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October 4, 2013

BY EMAIL

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Dear Sir or Madam:

RE: RESPONSE TO OSC STAFF CONSULTATION PAPER 58-401 – DISCLOSURE REQUIREMENTS REGARDING WOMEN ON BOARDS AND IN SENIOR MANAGEMENT

Thank you for the opportunity to provide comments to the Ontario Securities Commission (“OSC”) in response to the OSC’s Consultation Paper 58-401 – Disclosure Requirements Regarding Women on Boards and in Senior Management (the Consultation Paper).

With more than \$129.5 billion in assets, the Ontario Teachers’ Pension Plan (“Teachers’”) is the largest single-profession pension plan in Canada. An independent organization, it invests the pension fund’s assets and administers the pensions of 300,000 active and retired teachers in Ontario.

Diverse Boards Add Value

Teachers’ has long held the view that good governance is good business and that a company with good governance practices is better positioned to make high-quality decisions that benefit the corporation and ultimately its shareholders. Strong and effective boards are built with qualified directors selected from a diverse pool of candidates. Diversity can be represented by, but is not limited to, professional background, nationality and gender.

Teachers’ supports board diversity because it brings a broad range of perspectives, ideas, and thoughts to boardroom discussions, which in our view improves a board’s overall effectiveness. That being said, it is also important that boards make a real and demonstrated commitment to diversity by seeking out and appointing diverse directors in sufficient numbers so they can be effective in having their views expressed and debated at the board level.

As shareholders, it is important for us to understand the efforts that boards are making to identify where more diversity is needed and to address how they will make the board more diverse. Therefore, we encourage boards to broaden the director recruitment process and to enhance the transparency and thoroughness of both the selection of new director candidates as well as the evaluation of the board’s composition and performance, giving full weight to increasing the board’s effectiveness through diversity. To that end, we support a principled approach similar to the UK Corporate Governance

Code articulated in *Principle B.2 – Appointments to the Board* and *Principle B.6 – Evaluation*, which is highlighted in the Consultation Paper.

Gender Diversity as an Element of Board Diversity

The Consultation Paper focuses on improving gender diversity on boards and in senior management and we recognize that gender is one form of diversity that boards should incorporate into their composition. It is our belief that boards have generally been slow to embrace many different forms of diversity and as a result we will consider, and where appropriate support, initiatives that encourage more diverse boards, such as the one presented in the Consultation Paper. The lack of improvement in the overall increase in the number of women on boards observed over the past number of years at Canadian issuers indicates to us that it is an appropriate time to address the issue of gender diversity. We believe that focusing on female representation on boards is an appropriate starting point to increase overall board diversity and encourage issuers to develop and implement their director recruitment processes with the goal of developing a diverse board.

Slow Progress Requires Action

Looking specifically at gender diversity, we view the progress over the past number of years as disappointing. Even though there has been a great deal of advocacy and discussion surrounding a push for greater board gender diversity within Canada for many years¹, there has been minimal improvement in the number of women on Canadian boards. Over the past decade, the number of boards that have no female directors has consistently varied between 40% and 50%², and the percentage of women on boards in Canada has remained in the 10% to 13% range. Given the lack of progress in appointing women to boards we believe there is a need for an approach to have an immediate and profound impact.

Our commitment to achieving gender diverse boards is demonstrated by the composition of our own board of directors over the years. Since the creation of Teachers' in 1991, there have been between three and four female directors in all but two years. Currently, four of the nine directors who serve on our board are women and for the past six years our Chair has been a woman. We have been successful in recruiting highly qualified female directors and remain committed to seeking skilled women to fill board vacancies as part of our board's regular refreshment process.

Comply-or-Explain Approach Proven Ineffective

In this instance, we are not convinced that a comply-or-explain regime will be effective in achieving a measurable increase in the number of female directors. We have arrived at this conclusion based on a number of factors described below.

Lack of progress despite high awareness

As stated above, there has recently been a great deal of advocacy and attention given to increasing both the awareness of the lack of women on boards and the number of female directors. Yet, over the past number of years significant improvement has not been realized. Boards have had the opportunity

¹ Catalyst Canada has published research as early as 1997/1998: "*Closing the Gap: Women's Advancement in Corporate and Professional Canada*" (1997) and "*Census of Women Board Directors of Canada*" (1998)

² "*Board Games: The slow progress of women in Canada's boardrooms*" – The Globe and Mail - <http://www.theglobeandmail.com/report-on-business/careers/management/board-games-2012/interactive-graphic-the-slow-progress-of-women-in-canadas-boardrooms/article5569734/>

to proactively address gender diversity but it is evident that a great number of boards continue to have no women on their boards. We can conclude from this that a voluntary approach to increasing gender diversity is ineffective.

