April 9, 2014

The Secretary
Ontario Securities Commission
20 Queen St. W., 22nd Floor
Toronto, ON
M5H 3S8

By email: comments@osc.gov.on.ca

Dear Secretary Stevenson,

Re: Request for Comment, Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101, *Disclosure of Corporate Governance Practices*

Thank you for the opportunity to comment on these important Proposed Amendments. We commend the OSC for this initiative and support the Proposed Amendments to require disclosure or explain their absence in the following specific areas:

- Director term limits
- Policies regarding the representation of women on the board
- The board's or the nominating committee's consideration of the representation of women in the director identification and selection process
- The issuer's consideration of the representation of women in executive officer positions when making executive officer appointments
- Company-specified targets regarding the representation of women on the board and in executive officer positions
- The number of women on the board and in executive officer positions.

The 52 signatories below form an ad hoc, diverse and non-partisan group of experienced senior executives, professionals and corporate directors from across Canada, which has grown in number since our original submission of September 27, 2013 was filed, (attached as an Appendix to these comments). We reiterate the support expressed in our submission for the objectives and principles behind the proposed amendments.

We continue to be confident that implementing these measures will contribute towards improving the economic wellbeing and competitiveness of our country and of the companies that help drive our economy.

With regard to the request for comment on the specific questions laid out on page 10 of the OSC's proposed amendments, our responses are as follows:

1. The scope and content of the proposed amendments are appropriate. Additionally, we propose a three-year public review.

   We note that the draft amendments appear to have omitted recommendation #7 in the OSC's report to Ontario's Minister of Finance with regard to the need for a three-year review of outcomes once the amendments are enacted. In our view, three full reporting periods is a reasonable time frame for companies to show progress towards the goal of advancing the representation of women on boards and in senior management. The findings of this three- year review should be made public.

2. There should be no 'phasing in' of these amendments. These disclosure requirements should be introduced at the same time to all non-venture issuers reporting in Ontario or listed on the TSX.

3. As stated in our original submission, we support the disclosure of term limits or an explanation for their absence. This requirement is an essential tool to the renewal and revitalisation of Canadian corporate boards in a rapidly changing, globally competitive world.

4. Consistent with the principle of greater transparency, we support the proposal that non-venture issuers explicitly disclose (i) the number of new directors appointed since the company's last annual general meeting and (ii) of these new appointments, how many are women.

5. We submit that it is essential to observe best business practice by providing policies in writing.

Once the proposed amendments come into force, non-venture issuers may find that they have questions regarding implementation and disclosure. We would encourage OSC Staff to monitor any such questions and, where appropriate, to provide clarification and/or guidance by way of published notice to all issuers to whom the amendments apply.

In conclusion, our September 27, 2013 submission laid out a significant factual and research base establishing the grounds which justify these 'comply or explain' disclosure guidelines. There is a critical mass of evidence establishing that the current approach is not working, and that the ample and growing supply of female talent is largely underutilised. The evidence also shows clearly that economic growth and competitiveness depend on tapping the entire available talent pool and that companies with women on their boards outperform companies with all-male boards.

Canada already lags much of the developed world with respect to the representation of women on our boards and in management. We commend the OSC for its leadership in putting forward proposals which will help address this and contribute to ongoing improvement of corporate governance in Canada.

Signed:

Nancy Hughes Anthony
Board Member, HSBC Bank Canada

Mary-Ann Bell, Eng., ASC
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Micheline Bouchard, P. Eng., C.M.
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The views expressed above are those of the individual signatories to this submission and do not necessarily reflect the views of their respective organizations.

For questions or clarifications, please contact Shirley Dawe, shirley@shirleydawe.com (Toronto), Stella Thompson, thompson@governancewest.com (Calgary) or Karen Oldfield, koldfield@portofhalifax.ca.

APPENDIX A

September 27, 2013

The Secretary
Ontario Securities Commission
20 Queen St. W., 22nd Floor
Toronto, ON
M5H 3S8

By email: comments@osc.gov.on.ca

Dear Secretary Stevenson,

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

Thank you for the opportunity to comment on this important Consultation Paper. We commend the OSC's staff for this timely and informative initiative on a very important issue.

We are an ad hoc, diverse and non-partisan group of experienced senior executives, professionals and corporate directors from across Canada. We share an overriding concern and passion for the economic well-being and competitiveness of our country and of the companies that help drive our economy. We also share a conviction that the OSC is the only regulatory body with the ability to effect real change in this area.

We support the Consultation Paper's 'comply or explain' approach as an initial step to increase the representation of qualified women on boards and in the senior management ranks of Canadian non-venture issuers. This is a principled, effective and appropriate exercise of the OSC's responsibility to foster fairness, efficiency and confidence in Canada's capital markets; it is also consistent with the OSC's well-accepted oversight of the corporate governance practices of Canadian reporting issuers.

We summarize our comments on the policy framework below. We have set out our responses to the specific consultation questions in Appendix A to this letter, and excerpts from additional supporting research in Appendix B.

1. Business Case

Three key elements of a strong business case support the OSC's intent to advance the representation of women on boards and in senior management:[1]

- Improved performance
- Access to the widest talent pool
- Better corporate governance

[1] *Women on Boards*, p. 8, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf

(a) Improved Performance

Improved performance through increased productivity and innovation is essential to our collective well-being. The latest World Economic Forum (WEF) competitiveness rankings place Canada in 14th place overall (down from 9th in 2009) and 25th in "innovation" and "business sophistication".[2] The WEF's Canadian partner, the Conference Board of Canada, commented on the release of these data:

> "Overall, Canada's competitive position has stagnated. A closer look at the results shows that we are getting worse on several factors that do not bode well for our economic and social well-being."[3]

A TD Economics report also flagged Canada's slip in the international rankings of gender diversity on corporate boards as an issue of economic competitiveness.[4]

There is ample research to show that companies whose boards and senior management include more women perform significantly better. The McKinsey study *Why Women Matter* showed that in the best-performing companies, women are strongly represented at board or top-management levels.[5]

Credit Suisse's six-year global research study[6] of more than 20,000 companies, commencing in 2006, showed that those whose boards include women experience improvements in key metrics, including stock performance. This correlation has become stronger since the 2008 financial crisis, and these companies also significantly outperformed the others during the ensuing recession. Shares of companies with a market capitalization of more than $10 billion and mixed-gender boards outperformed those of comparable businesses with all-male boards by 26%; these companies averaged net income growth of 14% over a six-year period, vs. 10% for those with no women directors.

These significant data points show that companies benefit when women join their boards.

(b) Access to the Widest Talent Pool

Demographically, leveraging female talent is critical to our future economic growth.

