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Delivered by email

The Secretary
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**Re: Ontario Securities Commission (OSC) Staff Consultation Paper 58-401
Disclosure Requirements Regarding Women on Board and in Senior Management**

This letter is submitted on behalf of Governance Studio and Global Governance Advisors (GGA) in response to the invitation to participate in the consultation called for in the OSC Staff Consultation Paper 58-401 – *Disclosure Requirements Regarding Women on Boards and in Senior Management* dated July 30, 2013.

We thank the OSC for taking this first key step to encourage diversity, specifically gender diversity, thus addressing the advancement of women on boards of directors and in senior management of publicly-traded companies in Canada. As active participants in the discussion around corporate governance both Governance Studio and GGA believe increased diversity creates long-term value for organizations and their key stakeholders. It is imperative to successfully address this issue as the Canadian marketplace is falling behind other leading international markets on this key component of effective governance.

The OSC has requested comments on several key areas and, we are pleased to share our perspectives on the proposal, in particular, the new disclosure requirements. We strongly support public issuers disclosing their diversity policy, including the representation of women on the board and in senior management ranks. However, we disagree with the “comply or explain” model in this instance. Allowing disclosure of a policy, if there is one, or explanation if there isn’t, will not move organizations far enough in a reasonable amount of time. We believe a more effective approach is to require that listed organizations develop, adopt, disclose and report against a diversity policy of their choosing. It should be noted that Governance Studio and GGA strongly believe that public

issuers should be free to create their own diversity policy. We DO NOT agree with forcing companies to adopt a predetermined policy.

Further, we ask the OSC to examine the functionality of requiring listed companies, within their diversity policies, to include a self-chosen diversity percentage target and timeline. Each organization can make its case to its stakeholders as to what the percentage of female board members (and other diversity aspects appropriate to that business) will be, within a three or five year period.

Finally, Governance Studio and GGA ask the OSC to consider including in its disclosure requirements the organization's plans and progress toward increasing their diversity in their senior management levels. As stated earlier, we believe that a 'comply or explain' approach to diversity disclosure will not result in substantive changes in a reasonable period of time. Part of the reason for this is that it is both too easy, and in many cases, too true to say 'there were very few viable candidates to choose from'. The talent pool for potential Board members is very often drawn from the senior executive ranks of other organizations. However, according to the *2012 Catalyst Census; Financial Post 500 Women Senior Officers and Top Earners*, fully 35.9% of Canadian public companies had **0%** women in their senior executive staff, for example. This means that the potential Board development pool for diverse candidates will continue to be very limited unless overt action is taken to develop, mentor and promote a diversity of talent to the senior ranks of Canadian public companies.

Neither Governance Studio nor GGA support government mandated quotas to achieve increased diversity in the boardroom. With the strengthening of the Proposal as outlined above we do not believe quotas are necessary. It has been seen in other markets, that simple voluntary disclosure has not resulted in substantive changes in relation to the degree of boardroom diversity. In order to successfully avoid a quota, significant progress needs to be made.

In addition to a diversity policy we believe the board must make other procedural changes in order to achieve greater diversity. In particular the Nominating Committee must gain a deeper understanding of the skills and experience of the board. The Committee should implement an annual review process of director's skills through use of a skills matrix, including adding an extra layer of diversity to the assessment. This process will allow the Committee to identify not only potential skills gaps but also diversity gaps and then identify new board candidates that don't just fill a diversity requirement but also fulfill a necessary part of the skills matrix. In short, they must implement processes to find not only diverse candidates but ones that fit with the current and future needs of the board. This will result in a better functioning board which in turn adds stakeholder value.

The board can start identifying diverse directors today (that fit the current and future skills matrices) and add the names and CV's of those that aren't on the board but that meet the skills and diversity needs on paper. Current board members and management may then consider attending social and professional events that include the targeted pool of diverse candidates to get to know those individuals that are outside of the board today.

One option for a simple and effective change (that addresses board diversity and exposes a larger pool of candidates to boards) is that companies can adopt the Diversity One Policy. The policy and additional background are attached, but in its simplest form a board agrees that it will interview (not necessarily choose) at least one diverse candidate for every board seat opening.

Diversity One allows boards the freedom to recruit the most appropriate director while ensuring they begin to explore a broader pool of candidates. That, in turn, adds value by focussing on quality, not just quantity.

