



September 30, 2013

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Dear Secretary:

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

The Canadian Coalition for Good Governance ("CCGG") has reviewed the Consultation Paper and we thank you for the opportunity to provide our comments.

CCGG's members are Canadian institutional investors that together manage approximately \$2 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies and the improvement of the regulatory environment to best align the interests of boards and management with those of their shareholders and to promote the efficiency and effectiveness of the Canadian capital markets.

A list of our members is attached to this submission.

OVERVIEW

CCGG supports this important initiative by the OSC. The Consultation Paper comes at a time when studies show little discernible progress in Canada in increasing the representation of women on boards and in senior management¹. As the Consultation Paper points out, Canada also appears to be lagging

¹ Catalyst, *2011 Catalyst Census: Financial Post 500 Women Board Directors (March 8, 2012)*; Catalyst, *2012 Catalyst Census: Financial Post 500 Women Senior Officers and Top Earners (February 19, 2013)*

behind globally in this area² with negative competitive implications for our markets, given the correlation between board gender diversity and corporate performance³ and reliance on corporate leadership drawn from a subset of the available talent pool. Research shows gender diversity improves board decision making, independence and the oversight and mitigation of risk and avoids 'group-think'.⁴ From the institutional investors' perspective, gender diversity is a business issue as much as a social or political one.

As stated in CCGG's 2013 *Building High Performance Boards*, CCGG believes that the single most important corporate governance requirement is to have directors of quality. Gender diversity is one form of diversity that enhances the quality of boards and senior management. CCGG emphasizes the importance of diversity generally on boards and in senior management, however, and encourages the OSC to consider this issue in future consultations. As *Building High Performance Boards* states, boards should reflect a wide variety of experiences, views and backgrounds, which, to the extent practicable, reflects the gender, ethnic, cultural and other personal characteristics of the communities in which the corporation operates and sells its goods or services.⁵ The same principle applies to senior management. CCGG recognizes that the OSC has chosen to address only gender diversity in the Consultation Paper and we have framed our response accordingly. Moreover, given that women comprise half the population, efforts to increase diversity by focusing on gender is a good place to start and we believe may encourage the enhancement of other forms of diversity.

We believe that the model disclosure requirements proposed in the Consultation Paper would have a positive impact on increasing the number of women on boards and in senior management. We also believe that the OSC should propose a new guideline for National Policy 58-201 *Corporate Governance Guidelines* (the "Governance Guidelines"), recommending that as a "best practice" issuers should adopt a policy with respect to gender diversity on the board. The Governance Guidelines should also be amended to include as a "best practice" that boards should consider gender diversity when carrying out their management succession planning responsibilities. Issuers could then either 'comply' with these guidelines or 'explain' why they have chosen not to under National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the "Governance Disclosure Rules").

Before answering the specific questions posed by the Consultation Paper we make some general comments.

GENERAL COMMENTS

Need to monitor and report on progress

We stress the importance of the OSC continuing to monitor progress in this area with the intention of finding alternate solutions if no material improvement is seen within a specified and reasonable period

² GMI Ratings' *Women on Boards Survey* (May 1, 2013) "Canada's progress on gender diversity among directors is stagnant"

³ "Women Matter: gender diversity, a corporate performance driver", McKinsey, & Company, 2007; "The Bottom Line: Corporate Performance and Women's Representation on Boards", Lois Joy, Nancy M. Carter, Harvey M. Wagener, Sriram Narayanan; "Mining the Metrics of Board Diversity", June 2013 Thomson Reuters

⁴ "Women on Boards" February 2011, UK, pages 7-9 (the "Davies Report")

⁵ http://www.ccg.ca/site/ccgg/assets/pdf/building_high_performance_boards_august_2013_v12_formatted.pdf

of time (say three years), including a consideration of whether an alternative more prescriptive strategy may be appropriate if there is no material improvement by such specified future date. By that time, there will be additional evidence available from international experience with alternative strategies to better evaluate the most effective means of increasing board diversity. As well, the information on gender diversity practices provided by issuers under the proposed model disclosure will allow for valuable benchmarking.

CCGG recognizes that a 'comply and explain' approach may be insufficient to attain a desired goal. For example, CCGG has been encouraging the TSX to adopt a mandatory listing requirement for majority voting, rather than the 'comply or explain' model that is currently in place. Experience in Canada since the 'comply or explain' model was adopted by the TSX effective December 31, 2012 has shown that many companies have not adopted a majority voting policy and disclose as their "explanation" that there is no legal requirement to do so. It is CCGG's view that this failure to implement what is the clear intention behind the 'comply or explain' model, namely, to encourage companies to voluntarily adopt majority voting, shows that a mandatory regime with respect to this issue is necessary. With this in mind we suggest that gender diversity be monitored and reported on annually with a view to considering more prescriptive action if progress proves unsatisfactory.⁶ We also suggest that the quality of issuers' disclosure be monitored as part of the OSC's continuous disclosure review to ensure that disclosure is meaningful and does not become mere boilerplate.

