



Mr. John Stevenson
The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Via e-mail: comments@osc.gov.on.ca

October 4, 2013

Dear Mr. Stevenson:

Re: Improving Representation of Women on Boards and in Senior Management

The Women's Legal Education and Action Fund (LEAF) is pleased to make this submission in response to the Ontario Securities Commission (OSC) public consultation process regarding disclosure requirements for gender diversity.

LEAF is a national organization dedicated to promoting substantive equality for women through legal action, research and public education. LEAF has intervened in dozens of cases on substantive equality since its founding in 1985 and is a leading expert in the inequality and discrimination experienced by women in Canada.

LEAF makes this submission having consideration of the following:

- There is an underrepresentation of women on boards of directors and in senior management positions of Canadian corporations.
- This underrepresentation is not due to a lack of women who have the qualifications and credentials to hold such positions.
- Measures need to be taken to increase the representation of women on boards and in senior management positions for at least two reasons:
 1. There is a public interest in advancing the role of women in the higher echelons of the private sector;

2. Corporations benefit from having board members and senior managers who hold a wide array of skills and perspectives; meeting this objective is facilitated by an increase in the representation of women in those positions.
- The OSC, as the body responsible for fostering fair and efficient capital markets and confidence in capital markets, has a role to play in increasing the representation of women on boards and in senior management positions.
 - The appointment of directors and members of senior management should be done on a merits-based basis, with due regard for the proven benefits of diversity on the board, including gender.

We have reviewed the OSC Staff Consultation Paper 58-401 “Disclosure Requirements Regarding Women on Boards and in Senior Management”. The question is determining how to ensure that an increasing number of meritorious women are appointed to leadership positions in the private sector.

LEAF suggests the following types of disclosure requirements regarding women on boards and in senior management would be appropriate and useful:

- Reporting on gender composition on the board;¹
- Reporting what, if any, gender diversity policies are in effect;
- Reporting on how gender diversity is taken into account during the board selection process.

The OSC should recommend that non-venture issuers have a gender diversity policy; however, it should take care not to dictate all of the contents of the policy. Rather, the OSC should articulate best practices for improving the representation of women on a board and in senior management positions. A comply or explain approach could then be used to require non-venture issuers to explain how they are adhering to/implementing these best practices or to explain why they are not so doing.

In order to increase the number of women in the pipeline for board and senior management positions, the OSC might consider requiring all non-venture issuers to implement setting a minimum for the number of qualified women who are interviewed

¹ We note that, starting with the 2013-2014 reporting period, Australia will require public disclosure of gender equality indicators, such as the composition of the board of directors, in a report signed by the company CEO: <http://www.catalyst.org/legislative-board-diversity#footnote2_gn94i0z>.

for board or senior management roles, without setting any quota or target requirements for the ultimate appointees of these positions. It may be that requiring non-venture issuers to seriously consider qualified women in senior roles will in itself help increase the number of qualified women who eventually come to hold those positions.

Further, the OSC could share research with companies on a regular basis regarding the considerable benefits of having women on boards.² In addition, it could offer free training for women to prepare them for board positions and keep a roster of women who want to be considered for such positions.

Recommended best practices may also include:

- Review of workplace policies, practices and decision-making processes including systemic discrimination. Identifying direct and indirect discrimination that may be part of a hiring system – for example how decisions are made, and the practices and policies or the culture of the organization;
- Providing research and resources to address systemic barriers, which can be defined as situations, policies and/or practices that unfairly exclude women and members of other underrepresented groups from being appointed to boards or senior management positions;
- In industries where women historically have not participated, actively cultivating in women the skills and technical knowledge required to create a qualified pool of candidates going forward;
- Term-limits for directorship positions in order to facilitate a turn-over in the composition of boards of directors (which would make it more likely for a corporation to look outside its normal reaches when searching for new directors);
- Discussing at the annual general meeting the issue of what the corporation is doing regarding gender diversity concerns, thereby highlighting the importance of the issue in the presence of shareholders;
- Publicly posting notices of all board vacancies and encouraging women to apply.

In any event, the OSC's enforcement mechanism is likely limited to issuing fines to non-compliant corporations. Technically, it may be open to the OSC to take measures to issue a cease-trade order in respect of non-compliant corporations that fall under its purview. This may be too drastic a measure to recommend in the Canadian context at this time.

² See, for example, the research compiled on this subject by Catalyst <www.catalyst.org>.

However, LEAF is concerned that the problem of women’s serious underrepresentation has been identified for some time now, with little progress. While LEAF does not recommend mandatory targets at this stage, we do recommend that there be a follow up review within a very short period of time (i.e. one to two years) with consideration given to stronger enforcement provisions. In the interim, we recommend a further consultation with organizations in countries with stronger enforcement provisions in order to determine the strengths and failures of those provisions and to consider their potential applicability in Ontario.

LEAF welcomes the OSC’s initiative to address the systemic problem of women’s underrepresentation in the higher echelons of the private sector in Canada. We urge corporations to take the opportunity to address this problem as well, since doing so will benefit them in tangible ways. Indeed, it is now well-recognized that increasing women’s representation on boards and in senior management positions improves both financial and non-financial performance.³ Accordingly, we all stand to benefit from adopting measures that will make boards and senior management more representative of the workforce and enhance equality in our society.

All of which is respectfully submitted,

The Women’s Legal Education and Action Fund

³ Catalyst, *Increasing Gender Diversity on Boards: Current Index of Formal Approaches* (2013)