In summary, the three significant changes to the model being proposed by Governance Studio and GGA are:

1. the requirement to adopt a **company-developed diversity policy** of some form (rather than explaining why one isn't needed),
2. a requirement to include **measurable diversity objectives** under the policy including performance measures determined by each company (i.e. not pre-defined and/or prescribed for them), and
3. the requirement to include in their disclosure specific **senior management diversity action plans and progress** toward their achievement (e.g. mentoring, developmental assignments, enhanced succession planning, etc.).

We thank the OSC for this opportunity to share our comments on Consultation Paper 58-401. We look forward to the implementation of effective and appropriate diversity requirements for Canadian listed issuers. We agree that initial efforts may be focussed on non-venture issuers, but venture issuers also need to be addressed now or in the relatively near term.

If you would like any further information please feel free to contact Sylvia Groves at Sylvia@GovernanceStudio.ca or 403.991.2154 or Paul Gryglewicz at paul.gryglewicz@ggainc.com or 647.286.0626.

Best regards,

Governance Studio Inc.

Sylvia L. Groves
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ONE STEP

ONE ACTION

ONE IMPACT



1D

DIVERSITY ONE

An initiative by  Governance Studio

“What if one single change – one tiny shift – could double the number of diverse directors on North American boards in the next ten years?”

Diversity One – One Step, One Action, One Impact

Governance Studio is a strong advocate of increasing diversity in North American boardrooms, from the perspective of both gender diversity and along other diversity measures, such as ethnicity. True diversity, going beyond mere lip service of “a diversity of views and opinions”, adds values to boards and the organizations they oversee.

The Diversity One initiative is designed to make a significant impact over the next decade in one area of board diversity – gender diversity.

The Value of Diversity

The jury is still out on quantitative research that conclusively proves the economic value of increasing the number of women on boards. However, there is significant evidence on the qualitative side. First, women are exceptionally strong at keeping the best interests of the organization in mind in decision making and, second, the mere presence of women on the board increases the effectiveness of male directors and the whole board.

From a simpler sociological standpoint there is extensive evidence of the effectiveness of diverse (heterogeneous) teams over similar (homogenous) teams.

The Diversity One Policy

The Diversity One Policy is very simple – a board commits (by voluntarily adopting the policy) to interview at least one diverse candidate for every board seat it seeks to fill.

The policy allows boards to demonstrate their commitment to diversity to shareholders, stakeholders and regulators without ever being forced to select a less than ideal director candidate.

Diversity One is based on the same premises that underlie the Rooney Rule in NFL football – which initial results have borne out. It has been shown that when you make a commitment to interview at least one diverse candidate for an open position, more diverse candidates get hired.

The Rooney Rule and Its Impact

From the 1920s, when the NFL had one minority (ethnic) head coach, up through 2003 only six further head coaching positions were held by a minority candidate (an average of less than one per decade). This was despite the fact that the number of mainly African American, retiring players who were looking to coach was significant.

In 2003, the NFL adopted the Rooney Rule (named for Dan Rooney, the Chair of the league's Diversity Committee) that required at least one of the candidates interviewed for every head coaching job had to (initially) be African American. The rule is now expanded on two fronts. It has been expanded to all ethnic minorities and now covers all senior operations positions in the league.

Part of the impetus for the creation of the Rooney Rule was a September 2002 study by Janice Madden, Ph.D., commissioned by attorneys Johnnie L. Cochran and Cyrus Mehri, titled “Black Coaches in the National Football League: Superior Performance, Inferior Opportunities”.

In her review of the statistics Dr. Madden found that although African-American coaches were more effective by every objective standard (including, more wins per season, more likely to reach the playoffs) they were often the “last hired and the first fired” regardless of their record.

When the report was released, Cochran and Mehri noted that minority professionals were required to “significantly out perform their white counterparts to advance half as far”.

From 2003 to the end of 2012 the total number of minority head coaches in the NFL increased to 13. That nearly doubles the results of the previous 70 years in less than ten years – significantly moving the needle.

Another significant milestone was reached in 2007, when Tony Dungy became the first African American head coach to win the Superbowl. And, he was playing against a team who also had an African American head coach – another first in league history.

In fact, the Rooney Rule has shown enough success that consideration is being given to expanding it into college football under the name the Eddie Robinson Rule.