Focus on senior management and succession planning

We agree with the Consultation Paper's focus on gender diversity in senior management as well as on boards. Given that the majority of directors are typically drawn from executives with senior management experience the two populations are closely related. A more gender diverse senior management pool ultimately is likely to increase the number of women on boards as well as being a desirable goal in its own right.⁷

In this regard, we suggest that the OSC consider including an additional model disclosure requirement with respect to whether a board considers gender diversity in the context of its responsibilities for succession planning and the appointment, training and monitoring of senior management.

We also suggest that the Governance Guidelines be amended to recommend that directors consider gender diversity when carrying out their management succession planning responsibilities.

Application of disclosure requirements to TSX-V Issuers

Given that the model disclosure requirements proposed in the Consultation Paper are not onerous, CCGG is of the view that the requirements (including our recommendation with respect to new "best practices" guidelines contained herein) should apply to issuers listed on the TSX-V as well as non-

⁶ There is a certain amount of complacency around this issue by many, seemingly based on the idea that progress is inevitable and will evolve naturally in spite of evidence to the contrary. For example, Catalyst reports that women filled only 15% of entrant board seats at FP 500 companies between 2009 and 2011 (Catalyst report page 5).

⁷ There is some evidence that the issue of a lack of gender diversity in senior management is more intractable than that associated with representation on boards. See "Women on boards" April 2013, UK, pages 6-7; "Women on boards", February 2011 UK page 26

venture issuers. We do not believe the requirements impose undue hardship or that the cost to venture issuers will outweigh the benefit to the Canadian market participants.

Proxy access and gender diversity

Today shareholders in Canada have no meaningful access to the director nomination process. Providing shareholders with greater access to the nominating process will enable investors to help address the gender imbalance on boards by bringing forward women candidates if boards continue to lag with proposing their own. We encourage the OSC to focus on greater proxy access for shareholders, both to address the gender diversity issue with respect to boards and more generally to assist in increasing shareholder democracy.

Importance of board refreshment

In order for there to be opportunities for increased gender representation on boards there must be board turnover or regular board 'refreshment'.⁸ Simply increasing the number of board seats to accommodate more women will not address the issue. Board refreshment is increasingly viewed as important for avoiding 'group think' and maintaining board independence. CCGG believes that a robust board evaluation process rather than term limits or retirement ages is the best means of ensuring high quality board members, but perhaps boards will need to impose term limits or retirement ages in order to refresh themselves.

SPECIFIC CONSULTATION QUESTIONS

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

The global experience illustrates that various methods for increasing female participation on boards work. A voluntary business-led strategy (as is supported by Catalyst in Canada through its Catalyst Accord⁹) is working in the UK¹⁰; a 'comply or explain' model is working in Australia¹¹; and legislated quotas are working in those countries such as Norway that have adopted them¹². The question is

⁸ There is evidence that boards are turning over more slowly: Spencer Stuart's most recent US board index showed board turnover in 2012 was at the lowest level seen in at least the past decade. Patrick McGurn, special counsel at ISS, says people have begun considering how lengthy tenure and lack of turnover on boards have negatively impacted diversity, "*ISS Launches Probe into Director Tenure*" Agenda newsletter, September 3, 2013 page 1.

⁹ Catalyst Accord – Catalyst is calling on Canadian corporations to pledge to increase the overall proportion of FP500 board seats held by women to 25 percent by 2017. <http://www.catalyst.org/catalyst-accord-women-corporate-boards-canada>

¹⁰ Since 2011, when the first "*Women on boards*" was released, the number of women on boards in the UK has increased by nearly 40% (17.3% of FTSE 100 and 13.2% of FTSE 250 board directors, as at March 2013, up from 12.5% and 7.8%, respectively in February 2011)." *Women on boards*", April 2013

¹¹ When the Australian Stock Exchange Securities Council introduced gender metric reporting as part of its governance code in 2010, the number of new board appointments going to women increased dramatically from the previous year, up from 5% in 2009 to 27% in the first half of 2010, "*Women on boards*", February 2011, pp13-14

¹² By 2011, women comprised 44.2% of board members in Norway, up from 6.8% in 2002 when quotas were introduced, "*Women on boards*", February 2011 p 26. However this was partly achieved through an increase in board size rather than by replacing existing directors. Moreover, women still make up only 2% of CEOs in Norway which supports CCGG's view that attention must also be paid to disclosing whether consideration of gender

which approach can be expected to be effective in a particular market. Given Canada's generally successful experience with a 'comply or explain' strategy in other governance areas (other than with respect to majority voting), CCGG believes that a 'comply or explain' approach is an appropriate methodology for Canada for improving gender diversity at this time.