Experiences of other jurisdictions

The experiences of Norway and the UK also support our view that a comply-or-explain approach does not generate measurable results with respect to gender diversity on boards. In 2003, the Norwegian government amended the Company's Act and adopted a 40% quota for women on boards. Prior to the introduction of the amendments, female representation on boards of Norwegian companies was 6%³. The government indicated that if companies increased the number of women on their boards to 40% by 2006 the amendments would not come into effect. However, by 2006 only 18% of directors were female prompting the government to enact the amendments requiring the 40% quota to be reached within two years. Simultaneously, sanctions were imposed whereby all non-compliant companies would be forced to dissolve. In the years following, the number of female directors increased significantly – 25% in 2007, 36% in 2008 and 40% in 2009⁴. It is our view that without the implementation of a quota and the threat of sanctions Norway would not have met their board gender diversity target.

We also recognize the challenges experienced in the United Kingdom, which has failed to sustain growth with its voluntary target of 25% women on boards, prompting the UK government to threaten issuers with quotas if growth continues to remain stagnant⁵. In an attempt to apply greater pressure towards change, Prime Minister David Cameron issued a personal letter to corporate boards requesting compliance from those that failed to set female director targets for 2013 or 2015.⁶ Once again, we question the ability of a comply-or-explain approach to achieve the goal of increasing female representation on boards.

Proposed Approach

We believe that diverse boards are most effective in creating and sustaining value and that, generally, Canadian boards have been slow to increase diversity. While we acknowledge that diversity comes in many different forms, efforts for boards to become more diverse must start somewhere and it is appropriate that gender diversity be the catalyst that results in more diverse, and in our view more effective, Canadian boards. However, we are not convinced that a comply-or-explain approach as set out in the Consultation Paper will generate the desired results. As discussed earlier, boards should be required to provide transparency of the director recruitment and evaluation processes in order to mitigate any risks of tokenism that are often associated with such an approach to increasing gender diversity.

While we support the overall objectives as presented in the Consultation Paper, we propose an alternative approach that requires all TSX non-venture issuers to appoint a minimum of three (3) female directors to the board. The selection of a minimum of three women on a board is rooted in the belief that board diversity yields more effective boards and better results for shareholders and not based on meeting an arbitrary target simply for the sake of meeting that number. The threshold of three women directors is a means to achieve an end (more diverse boards) and our review of the

³ Storvik, Aagoth and Teigen, Mari, "Women on Board: The Norwegian Experience". June 2010, page 12.

⁴ Ibid.

⁵ Cranfield School of Management: "Progress stalls again for women on boards" (April 10, 2013)

⁶ Catalyst: "Take 5: Questioning Quotas" (May 1, 2013) - <http://www.catalyst.org/blog/catalyzing/take-5-questioning-quotas>

research has led us to conclude that without such a push it is not evident that sufficient progress in improving diversity would be made.

In a 2006 study, Kramer, Konrad, and Erkut determined that in order for a board to substantially benefit from the effects of increased gender diversity, a minimum of three women must serve on the board⁷. The research shows that having only one or two women on the board often produces a number of barriers towards affecting any real change:

- when one woman serves alone on a board, she will often experience many signs of tokenism. She will experience difficulties in having her opinions included during decision-making discussions and be stereotyped to represent the views of all women. Women are more apt to have feelings of discomfort from being overly visible as the lone woman on the board and to be excluded from social activities outside of board meetings.
- when two women sit on a board, the effects described above generally persist but to a lesser degree. The women experience a decrease in the level of stereotyping. In addition they provide each other with support in the boardroom to improve their visibility and impact during discussions. Overall, the women generally feel a greater sense of inclusion in boardroom activities. However, the women still perceive that their impact on the board is restricted due to their gender.

The study reveals a clear and pronounced change when three or more women serve on a board. Stereotyping ceases to be an issue. Female directors are treated as individuals each with their own opinions and personalities and are not considered to be representing the views of all women. This results in the women having a much greater influence on boardroom dynamics and discussions. Gender no longer restricts a woman from being included in discussions or contributing to board deliberations. Thus, it is evident from the results of the study that when boards have fewer than three female directors the risks of tokenism are higher, significantly reducing the impact that women can have on a board.

Another study, performed by Catalyst in 2011, reveals that Fortune 500 companies that had three or more women on their boards, in any four out of five years between 2004 and 2008, significantly outperformed those with zero women on the board⁸. Thus, it is evident that a greater representation of women on boards has affected positive change across companies.

In addition, boards should be required to provide transparency of the broader director recruitment and evaluation processes, as it is our view that having robust director selection, evaluation and succession planning practices facilitates creating and maintaining an appropriate balance of diverse skills and experiences at the board level. While our approach does not directly focus on increasing women in senior management, we believe that improving female representation on boards will have a trickle-down effect on the various levels of management within an organization over the long term.