Other Evidence

A recently published study, “*Why Women Make Better Directors*”, co-authored by Dr. Chris Bart of McMaster University and Dr. Gregory McQueen of A.T. Stills University in Arizona found that female directors were more likely to use “co-operation, collaboration and consensus building” when facing complex business situations. That approach often contributed to the success of the organization.

Why Only One Action

Several organizations throughout North America and Europe support increased gender diversity and most give several options and five or ten point plans to increase boardroom diversity. However, recent research on how and why people and groups change (or don't) set out in “*Switch: How to Change Things When Change is Hard*” by Chip and Dan Heath presents compelling evidence that asking people to make one single, concrete change or take one single, concrete action is much more effective than giving them a range of options. More than one choice confuses the issue and makes it easier to decide to do nothing at all.

The most compelling information comes from a study of public education messages designed to help parents get their children eating healthier to reduce childhood obesity. In one US county, they focussed on the food guide pyramid - only five categories and a simple number of servings for each. In another county they took the radical approach of suggesting only one single change – switching from whole milk to 1% milk. The campaign for the one simple change more than doubled the sales (and, by inference, the consumption) of healthier, low-fat milk. Clearly, it is more difficult to take action when there are several reasonable options available.

Applying it to the Boardroom

The situation with boardroom diversity in many respects tracks the exact same story as the NFL, just with emphasis currently on gender (which is overly narrow as well) rather than ethnicity. Even though it has been talked about for years and even though more initiatives are being undertaken, and even though more stakeholders are becoming vocal, and even though regulators are beginning to respond, the needle on balanced gender representation in corporate America has been moving very slowly. Impediments include, among other things, a purported lack of qualified candidates (although this is more likely perception than reality), the CEO bias (discussed below) and some reluctance to challenge the *status quo*.

Currently, the only exceptions are jurisdictions where there are legislated quotas for female directors. Eventually, the regulators throughout North America are going to take it upon

themselves (some already have – for example in Quebec where all crown boards must have a minimum of 50% female directors) to remedy the situation.

Gaining Exposure

One of the obstacles to directorships for diverse candidates is often familiarity to the board. Boards are, of course, merely large teams and want to ensure that they create a good working environment with appropriate chemistry. That leads to a desire on the part of boards to look at candidates who are known for how well they work with others. Ideally there is direct knowledge – perhaps the candidate worked for someone on the board earlier in their career or they took a course with a current director where they could be seen in action. Barring that, most boards will look to getting supplemental information from other people they know directly.

No different than in any other business relationship – we all want to work with people we know and trust. If we don't have direct experience, we want to work with people who are known and trusted by someone in our own network of known and trusted colleagues.

As was found after the implementation of the Rooney Rule, Diversity One will help overcome this obstacle by increasing the exposure of “unknown” candidates to boards through the required interview process. The policy serves to both expand the search pool and expose new candidates to boards. When you add in the effect of cross-pollination of boards, a diversity candidate can be noticed for service on upwards of a half a dozen boards when they are interviewed by a single one.

The CEO Bias

Another issue is the desire of many boards and particularly sitting CEOs for director candidates to be former CEOs. As most industries see a very small percentage of female or other diversity candidate CEOs, the ability of those candidates to obtain board seats is limited.

The very notion of requiring CEO service is severely flawed if a board is truly looking for even just a diversity of viewpoints. CEOs tend to like other CEOs because the other CEOs are likely to think similarly.

Ralph Whitworth of Relational Investors LLC recently relayed a situation he faced. A sitting CEO was pushing for a new board member to be a former CEO so that he could approach that person for counsel and guidance. However, when the seven other former CEOs on the board were asked about their experiences, they indicated that the CEO had never once come to any of them for counsel.

Accordingly, diverse candidates can quickly and easily be disposed of on the basis of having no CEO experience. The perfect opt-out for boards as, on the surface, it seems to be entirely reasonable – a former CEO will understand the issues a current CEO is facing. However, the board’s role is not merely to understand the CEO’s issues, but also to challenge the CEO’s assumptions. That is where truly diverse candidates and backgrounds can add significant value.

A similar issue was identified in the development of the Rooney Rule. The research prepared by Dr. Janice Madden found that NFL team owners expected far more from African-American coaches in order to be seen as competitive with their Caucasian counterparts.

A quote from the report indicates that an African-American head coach would need to have “incontrovertibly dwarfed their competition” in order to be hired as a head coach. Women seeking board service currently face a similar uphill battle.