Not only are women more than half the population, but they are now experiencing economic momentum. They form an increasing proportion of the labour force[7] and increasingly, they are more highly educated than men. More working-age women than men now hold university degrees

[2] http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf
[3] http://www.conferenceboard.ca/press/newsrelease/13-09-04/canada_ranks_14th_in_global_competitiveness_for_the_second_consecutive_year.aspx
[4] *Get On Board Corporate Canada*, TD Economics Special Report **,** March 7, 2013
[5] McKinsey and Company, *Why Women Matter*, 2012.
[6] Credit Suisse, *Gender Diversity and Corporate Performance*, August, 2012
[7] Women ages 15 and older were 47.3% of the labour force (and 67.3% of the part-time workforce). Employment has grown more rapidly among women than men. Between 1976 and 2012, the employment rate for women increased by 16.0 percentage points but it decreased for men by 6.9 percentage points. http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11475-eng.htm

in Canada, especially among the younger generation.[8] In 2012, more women (73.2%) than men (65.1%) aged 25 to 44 years of age had completed post-secondary education.[9]

Strong, confident leaders know they need to surround themselves with the best people they can find. In a diverse country like Canada, those people may not be the ones with whom our leaders are most familiar or comfortable. As more and more business leaders accept the fact that the status quo is no longer tenable for organizations wishing to compete in the global economy, solving the problem of women's underrepresentation has become a priority.[10]

Given the current composition of most Canadian public company boards and senior management, one is compelled to ask: isn't opening up recruiting to the other half of the population a key business imperative?

(c) Better Corporate Governance

As standards of corporate governance have risen over the past two decades, so have the demands of corporate directorships and the expectations of shareholders and stakeholders. The compelling evidence that companies with women on their boards deliver superior performance makes board gender diversity an urgent governance imperative.[11]

Women bring different perspectives and voices to boardroom debates and decisions. Research has shown that they take their roles as directors seriously and are more likely to ask uncomfortable questions, thereby contributing to more effective decision-making. Boards with more women members also tend to be earlier adopters of governance best practices. A critical mass of qualified female directors with diverse experience, skills and expertise enhances board independence and contributes to higher standards of corporate governance.

Recent Canadian research has also shown that female directors are better with complex issues and are more open to new ideas than their male counterparts; their higher quality decision-making capability "helps better explain the higher rates of return, more effective risk management and even lower rates of bankruptcy when women are present on the board."[12]

2. Dispelling Some Common Myths

Myth #1: There are not enough qualified women available to serve on boards.

A board must be strategic about its director composition and recruit the best individuals with the requisite skills, experience and expertise to complement that of current board members. It may well be that the number of men who are ready to serve on boards will outnumber the number of qualified women, but it is simply a myth that there are not enough qualified and board-ready

[8] CBC, *Census Trends – Education and Labour Demographics*, http://www.cbc.ca/news/canada/story/2013/06/26/statistics-canada-national-household--survey-labour.html
[9] HRDC, *Post-Secondary Education*, http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=56
[10] http://economia.icaew.com/opinion/september-2013/five-years-on-women#sthash.oKRqdwom.dpuf
[11] Please see Appendix B for multiple sources
[12] *Why Women Make Better Directors*, C. Bart, G. McQueen International Journal of Business Governance and Ethics, Vol. 8, No., 1, 2013, p. 95

women available to serve on boards. In fact, the Catalyst study *The Supply Problem Myth* found an ample supply of qualified women in senior management positions of the FP 500, and this does not even include partners in law or accounting firms and retired senior executives.[13]

In addition to the corporate pool of board-qualified women, there are many others whose distinguished careers in academia, public service, or professional services also qualify them to add value to boards.[14]

Myth #2: 'CEO' is shorthand for 'qualified' and 'necessary' for board membership.

Approximately 40% of board appointments to Canada's companies had a CEO background. This trend is declining with the shrinking pool of CEOs available to serve, as many are now either prohibited from serving on public boards, or limited to a single board. In 2012, Spencer Stuart identified other relevant and in-demand qualifications for board appointments.[15].

Increasingly, good boards create a "matrix" of relevant director skills and competences that will combine to create the best and most appropriate board for the company at that time. These diverse skills and competences may include, among others: industry, professional, operational, financial, international, marketing, governance, regulatory, human resource, risk, information technology, and also digital and social media expertise. Within these categories are thousands of Canadian women who, while not CEOs, have the background and experience to serve on boards and to add value, particularly through competencies essential to the increasingly important work of board committees.

Myth #3: Implementing regulatory requirements is more trouble than it is worth.

The great 19th-century scientist Lord Kelvin said: "If you cannot measure it, you cannot improve it." Without an open disclosure process, Canada risks continued stagnation in the participation rate of women on boards and in senior management. Indeed, implementing a 'comply or explain' model will require management time and attention: to define a policy, set goals, define action plans, accountabilities, performance metrics and a tracking mechanism, analysis, corrective action plans and communicating the results to internal and external stakeholders.

Much of this information already exists, primarily within the HR function; once a process is in place, it becomes a matter of measurement and reporting. While larger companies are already well-grounded in this type of reporting, it will require a greater adaptation for smaller and medium-sized businesses to achieve these worthwhile results in governance and overall performance.

Mandatory public measurement of women's representation in senior management has resulted in significantly higher representation of women on boards of federally-regulated companies.[16] Women now hold 22% of board seats in these companies, whereas in the balance of FP500

[13] *The Supply Myth: Fortune 500 Boards*, Catalyst, September, 2012, p. 2; *799 Active Women Senior Officers from Financial Post 500 Companies*
[14] Ibid, p. 2
[15] 2012 *Spencer Stuart Board Index*, p. 14
[16] *CBDC Annual Report Card on FP500* by Conference Board of Canada, 2012

companies, only 11.8% of board members are women.[17] Once boards were required to measure and report on women's participation in senior management, the participation of women as board members increased by 88%. This suggests that measuring metrics heightens awareness and generates results.

3. What We Support: Improved Governance Practices to Increase Participation of Women on Boards and in Senior Management

(a) Term Limits

In 2012, 101 companies listed on S&P/TSX Composite Index of Canada's 243 largest companies — or 41% of them — were still without a single female director.[18] This is in part due to the historically low turnover rate on boards. When terms are disclosed, they range from 7 to 15 years.[19] That, coupled with a trend toward smaller boards and fewer available board seats increases competition for a director seat, for all candidates.

