

October 4, 2013

Ontario Securities Commission

Attn: Secretary
Ontario Securities Commission
20 Queen St. W., 22nd Floor
Toronto, ON
M5H 3S8
Email: comments@osc.gov.on.ca
Suite 600, 250-5th Street SW

Dear Sir/Madam:

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

We have reviewed the Consultation Paper and commend staff for providing a very informative paper. We appreciate the opportunity to provide comments.

By way of background, Hermes is one of the largest asset managers in the City of London. As part of our Equity Ownership Service (Hermes EOS), we also respond to consultations on behalf of many clients from around Europe and the world, including for this submission:

The BBC Pension Trust Scheme (UK);
British Coal Staff Superannuation Scheme (UK);
Mineworkers Pension Fund (UK);
Lothian Pension Fund (UK);
la caisse de dépôt et placement du Quebec (Canada);
PNO Media (Netherlands);
VicSuper (Australia).

In all, EOS advises clients with regard to assets worth more than Canadian \$190 billion.

Overview

We believe that companies are likely to be most successful where they are overseen by effective, dynamic and challenging boards that avoid slipping into the comfort of group-think. Diversity of perspectives is an important driver in this respect, and we believe that company boards will be most effective if they reflect the diversity of their businesses and their stakeholders. Such diversity should include not only gender but also ethnicity, background, age, tenure and other attributes important for a company's particular situation such as a range of professional backgrounds and relevant specialist skills.



There is a growing body of evidence that board diversity really does matter from the perspective of company performance¹. One recent study by an asset management firm in the UK found that operational and share price performance was significantly higher over one and three years at companies where women made up over 20% of board members than those with lower numbers of women on the board². More such evidence is highlighted in the 'Guidance on Gender Diversity on Boards' recently approved by the International Corporate Governance Network (www.icgn.org).

While we recognize that the growth in the number of women in senior management and on boards of Canadian publicly traded companies has been limited in recent years, we do not support hard quotas for Canadian issuers at this time. A similar situation with respect to women on boards exists in the United Kingdom and the Davies Report, released in 2012, recommends that FTSE 350 companies set targets for 2013 and 2015 and FTSE 100 companies aim for a minimum of 25% female representation by 2015. The targets are similar to those recommended for Canadian corporations by Catalyst. We prefer that the situation be addressed satisfactorily through best practice initiatives and embraced with vigour rather than feeling like a regulatory imposition to be complied with only grudgingly. In the event that such an approach fails, then the introduction of quotas may be considered. We think that a push to expand gender diversity through enhanced and standardized disclosure specifically targeted to gender diversity will allow corporations to determine their own appropriate gender balance targets. The requirement for disclosure of comparative data on gender representation will cause corporations to look more closely at their practices and provide the basis for stakeholder engagement with laggard companies. Availability of standardized data on gender representation will enable market-wide studies to be published, which will document progress.

Hermes EOS Expectations for Board Diversity

On behalf of our clients as long term shareholders, we will strongly challenge companies that appear to be failing properly to address diversity issues. Below we have set out a number of areas that we believe are particularly important for boards to consider.

i Board composition and evaluation

We encourage boards to undertake a regular and thorough analysis of their composition to ensure that the interests of all relevant stakeholders are effectively represented. This should be part of the annual board evaluation process, which is required or promoted by the corporate governance codes in many countries. We expect that boards will set their own targets regarding diversity and seek to implement necessary changes as part of the process of board renewal. Where boards appear to lack sufficient diversity, we will question the extent to which such analyses and evaluations are being properly carried out.

ii Recruitment of non-executive directors

When considering possible candidates for membership, boards should take account of diversity in its widest sense and as this applies to the individual company. Attracting a suitably broad set of candidates may require looking beyond the mainstream recruitment agencies. We welcome and encourage the trend towards advertising board vacancies in national and international media. Where recruitment

¹ Women Matter: Gender diversity, a corporate performance driver McKinsey & Co 2007 The Bottom line: Corporate Performance and women's representation on boards Lois Joy, Nancy M Carter, Harvey M Wagener, Sriram Narayanan, Catalyst 2007

² Companies with a better track record of promoting women deliver superior investment performance Bhogaita M, New Model Advisor, 2011

agencies are used, boards should ensure that they are given a specific mandate to seek out candidates from non-traditional backgrounds. We will challenge boards where candidates for non-executive directorships appear to have been drawn from a narrow pool. This includes, for example, candidates who serve on other boards with existing board members or who are otherwise already well known to them, former advisers to the company or candidates with a large number of existing board positions. We expect the chair of the nominations committee to be able to explain clearly to shareholders why a proposed candidate was deemed suitable.

iii Development of senior personnel

In order to ensure that sufficient high quality candidates with diverse backgrounds are available to serve on boards, companies should also take steps to ensure that in considering internal promotion or external appointments their human resources policies do not inadvertently discriminate against certain groups. We encourage companies to make their senior personnel, particularly the cadre of executives immediately below the board, available to serve as non-executive directors at other companies. This assists in those individuals' personal development and also in deepening the pool of talented potential non-executives for other companies.