Senior Management Roles

Over the past several years, some progress has been made on the “CEO service” issue as companies broaden the parameter to include candidates that have had senior management roles, perhaps Vice President or higher. That is definite progress, but it remains to be seen whether more diverse viewpoints and value adds could come from candidates from mid to senior level management who are being newly exposed to board service.

After all, it is often people who are unfamiliar with a process or information who can more easily question it without “losing face”. With the ultimate responsibility of the board being the oversight of management, the most effective tool in a director’s bag is her ability (and courage) to ask questions – sometimes, as in Ralph Whitworth's case above – the simplest questions.

The Rule of Three

Interviews with leading female directors indicate another, less obvious, issue – that of being a lone voice in the board room. Dr. Richard Leblanc found in his research, almost to a woman, female directors indicate that board rooms truly begin to change only when there are at least three women on board. In most cases, that will represent somewhere between 20% and 30% of the board seats.

This information, rather unfortunately, gives greater credence to the idea of pink quotas to ensure that an “effective” number of women are appointed to boards.

Implementing Diversity One

Implementing a Diversity One Policy is simple – a board voluntarily adopts a resolution stating that it has adopted the policy and is committed to interviewing female candidates when board positions arise. Board can also choose to add a target goal and other diversity aspects if they desire.

Sample Policy Wording

RESOLVED that the board of directors of [Company] adopts a Diversity One Policy by which we commit to interviewing at least one female candidate for every open board position.

The Diversity One Registry

In support of this initiative in Canada and North America more broadly, Governance Studio is launching a public registry of Diversity One companies. All boards who adopt a policy will be included in the public registry at www.DiversityOne.org (currently in production).

They will also be authorized to display the official Diversity One logo in their public disclosure documents and on their websites, as they see fit. The logo is an instantly recognizable symbol of their commitment to diversity and board effectiveness and an identifying visual cue to stakeholders.

Supporting the Cause

Join the list of Governance Studio's partners and supporters of the Diversity One issue today. Contact Sylvia Groves at 403.991.2154 to become an official supporter and be included in the Diversity One team. Your organization can display the Diversity One logo and provide links to the registry and information sites. In addition, your organization's logo will be included in Diversity One print publications and website information.

Thank You

Special thanks to each of Paul Gryglewicz, Managing Partner of Global Governance Advisors (www.GGovernanceAdvisors.com), Dr. Richard Leblanc, Associate Professor, Law Governance and Ethics at York University (www.yorku.ca/rleblanc) and Brendan Sheehan, founder and President of The Illawong Group (www.IllawongGroup.com) for their input and support in moving Diversity One from a simple idea to a true initiative.

Thanks also to Broc Romanek (TheCorporateCounsel.net, www.TheCorporateCounsel.net) for the diversity podcast recorded earlier this year. You can listen to the podcast at http://www.thecorporatecounsel.net/nonMember/InsideTrack/2013/03_19_Groves.htm.

Initial Supporters

Thank you to all of the following organizations who have confirmed their support of the Diversity One Policy initiative in advance of this publication:

Canadian Society of Corporate Secretaries (Canada)

Corporate Secretary Magazine (USA)

Illawong Group (USA and Australia)

Global Governance Advisors (Canada and USA)

The 30% Club (UK)

Manifest (UK)

Early Reviewers

The Diversity One initiative has also been submitted for review by the Canadian Coalition for Good Governance, Corporate Board Member, the Institute of Corporate Directors, the National Association of Corporate Directors, the Society of Corporate Secretaries and Governance Professionals, the Canadian Investor Relations Institute, Glass Lewis, the Toronto Stock Exchange and certain institutional investors.

First Adopters

Our first corporate adopters will be recognized in a coming press release.

Resources and Inspiration

The Diversity One website (being launched in November 2013 at www.DiversityOne.org) will provide links and resources to companies who are looking for appropriate female candidates to include in their interview processes.

We will also be recognizing and publishing a list of diverse North American boards and providing case studies of how companies have implemented diversity as inspiration to other organizations.

Next Steps

In conjunction with our supporters, Governance Studio will be developing and sending out information on the Diversity One Policy to corporations and governance-minded organizations across North America. Please contact Sylvia Groves by phone at 403.991.2154 or email at Sylvia@GovernanceStudio.ca if you would like to help spread the word or if you would like to share how your company has successfully met the challenge of board diversity.