Governance organizations such as GMI Ratings are also becoming more vocal about the need for term limits, not only to further gender diversity, but for good governance in general.[20] In a number of countries, including the U.K., Australia, India, Hong Kong and Singapore, regulators have imposed term limits of nine or ten years, beyond which directors may no longer be considered independent.[21]

To stay ahead in a tech-driven, rapidly changing, globally competitive world, highly functional boards depend on renewal and on directors who are in tune with current realities. Reasonable term limits will require increasingly older and/or long-serving directors to step down to make room for new blood and fresh perspectives from incoming directors. If there are no reasonable term limits and no other interventions such as rigorous individual performance evaluations, it will take decades to shift the percentage of women on boards significantly.[22]

(b) The Role of the Nominating Committee: Increasing the Number of Women on Boards

Nominating committees of the board should focus on increasing transparency in the process of their director succession planning and recruitment:

- Identifying the skills, experience, expertise and diversity on the board
- Identifying strategic competency gaps
- Developing a diversity policy with company-specific gender goals within a specific time frame
- Measuring and reporting results towards these goals annually in the proxy circular

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[17] Ibid; calculation set out in Appendix B
[18] *S&P/TSX*: Globe & Mail, Janet McFarland, Nov 26 2012
[19] *Spencer Stuart 2012 CSSBI*
[20] Gladman, Kimberly, Ph.D., CFA, Managing Director, ESG Research and Lamb, Michelle, Senior Research Associate, *Director Tenure and Gender Diversity in the United States: A Scenario Analysis*, GMI Ratings, June 2013.
[21] http://www.huffingtonpost.ca/richard-leblanc/when-does-it-become-uneth_b_3951305.html?goback=%2Egde_4163769_member_275070480#21
[22] *Women on Boards*, UK, 2011, p. 13

To dispel the belief that there are few qualified female director candidates available, we recommend that nominating committees, especially in smaller companies with less extensive networks, work with executive search firms (ESF) to expand their mandate beyond the traditional sources, searching broader and deeper to recruit qualified female executives working in the executive suite (below the rank of CEO) or as business unit leaders with profit and loss (P+L) accountability, as well as women with the broader competences described above under Myth #2.

(c) The Role of the Human Resource Committee: Increasing the Number of Women in Senior Management

The increase in the number of women occupying senior roles in Canada's FP500 has been slow and disappointing, with minimal change between 2010 and 2012. A full 36% of FP500 companies still have no women senior officers; 22% of FP500 companies report 25% or more women as senior officers. Overall, just 18% of senior officer positions are occupied by women.[23]

The inclusion of senior management in the proposed measures is a very important and positive component of the OSC's proposal. Given that gender-diverse leadership teams are beneficial to companies, employees, customers, communities and the economy at large, advancing women to senior leadership positions should be an essential and integral part of any business strategy.

We support the 'comply and explain' approach to increase gender diversity for both senior management and boards: only a focused effort by the CEO, overseen by the HR Committee of the board, will significantly increase the number of women in senior management positions.

The HR Committee of the board can and should play an integral role in this process, taking on the same governance responsibilities as for board positions: setting policy and goals, measurement and communicating annually to the board and to shareholders via the proxy circular. Greater transparency, accountability and scrutiny to measure results and take corrective action will increase women's participation in senior management ranks and ultimately, the supply of qualified female talent to fill future board positions.

(d) The Role of the OSC: Overseeing Compliance, Holding Corporations Accountable and Assessing Progress in Women's Participation

The Australian experience[24] shows that results come when companies are required to disclose and report annually on their gender diversity policy, and on their progress on measureable company-specific objectives for women on boards and in senior management, within specific time-frames. The OSC should be prepared to oversee compliance with this disclosure model and to hold corporations accountable.

The OSC should also evaluate the 'comply and explain' model's success in generating an increase in women's participation on boards and in senior management within a reasonable time frame. We recommend that the OSC hold a public review of the success of this approach three years after implementation.

23 Catalyst 2012, *A review of the status and progress of women occupying senior roles in Canada's FP500*
24 http://www.csaust.com/knowledge-resources/guidelines-on-gender-balance-performance-and-reporting-australia/

4. Why We Support a 'Comply or Explain' Model

(a) A Successful Track Record

The 'comply or explain' model arises from Canada's principles-based approach (as opposed to a rules-based approach) to regulatory implementation. For example, when the Toronto Stock Exchange implemented the 1994 Dey Commission's 14 recommendations on good corporate governance[25] the issuer had to 'comply or explain' its results in each area recommended by the Dey Commission in its proxy circular. That, coupled with a focused media report card among the FP200 issuers, quickly raised awareness and facilitated compliance within the largest reporting issuers, lifting Canada's governance practices and international reputation.

(b) Australia's Approach as a Test Case for Canada

Australia's economy is largely resource-based, with similar capital markets and regulatory systems; this makes it an excellent proxy for Canada. Australia changed its *Corporate Governance Code* in 2010 and 2011 to address gender equity with a 'comply or explain' approach requiring adoption and annual disclosure of a diversity policy, objectives, and progress.

This model has driven rapid progress, without mandating quotas or stringent regulatory intervention. Female representation on boards has increased from 8% in 2010 to 15.7% as of March 2013, an increase of nearly 100% within three years.

5. Conclusion

In summary, we believe that the time for action on 'comply or explain' is at hand:

- The current laissez-faire approach is not working
- There is an ample and growing supply of female talent
- There is an abundance of evidence that economic growth depends on tapping the female talent pool
- There are enough qualified women to make a difference at corporate Canada's board tables
- Companies with women on their boards outperform companies with all-male boards
- The recent drop in Canada's international competitiveness increases the urgency of acting

The OSC's recommendations in its Consultation Paper are exemplary and should be implemented. We believe the following additional measures will improve their chances of success:

- Measurable company-specific objectives within a specific time frame
- Annual review of progress in achieving these objectives
- A public review of progress three years after implementation of the 'comply or explain' "model

[25] *Where Were the Directors?*

If all of these measures are implemented, they will enhance corporate governance, benefit the economy and improve Canada's competitiveness.

Signed:

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Trustee, Cominar REIT
Senior Vice President, Ontario and Quebec
Bell Alliant Regional Communications

Cathy Bennett
CEO, Bennett Group of Companies

Micheline Bouchard, P. Eng., C.M.
Corporate Director

Helen Burstyn
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Chief Economic Advisor, MDC Partners Ltd.

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Community Volunteer and Former CEO, United Way of Calgary

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Corporate Director
Distinguished Visiting Scholar, Ryerson University

Stella Thompson
President, International Women's Forum of Canada
Corporate Director

Kim West, Fellow CPRS ICD.D
Partner, NATIONAL Public Relations

The views expressed above are those of the individual signatories to this submission and do not necessarily reflect the views of their respective organizations.

For questions or clarifications, please contact Shirley Dawe, shirley@shirleydawe.com (Toronto), Stella Thompson, thompson@governancewest.com (Calgary) or Karen Oldfield, koldfield@portofhalifax.ca.

Appendix A

Responses to Specific Consultation Questions

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

Policy options for increasing the number of women on boards and in senior management include:

- Laws establishing minimum gender representation requirements or quotas with specified consequences for non-compliance, ranging from consequences for director compensation and fines, to potential business suspension
- Regulations establishing 'best practice' governance norms and requiring listed issuers to 'comply or explain'
- Voluntary implementation of gender balance by boards and corporations. However, this approach has not resulted in an appropriate representation of women on boards and in senior management positions, an area where Canada is increasingly lagging in international rankings.

