifically address board members and senior management. The Working Group believes that a "comply or explain" model of disclosure for diversity policies would most likely contribute to delivering tangible results by allowing non-venture issuers to reflect on the effectiveness of their respective policy and the progress made each year. However, the Working Group is of the opinion that the OSC should not recommend optional content for such policy, as there is no "one-size-fits-all" model that would fill the needs of all non-venture issuers.

Conclusion

In short, members of the Working Group support the OSC's initiative and believe it is a necessary step to increase diversification on boards and in senior management positions across the country. The Working Group is of the view that a "comply or explain" model of disclosure would raise awareness on the issue of diversity on boards and would pave the way towards tangible improvements for Canadian corporations and Canada as a whole. Although gender diversity is an essential component of a diversity policy, participants in the Working Group believe that the scope of the new disclosure requirements should be broadened to include other types of diversity. We hope such initiatives will result in better boards and better management in Canada.

Thank you for allowing us to comment on this subject.

Yours truly,

Norton Rose Fulbright Canada LLP