Importance of sanctions

We believe that in order to achieve the target of a minimum of three women on every board there must be sanctions for non-compliance. We have come to this conclusion based on the experiences in other jurisdictions that show that in the absence of sanctions for non-compliance there was little increase in the number of women on boards. Only when sanctions, or the threat of sanctions, were

⁷ Kramer, Vicki W., Konrad, Alison M., Erkut, Sumru (2006). "Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance". (Wellesley Centers for Women, Report No. WCW 11). Wellesley, MA: Wellesley Centers for Women.

⁸ Outperformance was measured by: 84% higher Return on Sales, 60% higher Return on Invested Capital, and 46% higher Return on Equity, "Catalyst: The Bottom Line: Corporate Performance and Women's Representation on Boards (2004-2008)"

introduced was there noticeable improvement. It is our view that an appropriate sanction for non-compliance with our proposal would be the threat of delisting companies. Therefore we foresee a minimum of three female directors being a TSX listing requirement to be enforced by the Exchange. We believe that there has already been precedent to include corporate governance policies in the TSX listing standards relating to director elections and majority voting as recent examples.

In addition, we are not convinced that a comply-or-explain regime provides enough incentive for companies to act. The TSX has instituted a comply-or-explain model for companies adopting majority voting yet since the policy's adoption in December 2012 a number of issuers have failed to adopt a majority voting policy for director elections, citing a lack of a legal requirement to do so. This response raises concerns that unless required by law or other means, companies may continue to cite the absence of legal obligation as the rationale for not adopting a recommended practice. Given the historical track record in Canada to date, we are concerned that under a comply-or-explain regime the absence of a legal obligation will be a rationale for not increasing board gender diversity. As discussed earlier, one only needs to look at the experiences in other jurisdictions to find evidence of this.

Threshold Implementation

We acknowledge that a common reason given for not appointing more women on boards is the absence of a sufficient talent pool. In addition, some boards could feel obliged to appoint unqualified individuals to achieve the three female director threshold we are proposing. While we understand some boards may experience such pressure, we are confident these challenges can be overcome by boards objectively assessing their board evaluation and selection processes to ensure it is sufficiently broad and deep to expand the director candidate pool. We believe that after such a review, boards would conduct candidate searches that go beyond what is currently done, including accessing a number of different databases that exist, such as the one administered by the Institute of Corporate Directors (ICD), designed to provide issuers exposure to a large number of women director candidates.

We believe that an appropriate phase-in period should be applied for all TSX non-venture issuers. Companies should annually report on their progress towards meeting our proposed requirement of three or more women on the board, as well as the policies and actions that they have taken towards increasing female representation at both the board and senior management levels. We believe that any transition period should serve to effectively minimize potential disruptions without reducing the board's responsibility to take immediate action and implement changes and suggest it would be reasonable to expect boards to have a minimum of three women directors no later than 2020.

We recognize that it may not be practical to require smaller-sized boards to comply with our proposed threshold and understand that a scaled approach, such as the one implemented by Norway, may be necessary. Of the companies listed as part of the TSX Composite, almost 50% of the boards are composed of seven to nine directors; only a small proportion (8.7%) has less than seven directors.⁹

In summary, we believe that diversity is an important factor in creating effective boards that deliver and sustain value and support initiatives designed to improve board diversity. While there are a number of ways that a board can enhance its diversity, it is appropriate to begin the transformation to more diverse boards by focusing on gender diversity. However, because of the lack of movement in

⁹ Data provided by the Clarkson Centre for Business Ethics and Board Effectiveness, Rotman School of Management – University of Toronto (September 1, 2013)

promoting women on boards over the last decade, experiences in other jurisdictions and inconsistencies of comply-or-explain to implement best practice, TSX non-venture companies should be required to appoint at least three women to the board and achieving this threshold should be included as a TSX listing requirement with sanctions applied for non-compliance.

We believe our proposal, combined with a robust and transparent director recruitment process will result in more diverse and more effective boards while avoiding the pitfalls of tokenism and provides the best opportunity to achieve the OSC's goal to facilitate an increase in the participation of women on boards.

Thank you again for this opportunity to comment on the OSC's Staff Consultation Paper 58-401 – Disclosure Requirements Regarding Women on Boards and in Senior Management. Should you have any questions, please contact Paul Schneider, Manager, Corporate Governance at paul_schneider@otpp.com or 416-730-5307.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Wayne Kozun". The signature is fluid and cursive, with the first name "Wayne" being more prominent and the last name "Kozun" following in a similar style.

Wayne Kozun
Senior Vice-President, Public Equities