We support 'comply or explain'. Countries whose legal and regulatory systems are similar to Canada's have opted for a 'comply or explain' model in the short term, but have committed to consider mandatory approaches if progress in appointing women directors and senior executives is insufficient. The 'comply or explain' mechanism has been an important part of the system of corporate governance in Canada since the early 1990s, and has been at the core of corporate governance regimes in countries such as the United Kingdom and Australia. As Sir Christopher Hogg noted in response to the question "Does comply or explain work?":

> "…in markets where the right conditions are in place, such as the United Kingdom, it does appear that 'comply or explain' has been successful in raising overall standards of corporate governance. … data show that the rate of compliance with the best practices set out in the *UK Corporate Governance Code* has consistently risen over time, with compliance rates for most of these practices now being greater than 90%."[26]

2. What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?

The model of disclosure requirements outlined by the OSC in its discussion paper would require non-venture issuers (other than investment funds) to disclose annually:

- Policies regarding the representation of women on the board and in senior management
- Measurement of the representation of women in the organization, and specifically on the board and in senior management

[26] Hogg, Sir Christopher, *The "Comply or Explain" Approach to Improving Standards of Corporate Governance*, QFinance, www.qfinance.com.

- Representation of women as candidates in the director selection process
- The board evaluation of progress concerning the representation of women

We have carefully reviewed the OSC's suggested disclosure requirements, along with results in other jurisdictions. This has led us to conclude that additional requirements are necessary. They are noted in our letter and in our response to Question 3.

3. Are the proposed scope and content of the model disclosure requirements described in Part 4 of this consultation paper appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.

We support the model disclosure requirements outlined in Part 4 of the consultation paper. We submit that the OSC should consider implementing the following additional disclosure requirements:

Measurable company-specific objectives for achieving gender diversity: The OSC's Consultation Paper does reference the establishment of measurable objectives (p. 18) but only "if" an issuer has adopted a policy for advancing women in senior management and board roles and if so, a requirement to describe "any" measurable objectives under the policy.

We note that the *ASX Corporate Governance Principles and Recommendations* state that "Companies should disclose in each annual report **the** measurable objectives for achieving gender diversity set by the board in accordance with the diversity policy and progress towards achieving them." *(emphasis added)* Given that since the implementation of these Australian disclosure requirements, the percentage of women board members has nearly doubled, we suggest adding this requirement, and specifying that this should be done within a specific time-frame, as has been done in the U.K.

4. What type of statistics, data and/or accompanying qualitative information regarding the representation of women in their organizations should non-venture issuers be required to disclose? Should such disclosure be reported for the non-venture issuer only or for all of its subsidiary entities also?

Appropriate data collection and reporting is critically important to the process of driving change in the representation of women. The OSC's model of disclosure requirements requires non-venture issuers to disclose the proportion (in percentage terms) of:

- Female employees in the whole organization
- Women in senior executive positions (as defined by the OSC)
- Women on the board

As referenced in the previous section, we submit that non-venture issuers should also be required to disclose the measurable objectives they have set as part of their policy for gender diversity within a specific time-frame.

We encourage the OSC to examine the excellent Performance Reporting Framework developed through a collaboration of multiple entities in Australia in the *Guidelines for Gender Balance*

Performance and Reporting Australia (May 2013). Australian issuers have successfully implemented the framework and are now collecting data that includes workplace profile, recruitment and promotion, and evaluation and development.

This is consistent with McKinsey's recommendation in *Women Matter* that companies should "know the numbers." This research indicates that:

> "Companies that begin with a robust, fact-based understanding of their starting point are 2.4 times more likely to transform their companies than those that are less well prepared. It helps them detect the obstacles they need to tackle, to set realistic but challenging goals, and to track progress." (p. 15)

It may not be practical to report on all of the indicators in the Australian guidelines. However, we submit that the OSC could and should require non-venture issuers to disclose their gender balance reporting framework. This could include a variety of management indicators tracking their progress in advancing women in senior roles within the company, such as the number of women in P&L roles.

We also suggest that the 'comply or explain' requirement apply only to the non-venture issuer, but that these issuers be encouraged to provide additional gender-related data for their subsidiaries on a voluntary basis.

5. What practices should the OSC recommend for facilitating increased representation of women on boards and in senior management? e.g. Gender diversity policy and comply or explain.

We fully support the 'comply or explain' approach, and have indicated the disclosure areas that we believe will be most effective in driving change.

In addition, like many governance experts such as GMI Ratings,[27] and as explained in our letter, we support the addition of term limits to facilitate optimal board renewal. While most boards understand the importance of renewal and rejuvenation and support this, only about 25% of FP300 corporations disclose mandatory retirement age or term limits. In contrast, regulators in the UK, Australia, India, Hong Kong, Singapore and other countries are imposing term limits of nine or ten years for directors. Unless the increasingly older and or long-serving directors are required to step down by term limits, there will be little renewal and little room for new blood and fresh perspectives.

As outlined in our letter, we submit that two standing committees of the board should play an active role in the advancement of women on the board and in senior management:

- The nominating committee of the board should play an active role in setting goals and monitoring the success of gender diversity policies at the board level
- The human resources committee of the board, working with the CEO, should set policies and monitor progress in increasing the number of women in senior management

[27] Gladman, Kimberly, Ph.D., CFA, Managing Director, ESG Research and Lamb, Michelle, Senior Research Associate, *Director Tenure and Gender Diversity in the United States: A Scenario Analysis*, GMI Ratings, June 2013.

While we know of no research that has established a direct link between the gender composition of nominating committees and progress in women's representation on boards and in senior management, we believe it would be worthwhile tracking this information to establish whether or not such a link exists. Since this information can easily be derived from the existing proxy disclosure of non-venture issuers, this places no additional disclosure burden on them.

Should the OSC recommend that non-venture issuers develop gender performance and reporting systems such as those outlined in the *Guidelines on Gender Balance Performance Reporting Australia*, boards and CEOs would gain more insight into the measurable objectives that their corporations should establish to demonstrate progress on achieving greater gender balance throughout their organizations. We are of the view that individual issuers should develop company-specific goals tied to specific time frames in order to ensure progress.

Finally, the OSC should monitor annual reporting of the progress increasing the representation of women on boards and in senior management. Within three years of the implementation of the 'comply or explain' guidelines, it should conduct a public review of this progress.

Appendix B – Supplementary Research References

The following are excerpts from research that we used in formulating our letter of response to the *OSC Staff Consultation Paper 58-401, Disclosure Requirements Regarding Women on Boards and in Senior Management* and in answering the specific consultation questions. We have deemed it useful to attach them here for those seeking a deeper understanding of the rationale for these policy changes.

As standards of corporate governance have risen over the past two decades, so have the demands of corporate directorships. The responsibilities and roles of boards have been clarified and nomination processes shaped accordingly to arrive at a good mix of skills, expertise and backgrounds around corporate board tables. Competence matrices used to identify and recruit new members include key domains such as strategy, risk oversight, executive compensation and talent management, financial oversight, communications and stakeholder relations as well as corporate social responsibility. Additional desired attributes for corporate directors include competencies such as independence, leadership skills, sound business judgment, a strategic orientation, the courage and knowledge base to ask thoughtful oversight questions, good people skills, good communication skills and the ability to work well with others.

