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L'honorable Céline Hervieux-Payette, c.p.  
(Bedford, Québec)

The Honourable Céline Hervieux-Payette, P.C.  
(Bedford, Quebec)

CANADA

Ottawa, October 4, 2013

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto ON M5H 3S8

**SENT VIA EMAIL:** [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Secretary,

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

As an advocate for women's rights, I strongly encourage all efforts dedicated to the advancement of women, particularly in the economic sphere. I recently read: "Canada's progress on gender diversity among directors is stagnant: the proportion of female directors is at 13.1%, unchanged from a year ago and up less than 1 percentage point since 2009"<sup>1</sup>. This is a troubling fact.

I would like to commend the Ontario government and the Ontario Securities Commission for addressing the issue of gender diversity on boards and in senior management. However, I would argue that the proposed disclosure requirements, "comply or explain", would only delay the diversification process.

Women are active participants in the business community – as business owners, shareholders, officers, managers and employees – and they also play an important role in the market as consumers. A series of studies have shown that companies that achieve diversity in their management and on their corporate boards attain better financial results,

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<sup>1</sup> GMI Ratings, *GMI Ratings' 2013 Survey Women on Boards Survey* (April 2013).

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on average, than other companies. Women, therefore, can be powerful drivers of economic development.

For many years now I have been working tirelessly on this very issue as Sponsor of Bill S-203, *An Act to Modernize the Composition of the Boards of Directors of Certain Corporations, Financial Institutions and Parent Crown Corporations, and in Particular to Ensure the Balanced Representation of Women and Men on those Boards*. Rather than proposing a “comply or explain” approach, or a quota for a certain percentage of women on boards of directors, this Bill requires a minimum of 40 percent for each gender, offering a better balance of opportunities for both women and men.

The approach chosen was based on extensive research as well as advice from experts in the field, many of whom were called before the Standing Senate Committee on Banking, Trade and Commerce to speak on the issue. For example, Norwegian expert Ms. Liv Monica Stubholt, Chief Executive Officer and member of the board of directors of Aker Clean Carbon and the former State Secretary of the Ministry of Petroleum and Energy, explained quite clearly that “[Women] do not come in sufficient numbers unless you introduce legislation, if we are to look at this in an empirical way”<sup>2</sup>.

Norway became a pioneer in setting binding gender targets when in December 2003 it set out the target of 40 percent representation of both genders among board members. Companies were initially given the opportunity to meet the target on a voluntary basis, but voluntary measures did not result in much progress. The requirements, thus, became obligatory as of January 1, 2006<sup>3</sup>. To this day, Norway leads the globe on gender-diverse boards<sup>4</sup>.

In September 2010, the European Commission announced that it was considering using “targeted initiatives to get more women into top jobs in decision-making”<sup>5</sup>. Ms. Viviane

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<sup>2</sup> Parliament of Canada, Proceedings of the Standing Senate Committee on Banking, Trade and Commerce, *Issue 15 – Evidence* (December 9, 2010).

<sup>3</sup> European Commission, *Women in Economic Decision-Making in the EU: Progress Report: A Europe 2020 Initiative* (2012).

<sup>4</sup> GMI Ratings, *GMI Ratings’ 2013 Survey Women on Boards Survey* (April 2013).

<sup>5</sup> European Commission, *Strategy for Equality between Women and Men (2010-2015)* (September 21, 2010).

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Reding, Vice-President of the European Commission and EU Commissioner for Justice, launched a pledge which called on publicly listed companies in Europe to sign a voluntary commitment to increase women's presence on their corporate boards to 30 percent by 2015 and 40 percent by 2020<sup>6</sup>. The European Parliament supported the Commission's approach with a resolution adopted in July 2011 stating that if companies did not make sufficient progress through self-regulation, legislation at the European level would be enacted<sup>7</sup>.

Several member States – France, Spain, the Netherlands, Italy and Belgium – took action by enacting legislative measures aimed at improving gender balance on company boards<sup>8</sup>. Significant increases have been reported in Italy and France following the passage of such recent laws<sup>9</sup>. Evidently, as a result of intensified public debate initiated by the Commission's and the European Parliament's calls for action, the best progress improving the gender balance on company boards was made between October 2010 and January 2012<sup>10</sup>.

Overall, however, progress in Europe continues to be very limited. "Despite an intense public debate and some voluntary initiatives at national and European level, the situation has not changed significantly in recent years"<sup>11</sup>. Even slower progress has been reported for most of the world outside Europe<sup>12</sup>. Essentially, countries who are seeking to increase board diversity through non-legislative means are lagging in comparison to parts of the world where legal mandates have been adopted. Achieving gender balance on boards will remain a challenge to any country until legislative measures are implemented.

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<sup>6</sup> Ibid.

<sup>7</sup> European Parliament, *Resolution Women and Business Leadership* (July 6, 2011).

<sup>8</sup> European Commission, *Women in Economic Decision-Making in the EU: Progress Report: A Europe 2020 Initiative* (2012).

<sup>9</sup> GMI Ratings, *GMI Ratings' 2013 Survey Women on Boards Survey* (April 2013).

<sup>10</sup> European Commission, *Women in Economic Decision-Making in the EU: Progress Report: A Europe 2020 Initiative* (2012).

<sup>11</sup> European Commission, Press Release, *Women on Boards: Commission Proposes 40% Objective* (November 14, 2012).

<sup>12</sup> GMI Ratings, *GMI Ratings' 2013 Survey Women on Boards Survey* (April 2013).

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Quotas have been described as the “antithesis of merit” and likely to stigmatize qualified women on boards as “tokens”, which can undermine the cause being championed<sup>13</sup>. However, as mentioned, countries operating on a “comply or explain” disclosure regime are simply not producing significant progress. The percentage of women on UK boards, for instance, is 12.6 percent compared to Norway with 36.1 percent and Finland with 26.8 percent<sup>14</sup>. Thus, the approach taken in my Bill is a meaningful compromise, and, most importantly, it will achieve concrete results. Norway’s performance is a prime example.

The Bill focuses on balanced representation and flexibility. Not only does the 40 percent requirement apply to both genders, but its application is deferred. Affected corporations will have three years after the law comes into force to give men and women at least 20 percent of the seats on their boards of directors. The 40 percent target must be reached six years following the enforcement of the law.

I would like to thank the Ontario Securities Commission for the opportunity to comment on the proposal to implement a “comply or explain” disclosure regime. While I would recommend a legislative approach in order to substantially advance the representation of women on boards and in senior management, I believe this consultation process is a positive step towards change.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Celine Hervieux-Payette'.

The Honourable Céline Hervieux-Payette, P.C.  
Senator

Cc: The Honourable Kathleen Wynne, Premier of Ontario

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<sup>13</sup> TD Economics, *Get on Board Corporate Canada* (March 7, 2013).

<sup>14</sup> GMI Ratings, *GMI Ratings’ 2013 Survey Women on Boards Survey* (April 2013).