We also note the level of hostility generated by the idea of quotas. It raises concerns about stigmatisation, tokenism and a fear of incompetent board members. The success of any approach will be affected by the willingness of people to adopt it and we believe that a 'comply or explain' approach is much more likely to be accepted in Canada than a quota system.

Accordingly, at this time we support the 'comply or explain' approach taken in the Consultation Paper. Before a more prescriptive approach is considered, 'comply or explain' should be given an opportunity to work.

- *What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?*
See response to next question.
- *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.*

We believe the proposed scope and content of the model disclosure requirements are appropriate subject to the following additional disclosure requirement:

- Issuers should explicitly indicate whether, and if so how, the board considers the representation of women in senior management positions when meeting their succession planning responsibilities, including the appointment, training and monitoring of senior management. If the issuer does not take the representation of women into account, it should explain why not and identify any risks or opportunity costs associated with the decision not to do so (as is proposed by the OSC in connection with the model disclosure requirement for the nomination of directors).
- *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?*

We believe that the Consultation Paper is looking at the appropriate type of data regarding the representation of women in organizations with its proposal that issuers disclose the proportion (in percentage terms) of women:

- in the whole organization
- in senior executive positions
- on the board.

representation is happening in management succession planning to improve the pipeline of qualified female directors.

We suggest that issuers should also be required to disclose the percentage of board entrants over the past three years that have been women, regardless of whether or not the issuer has a policy on gender diversity.

It would also be useful to disclose the number of female candidates considered for each board opening. While CCGG does not believe quotas for directors are appropriate at this time, it would be helpful for issuers to consider a quota for candidates, say for each board opening 30% or 50% of the candidates considered must be women. This will increase the nominating committees' exposure to qualified women candidates. Disclosing whether or not recruitment firms hired by the board or nominating committee are asked to bring forward suitable female candidates would also be useful information.

The above data should be reported for all subsidiary or operating entities of the issuer as well as for the issuer.

- *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)?*

The OSC should recommend that issuers adopt a gender diversity policy for boards and that this should be a 'best practice' added to the Governance Guidelines. The Governance Guidelines are not prescriptive, as the Consultation Paper points out, but are intended to encourage issuers to consider the guidelines in developing their own corporate governance practices. And as with other guidelines, companies should be required to comply with the recommended practices or explain why they have not complied.

The OSC should set out recommended content for the policy in general rather than specific terms. For example, the OSC should recommend that the policy set out goals with respect to gender representation on the board and a timeline for meeting those goals but not stipulate that a company must adopt, for example, a goal of having 30% of the board be comprised of women by 2017.¹³ This would be consistent with the methodology of the Governance Guidelines which recommend, for example, that boards should adopt a written code of business conduct and ethics that addresses conflicts of interests but does not stipulate what should be contained within it.

We also suggest section 3.14 of the Governance Guidelines be amended to state that in making recommendations, nominating committees should consider the gender diversity of the board as a whole.

Finally, as discussed above, we believe that the Governance Guidelines should be amended to require that board mandates acknowledge a consideration of gender diversity as part of succession planning.

¹³ In setting their policy, boards should be cognizant of studies that have shown that a 'critical mass' of three or more women at board level or in senior management produces the best financial results: "*Women Matter: gender diversity, a corporate performance driver*", McKinsey & Company, 2007; "*Characteristics of women and men corporate inside directors in the US*", *Corporate Governance: An International Review*, 12(3):337-42.

Consistent with the 'comply or explain' model, if the board does not consider gender diversity in succession planning then the issuer must explain why not and identify the risks or opportunity costs associated with not doing so.

In summary, we support the OSC's initiative to advance the representation of women on boards and in senior management and encourage the OSC to consider the issue of broader diversity in future as well.

Thank you for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Erlichman, at 416.868.3585 or serlichman@ccgg.ca or our Director of Policy Development, Catherine McCall, at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,

A handwritten signature in black ink that reads "Daniel E. Chornous / C. McCall". The signature is written in a cursive style.

Daniel E. Chornous, CFA
Chair of the Board
Canadian Coalition for Good Governance

CCGG MEMBERS

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund Board
Aurion Capital Management Inc.
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Limited
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management Ltd.
Canada Pension Plan Investment Board (CPPIB)
Canada Post Corporation Registered Pension Plan
CIBC Global Asset Management Inc.
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Connor, Clark & Lunn Investment Management Ltd.
Franklin Templeton Investments Corp.
GCIC Ltd.
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Healthcare of Ontario Pension Plan (HOOPP)
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel Ltd.
Lincluden Investment Management Limited
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada (Pension Plan)
New Brunswick Investment Management Corporation (NBIMC)
Northwest & Ethical Investments L.P. (NEI Investments)
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Ontario Pension Board
Ontario Teachers' Pension Plan (Teachers')
OPSEU Pension Trust
Public Sector Pension Investment Board (PSP Investments)
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