The UK *Women on Boards* Report noted:

- "Around the world, women have become the new majority in the highly qualified talent pool. In Europe and the USA, women account for approximately six out of every ten university graduates and in the UK women represent almost half of the labour force. These are trends that British business cannot ignore. The failure of any business or economy to maximize the talents of all of its people will result in below-par performance. Tapping into the under-utilised pool of female talent at the board level is vital if British companies are to remain competitive and respond to rapidly changing expectations and market demands. British corporate competitiveness is at stake."[28]

- The McKinsey study *Why Women Matter* showed that in the best-performing companies, women are strongly represented at board or top-management levels.[29] Companies with three or more women in senior management functions score more highly, on average, on the organizational performance profile than companies with no women at the top, and performance increases significantly beyond a certain critical mass: specifically, when there are at least three women on management committees with an average membership of 10 people.

As noted in *Getting on Board*[30]:

> "There is a distinct need for diversity in skill sets, expertise, experience and viewpoints on boards, driven by evolving strategic goals and market challenges. Board effectiveness demands robust debate in which norms are challenged and a

[28] *Women on Boards*, UK, p. 9
[29] McKinsey and Company, *Why Women Matter*, 2012
[30] Ernst & Young, *Getting on Board*, p.2, www.ey.com/governance

> breadth of perspectives inform board strategic discussions and actions. Indeed, a high-performing board is now, by definition, diverse."

Companies with more women on their boards outperform their rivals.[31] Research has shown that these companies are more likely to have higher standards of corporate governance and reduced risk. The UK report *Women on Boards* notes:

> "There is a body of research which demonstrates how the appointment of female directors can improve a company's performance. Female directors enhance board independence. Better decision-making is assumed to occur as a result of directors having a range of experiences and backgrounds. Women take their non-executive director roles more seriously, preparing more conscientiously for meetings. Women ask the awkward questions more often, decisions are less likely to be nodded through and so are likely to be better."[32]

This is particularly the case when women achieve a critical mass on boards or senior manage-ment teams. As noted in *Women on Boards*:

> "A Canadian study entitled *Not Just the Right Thing, but the Bright Thing*, looking at public, not-for-profit and private boards, found that boards with three or more women on them showed very different governance behaviours to those with all-male boards. The more gender-balanced boards were more likely to identify criteria for measuring strategy, monitoring its implementation, follow conflict of interest guidelines and adhere to a code of conduct. They were more likely to ensure better communication and focus on additional non-financial performance measures, such as employee and customer satisfaction, diversity and corporate social responsibility. They were also more likely to have new director induction programmes and closer monitoring of board accountability and authority.
>
> "UK FTSE 100 companies with more women adopted the governance recommendations from the Higgs Review earlier than those without. In particular they focused on: better succession planning and the use of external search consultants, new director induction and training; audit and balance of the whole board's skills, knowledge and experience; and regular reviews of board performance.
>
> "These findings are again confirmed in more recent research. A 2010 survey commissioned by search consultancy Heidrick & Struggles and conducted by Harvard Business School researchers suggests that women appear to be more assertive on certain important governance issues such as evaluating the board's own performance and supporting greater supervision on boards. The researchers suggest that this chan-ging dynamic may bring in a new era of strengthened governance."[33]

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[31] *Women on Boards*, UK, p. 7
[32] Ibid, p. 8
[33] *Women on Boards*, UK, p. 10

The same report noted further that:

> "Women bring different perspectives and voices to the table, to the debate and to the decisions. Studies, stemming from Solomon Asch's original work on conformity to majority opinion, have shown that three women are required to change boardroom dynamics, allowing them to become more vocal and their voices to be heard. Further studies have shown that the environment for women in senior roles improves once about a third of leaders at that level are female, and that a 'critical mass' of 30% or more women at board level or in senior management produces the best financial results."[34]

GMI Ratings recently published a study[35] which argued that beyond gender diversity, term limits are necessary for good governance:

> "Many observers have noted that long director tenures complicate efforts to quickly increase board diversity at public companies, since relatively few board seats turn over each year. A number of investors have also expressed concern about long tenure in its own right, believing that it may impair independence. The current report finds that over one-quarter of board seats in the US are held by men with at least ten years' tenure, and analyzes the potential effect of replacing various percentages of these long-tenured men with women. For example, if less than half (46%) of the male directors in the S&P 500 with 10-plus years of seniority were replaced by female directors, 30% of that index's board seats would be held by women. In the Russell 1000 and 3000 indices, 54% and 62%, respectively, of the men with over ten years' tenure would need to be replaced by women to reach the threshold of 30% female representation. These findings may be of interest to investors advocating for board diversity as well as improved independence standards."

A recent research article provocatively titled *Why Women Make Better Directors* summarized the quantitative research involving more than 600 corporate directors, and concluded that female directors are better with complex issues, are more willing to "rock the boat", and are more open to new ideas than their male counterparts. Among the study's specific points are:

- " …our research has found that women on boards are significantly better than men at making decisions because of their 'Complex Moral Reasoning' (CMR) abilities. CMR involves acknowledging and considering the rights of others in pursuit of fairness by using a social cooperation and consensus building approach that is consistently applied in a non-arbitrary fashion. The dramatic importance of this is highlighted when one considers that the role of directors is solely to make decisions or, more precisely, to help the board make decisions."[36]

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[34] *Women on Boards*, UK, pp. 8 and 9

[35] Gladman, Kimberly, Ph.D., CFA, Managing Director, ESG Research and Lamb, Michelle, Senior Research Associate, *Director Tenure and Gender Diversity in the United States: A Scenario Analysis*, GMI Ratings, June 2013 http://www3.gmiratings.com/wp-content/uploads/2013/06/GMIRatings_WOB_TenureGender_062013.pdf

[36] *Why Women Make Better Directors*, Chris Bart, G. McQueen, International Journal of Business Governance and Ethics, Vol. 8, No., 1, 2013, p. 95

- "This means that female corporate directors are significantly more inclined to work through decision-making by taking the interests of multiple stakeholders into account in order to arrive at a fair and morally consistent decision…Their effectiveness stems from their predisposition to be more inquisitive and to see more possible solutions."[37]

- "Our results demonstrate that female corporate directors can make significant contributions to any board through what appears to be their innately superior decision-making framework (i.e, what's fair?) *and* process skills (i.e., consider everyone's point of view). And it is this higher quality decision-making capability which we now posit helps better explain the higher rates of return, more effective risk management and even lower rates of bankruptcy when women are present on the board."[38]

- "In short, women make better directors than men. Board Chairs everywhere need to take our findings into consideration in making their next board appointments. And if they do not, it would only seem reasonable to ask: from a fiduciary standpoint, in whose best interests are they really serving? Because certainly, it's not the corporation's!"[39]

The Australian regulatory model requires data collection in the following areas:

- Workplace profile data, including:
  - ✓ Number of all employees by gender (full-time and part-time)
  - ✓ Number of employees by gender in operational roles within the company's core *business(es)*
  - ✓ Number of employees by gender in functional roles
  - ✓ Number of employees by gender in support roles
  - ✓ Number of senior executives by gender (full-time and part-time)
  - ✓ Number of board members by gender
  - ✓ Number of middle management by gender (full-time and part-time)
- Recruitment and promotion data including:
  - ✓ Number of new appointments to senior executive roles by gender
  - ✓ Number of exits from senior executive roles by gender
  - ✓ Number of employees by gender identified as "top talent" (strong candidates for internal promotion in performance evaluation processes)
  - ✓ Tracking of career progress via promotion through the operational hierarchy by gender for employees who have been at the company five or more years
- Evaluation and development data including:
  - ✓ Number of employees who participate in leadership development or management training programs by gender

  - ✓ Number of employees who participate in mentoring programs by gender

[37] Ibid, p. 97
[38] Ibid, p. 97
[39] Ibid, p. 98

In the light of the Catalyst research which shows that giving women P&L responsibility early in their careers is predictive of ascension to senior management (and beyond), the OSC may want to consider tracking the percentage of P&L roles held by women by management level.