Specific Consultation Questions

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

We firmly favour best practice guidelines and encouragement rather than quotas. Investors making clear their views to investee companies in these respects will provide the most effective and appropriate accelerant to the adoption of best practice. Encouraging companies to set out their targets to which they can be held accountable creates an appropriate dynamic for dialogue. Hard quotas may accelerate the process, but aggressive quotas could interfere with effective hiring/nominating or robust director/executive evaluation processes that have evolved out of good governance practices. An effective policy will allow a corporation's board and executives to determine the diversity objectives that are appropriate for their individual company. We would expect such objectives to be simple and avoid long "positioning" statements. A company should set diversity goals at each stage:

- 1 identification of possible candidates;
- 2 evaluation of select candidates; and
- 3 hiring or nominating.

These should not be hard quotas, but guidelines.

What type of disclosure requirements would be most appropriate and useful?

For a particular company, disclose diversity goal(s) and explain why the disclosed balance is considered appropriate.

Disclose whether a company has diversity objectives when identifying candidates.

Disclose whether gender diversity has been increasing or decreasing or remaining flat.

Of particular interest is the process used to identify candidates for directorships or senior executive positions. If a consultant is used to conduct the search, the consultant should be identified.

Are the scope and content of the model disclosure requirements appropriate and complete?

In the context of a comply or explain model, the model requirements proposed by the OSC seem adequate. We are concerned that the OSC model asks for a lot of explanation. We think the rule should emphasize setting gender diversity goals and progress against those goals over time. Diversity goals should be somewhat flexible.

We recommend that Venture companies be part of the solution and we have suggested below that they disclose statistics on gender diversity.

While we concur that the OSC should not set out a new definition of executive officer for the purposes of this initiative, we do believe that the definition, as it is used generally, should be changed to clarify that the role of chair of the board is that of a director, not an executive officer.

What type of statistics, data and/or accompanying information regarding representation of women in their organization? Should such disclosure be reported for the non-venture issuer or all of its subsidiary entities also?

We believe that the three measurements (total female employees, women in senior executive positions and women on the board) as proposed in the model, expressed as percentages of the relevant total population, are appropriate and would suggest that the disclosure also identify for each category, an indication of whether the percentage is trending up, is flat or trending down. The prior year or two's data should be included to give this trend information. We do not think that such disclosure would be onerous for Venture issuers. We believe that this pool of corporations offers a good starting point for new or less experienced directors, and should not be completely exempt from the scope of the model.

What practices should we recommend for facilitating increased representation of women on boards and in senior management

We think that the starting point, the pool of talent, has been too narrowly defined. This needs to be broadened. We believe that the proposed model, if implemented with or without our recommendations, will result in the need to consider a broader pool of candidates. With respect to directorships, advertising the position, as a few issuers are doing through the Institute of Corporate Directors and in the press, will broaden the pool. Consultants need to consider ways to broaden their talent pool and we encourage consultants to set out publicly their policies on developing more diverse long- and short-lists so that investors can have confidence they are playing their full and appropriate role in this respect.

The OSC should recommend, as a best practice, that companies have a critical mass of women on their nominating committees.

Summary

We support the model proposed by the OSC and prefer it to a system of imposed quotas. We would encourage an approach that is more focused on getting companies to tailor flexible goals rather than

offer long explanations. We believe that many Canadian issuers do consider gender diversity to be a significant factor in their search for talent. For others, including many venture issuers, more focus on diversity is desirable. We are hopeful that, when others see the benefits and embrace diversity, the implementation of a regulatory push to increase diversity will prove to have been needed only as a temporary measure.

We thank you for considering our comments. If you have any questions regarding the above, please feel free to contact me at 416.417.0173 or w.mackenzie@hermes.co.uk

Yours very truly,

A handwritten signature in black ink, appearing to read 'Bill Mackenzie', with a stylized flourish at the end.

Bill Mackenzie
Senior Advisor - Canada