The *Guidelines for Gender Balance Performance and Reporting Australia (May 2013)* point out that "participation of women in senior roles is unlikely to increase without greater progress in:

- Determining those gender balance initiatives that **should be formally adopted as measurable objectives**, and
- Being accountable to stakeholders on **progress toward achieving those measurable objectives**."[40] (Emphasis added.)

They also state:

> "The Guidelines Development Committee believes that the cultural shift that can take place within entities as they set their own targets and work toward achieving them can lead to more optimal outcomes than a compliance-based approach to meeting quotas."[41]

The *2012 Spencer Stuart Board Index* found that CEOs are increasingly prohibited from serving on public boards or are limited to a single board. This quote appears on page 17 of the *Index:*

> "58% of respondents report some limit on the CEO's outside board participation: 3% permit no outside directorships and 48% limit outside directorships to one or two." (The table shows 24% limit to one and 24% to two; 42% have no limit).

[40] *Guidelines for Gender Balance Performance and Reporting Australia*, Chartered Secretaries Australia, Financial Services Institute of Australasia, Stockland Property Group, IGM Consulting, Women Lawyers Association of Queensland, Women on Boards, May 2013, p. 2, www.csaust.com/genderbalance or www.womenonboards.org.au.

[41] Ibid, p. 2

September 27, 2013

The Secretary
Ontario Securities Commission
20 Queen St. W., 22nd Floor
Toronto, ON
M5H 3S8

By email: comments@osc.gov.on.ca

Dear Secretary Stevenson,

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

Thank you for the opportunity to comment on this important Consultation Paper. We commend the OSC's staff for this timely and informative initiative on a very important issue.

We are an ad hoc, diverse and non-partisan group of experienced senior executives, professionals and corporate directors from across Canada. We share an overriding concern and passion for the economic well-being and competitiveness of our country and of the companies that help drive our economy. We also share a conviction that the OSC is the only regulatory body with the ability to effect real change in this area.

We support the Consultation Paper's 'comply or explain' approach as an initial step to increase the representation of qualified women on boards and in the senior management ranks of Canadian non-venture issuers. This is a principled, effective and appropriate exercise of the OSC's responsibility to foster fairness, efficiency and confidence in Canada's capital markets; it is also consistent with the OSC's well-accepted oversight of the corporate governance practices of Canadian reporting issuers.

We summarize our comments on the policy framework below. We have set out our responses to the specific consultation questions in Appendix A to this letter, and excerpts from additional supporting research in Appendix B.

1. Business Case

Three key elements of a strong business case support the OSC's intent to advance the representation of women on boards and in senior management:[1]

- Improved performance
- Access to the widest talent pool
- Better corporate governance

[1] *Women on Boards*, p. 8, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf

(a) Improved Performance

Improved performance through increased productivity and innovation is essential to our collective well-being. The latest World Economic Forum (WEF) competitiveness rankings place Canada in 14th place overall (down from 9th in 2009) and 25th in "innovation" and "business sophistication".[2] The WEF's Canadian partner, the Conference Board of Canada, commented on the release of these data:

> "Overall, Canada's competitive position has stagnated. A closer look at the results shows that we are getting worse on several factors that do not bode well for our economic and social well-being."[3]

A TD Economics report also flagged Canada's slip in the international rankings of gender diversity on corporate boards as an issue of economic competitiveness.[4]

There is ample research to show that companies whose boards and senior management include more women perform significantly better. The McKinsey study *Why Women Matter* showed that in the best-performing companies, women are strongly represented at board or top-management levels.[5]

Credit Suisse's six-year global research study[6] of more than 20,000 companies, commencing in 2006, showed that those whose boards include women experience improvements in key metrics, including stock performance. This correlation has become stronger since the 2008 financial crisis, and these companies also significantly outperformed the others during the ensuing recession. Shares of companies with a market capitalization of more than $10 billion and mixed-gender boards outperformed those of comparable businesses with all-male boards by 26%; these companies averaged net income growth of 14% over a six-year period, vs. 10% for those with no women directors.

These significant data points show that companies benefit when women join their boards.

(b) Access to the Widest Talent Pool

Demographically, leveraging female talent is critical to our future economic growth.

Not only are women more than half the population, but they are now experiencing economic momentum. They form an increasing proportion of the labour force[7] and increasingly, they are more highly educated than men. More working-age women than men now hold university degrees

[2] http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf
[3] http://www.conferenceboard.ca/press/newsrelease/13-09-04/canada_ranks_14th_in_global_competitiveness_for_the_second_consecutive_year.aspx
[4] *Get On Board Corporate Canada*, TD Economics Special Report **,** March 7, 2013
[5] McKinsey and Company, *Why Women Matter*, 2012.
[6] Credit Suisse, *Gender Diversity and Corporate Performance*, August, 2012
[7] Women ages 15 and older were 47.3% of the labour force (and 67.3% of the part-time workforce). Employment has grown more rapidly among women than men. Between 1976 and 2012, the employment rate for women increased by 16.0 percentage points but it decreased for men by 6.9 percentage points. http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11475-eng.htm

in Canada, especially among the younger generation.[8] In 2012, more women (73.2%) than men (65.1%) aged 25 to 44 years of age had completed post-secondary education.[9]

Strong, confident leaders know they need to surround themselves with the best people they can find. In a diverse country like Canada, those people may not be the ones with whom our leaders are most familiar or comfortable. As more and more business leaders accept the fact that the status quo is no longer tenable for organizations wishing to compete in the global economy, solving the problem of women's underrepresentation has become a priority.[10]

Given the current composition of most Canadian public company boards and senior management, one is compelled to ask: isn't opening up recruiting to the other half of the population a key business imperative?

(c) Better Corporate Governance

As standards of corporate governance have risen over the past two decades, so have the demands of corporate directorships and the expectations of shareholders and stakeholders. The compelling evidence that companies with women on their boards deliver superior performance makes board gender diversity an urgent governance imperative.[11]

Women bring different perspectives and voices to boardroom debates and decisions. Research has shown that they take their roles as directors seriously and are more likely to ask uncomfortable questions, thereby contributing to more effective decision-making. Boards with more women members also tend to be earlier adopters of governance best practices. A critical mass of qualified female directors with diverse experience, skills and expertise enhances board independence and contributes to higher standards of corporate governance.

Recent Canadian research has also shown that female directors are better with complex issues and are more open to new ideas than their male counterparts; their higher quality decision-making capability "helps better explain the higher rates of return, more effective risk management and even lower rates of bankruptcy when women are present on the board."[12]

2. Dispelling Some Common Myths

Myth #1: There are not enough qualified women available to serve on boards.

A board must be strategic about its director composition and recruit the best individuals with the requisite skills, experience and expertise to complement that of current board members. It may well be that the number of men who are ready to serve on boards will outnumber the number of qualified women, but it is simply a myth that there are not enough qualified and board-ready

[8] CBC, *Census Trends – Education and Labour Demographics*, http://www.cbc.ca/news/canada/story/2013/06/26/statistics-canada-national-household--survey-labour.html
[9] HRDC, *Post-Secondary Education*, http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=56
[10] http://economia.icaew.com/opinion/september-2013/five-years-on-women#sthash.oKRqdwom.dpuf
[11] Please see Appendix B for multiple sources
[12] *Why Women Make Better Directors*, C. Bart, G. McQueen International Journal of Business Governance and Ethics, Vol. 8, No., 1, 2013, p. 95

women available to serve on boards. In fact, the Catalyst study *The Supply Problem Myth* found an ample supply of qualified women in senior management positions of the FP 500, and this does not even include partners in law or accounting firms and retired senior executives.[13]

In addition to the corporate pool of board-qualified women, there are many others whose distinguished careers in academia, public service, or professional services also qualify them to add value to boards.[14]

Myth #2: 'CEO' is shorthand for 'qualified' and 'necessary' for board membership.

Approximately 40% of board appointments to Canada's companies had a CEO background. This trend is declining with the shrinking pool of CEOs available to serve, as many are now either prohibited from serving on public boards, or limited to a single board. In 2012, Spencer Stuart identified other relevant and in-demand qualifications for board appointments.[15].

Increasingly, good boards create a "matrix" of relevant director skills and competences that will combine to create the best and most appropriate board for the company at that time. These diverse skills and competences may include, among others: industry, professional, operational, financial, international, marketing, governance, regulatory, human resource, risk, information technology, and also digital and social media expertise. Within these categories are thousands of Canadian women who, while not CEOs, have the background and experience to serve on boards and to add value, particularly through competencies essential to the increasingly important work of board committees.

Myth #3: Implementing regulatory requirements is more trouble than it is worth.

The great 19th-century scientist Lord Kelvin said: "If you cannot measure it, you cannot improve it." Without an open disclosure process, Canada risks continued stagnation in the participation rate of women on boards and in senior management. Indeed, implementing a 'comply or explain' model will require management time and attention: to define a policy, set goals, define action plans, accountabilities, performance metrics and a tracking mechanism, analysis, corrective action plans and communicating the results to internal and external stakeholders.

Much of this information already exists, primarily within the HR function; once a process is in place, it becomes a matter of measurement and reporting. While larger companies are already well-grounded in this type of reporting, it will require a greater adaptation for smaller and medium-sized businesses to achieve these worthwhile results in governance and overall performance.

Mandatory public measurement of women's representation in senior management has resulted in significantly higher representation of women on boards of federally-regulated companies.[16] Women now hold 22% of board seats in these companies, whereas in the balance of FP500

[13] *The Supply Myth: Fortune 500 Boards*, Catalyst, September, 2012, p. 2; *799 Active Women Senior Officers from Financial Post 500 Companies*
[14] Ibid, p. 2
[15] 2012 *Spencer Stuart Board Index*, p. 14
[16] *CBDC Annual Report Card on FP500* by Conference Board of Canada, 2012

companies, only 11.8% of board members are women.[17] Once boards were required to measure and report on women's participation in senior management, the participation of women as board members increased by 88%. This suggests that measuring metrics heightens awareness and generates results.

3. What We Support: Improved Governance Practices to Increase Participation of Women on Boards and in Senior Management

(a) Term Limits

In 2012, 101 companies listed on S&P/TSX Composite Index of Canada's 243 largest companies — or 41% of them — were still without a single female director.[18] This is in part due to the historically low turnover rate on boards. When terms are disclosed, they range from 7 to 15 years.[19] That, coupled with a trend toward smaller boards and fewer available board seats increases competition for a director seat, for all candidates.

Governance organizations such as GMI Ratings are also becoming more vocal about the need for term limits, not only to further gender diversity, but for good governance in general.[20] In a number of countries, including the U.K., Australia, India, Hong Kong and Singapore, regulators have imposed term limits of nine or ten years, beyond which directors may no longer be considered independent.[21]

To stay ahead in a tech-driven, rapidly changing, globally competitive world, highly functional boards depend on renewal and on directors who are in tune with current realities. Reasonable term limits will require increasingly older and/or long-serving directors to step down to make room for new blood and fresh perspectives from incoming directors. If there are no reasonable term limits and no other interventions such as rigorous individual performance evaluations, it will take decades to shift the percentage of women on boards significantly.[22]

(b) The Role of the Nominating Committee: Increasing the Number of Women on Boards

Nominating committees of the board should focus on increasing transparency in the process of their director succession planning and recruitment:

- Identifying the skills, experience, expertise and diversity on the board
- Identifying strategic competency gaps
- Developing a diversity policy with company-specific gender goals within a specific time frame
- Measuring and reporting results towards these goals annually in the proxy circular

[17] Ibid; calculation set out in Appendix B
[18] *S&P/TSX*: Globe & Mail, Janet McFarland, Nov 26 2012
[19] *Spencer Stuart 2012 CSSBI*
[20] Gladman, Kimberly, Ph.D., CFA, Managing Director, ESG Research and Lamb, Michelle, Senior Research Associate, *Director Tenure and Gender Diversity in the United States: A Scenario Analysis*, GMI Ratings, June 2013.
[21] http://www.huffingtonpost.ca/richard-leblanc/when-does-it-become-uneth_b_395 1305.html?goback=%2Egde_4163769_member_275070480#21
[22] *Women on Boards*, UK, 2011, p. 13

To dispel the belief that there are few qualified female director candidates available, we recommend that nominating committees, especially in smaller companies with less extensive networks, work with executive search firms (ESF) to expand their mandate beyond the traditional sources, searching broader and deeper to recruit qualified female executives working in the executive suite (below the rank of CEO) or as business unit leaders with profit and loss (P+L) accountability, as well as women with the broader competences described above under Myth #2.

(c) The Role of the Human Resource Committee: Increasing the Number of Women in Senior Management

The increase in the number of women occupying senior roles in Canada's FP500 has been slow and disappointing, with minimal change between 2010 and 2012. A full 36% of FP500 companies still have no women senior officers; 22% of FP500 companies report 25% or more women as senior officers. Overall, just 18% of senior officer positions are occupied by women.[23]

The inclusion of senior management in the proposed measures is a very important and positive component of the OSC's proposal. Given that gender-diverse leadership teams are beneficial to companies, employees, customers, communities and the economy at large, advancing women to senior leadership positions should be an essential and integral part of any business strategy.

We support the 'comply and explain' approach to increase gender diversity for both senior management and boards: only a focused effort by the CEO, overseen by the HR Committee of the board, will significantly increase the number of women in senior management positions.

The HR Committee of the board can and should play an integral role in this process, taking on the same governance responsibilities as for board positions: setting policy and goals, measurement and communicating annually to the board and to shareholders via the proxy circular. Greater transparency, accountability and scrutiny to measure results and take corrective action will increase women's participation in senior management ranks and ultimately, the supply of qualified female talent to fill future board positions.

(d) The Role of the OSC: Overseeing Compliance, Holding Corporations Accountable and Assessing Progress in Women's Participation

The Australian experience[24] shows that results come when companies are required to disclose and report annually on their gender diversity policy, and on their progress on measureable company-specific objectives for women on boards and in senior management, within specific time-frames. The OSC should be prepared to oversee compliance with this disclosure model and to hold corporations accountable.

The OSC should also evaluate the 'comply and explain' model's success in generating an increase in women's participation on boards and in senior management within a reasonable time frame. We recommend that the OSC hold a public review of the success of this approach three years after implementation.

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23 Catalyst 2012, *A review of the status and progress of women occupying senior roles in Canada's FP500*

24 http://www.csaust.com/knowledge-resources/guidelines-on-gender-balance-performance-and-reporting-australia/

4. Why We Support a 'Comply or Explain' Model

(a) A Successful Track Record

The 'comply or explain' model arises from Canada's principles-based approach (as opposed to a rules-based approach) to regulatory implementation. For example, when the Toronto Stock Exchange implemented the 1994 Dey Commission's 14 recommendations on good corporate governance[25] the issuer had to 'comply or explain' its results in each area recommended by the Dey Commission in its proxy circular. That, coupled with a focused media report card among the FP200 issuers, quickly raised awareness and facilitated compliance within the largest reporting issuers, lifting Canada's governance practices and international reputation.

(b) Australia's Approach as a Test Case for Canada

Australia's economy is largely resource-based, with similar capital markets and regulatory systems; this makes it an excellent proxy for Canada. Australia changed its *Corporate Governance Code* in 2010 and 2011 to address gender equity with a 'comply or explain' approach requiring adoption and annual disclosure of a diversity policy, objectives, and progress.

This model has driven rapid progress, without mandating quotas or stringent regulatory intervention. Female representation on boards has increased from 8% in 2010 to 15.7% as of March 2013, an increase of nearly 100% within three years.

5. Conclusion

In summary, we believe that the time for action on 'comply or explain' is at hand:

- The current laissez-faire approach is not working
- There is an ample and growing supply of female talent
- There is an abundance of evidence that economic growth depends on tapping the female talent pool
- There are enough qualified women to make a difference at corporate Canada's board tables
- Companies with women on their boards outperform companies with all-male boards
- The recent drop in Canada's international competitiveness increases the urgency of acting

The OSC's recommendations in its Consultation Paper are exemplary and should be implemented. We believe the following additional measures will improve their chances of success:

- Measurable company-specific objectives within a specific time frame
- Annual review of progress in achieving these objectives
- A public review of progress three years after implementation of the 'comply or explain' "model

[25] *Where Were the Directors?*

If all of these measures are implemented, they will enhance corporate governance, benefit the economy and improve Canada's competitiveness.

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The views expressed above are those of the individual signatories to this submission and do not necessarily reflect the views of their respective organizations.

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Appendix A

Responses to Specific Consultation Questions

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

Policy options for increasing the number of women on boards and in senior management include:

- Laws establishing minimum gender representation requirements or quotas with specified consequences for non-compliance, ranging from consequences for director compensation and fines, to potential business suspension
- Regulations establishing 'best practice' governance norms and requiring listed issuers to 'comply or explain'
- Voluntary implementation of gender balance by boards and corporations. However, this approach has not resulted in an appropriate representation of women on boards and in senior management positions, an area where Canada is increasingly lagging in international rankings.

We support 'comply or explain'. Countries whose legal and regulatory systems are similar to Canada's have opted for a 'comply or explain' model in the short term, but have committed to consider mandatory approaches if progress in appointing women directors and senior executives is insufficient. The 'comply or explain' mechanism has been an important part of the system of corporate governance in Canada since the early 1990s, and has been at the core of corporate governance regimes in countries such as the United Kingdom and Australia. As Sir Christopher Hogg noted in response to the question "Does comply or explain work?":

> "…in markets where the right conditions are in place, such as the United Kingdom, it does appear that 'comply or explain' has been successful in raising overall standards of corporate governance. … data show that the rate of compliance with the best practices set out in the *UK Corporate Governance Code* has consistently risen over time, with compliance rates for most of these practices now being greater than 90%."[26]

2. What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?

The model of disclosure requirements outlined by the OSC in its discussion paper would require non-venture issuers (other than investment funds) to disclose annually:

- Policies regarding the representation of women on the board and in senior management
- Measurement of the representation of women in the organization, and specifically on the board and in senior management

[26] Hogg, Sir Christopher, *The "Comply or Explain" Approach to Improving Standards of Corporate Governance*, QFinance, www.qfinance.com.

- Representation of women as candidates in the director selection process
- The board evaluation of progress concerning the representation of women

We have carefully reviewed the OSC's suggested disclosure requirements, along with results in other jurisdictions. This has led us to conclude that additional requirements are necessary. They are noted in our letter and in our response to Question 3.

3. Are the proposed scope and content of the model disclosure requirements described in Part 4 of this consultation paper appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.

We support the model disclosure requirements outlined in Part 4 of the consultation paper. We submit that the OSC should consider implementing the following additional disclosure requirements:

Measurable company-specific objectives for achieving gender diversity: The OSC's Consultation Paper does reference the establishment of measurable objectives (p. 18) but only "if" an issuer has adopted a policy for advancing women in senior management and board roles and if so, a requirement to describe "any" measurable objectives under the policy.

We note that the *ASX Corporate Governance Principles and Recommendations* state that "Companies should disclose in each annual report **the** measurable objectives for achieving gender diversity set by the board in accordance with the diversity policy and progress towards achieving them." *(emphasis added)* Given that since the implementation of these Australian disclosure requirements, the percentage of women board members has nearly doubled, we suggest adding this requirement, and specifying that this should be done within a specific time-frame, as has been done in the U.K.

4. What type of statistics, data and/or accompanying qualitative information regarding the representation of women in their organizations should non-venture issuers be required to disclose? Should such disclosure be reported for the non-venture issuer only or for all of its subsidiary entities also?

Appropriate data collection and reporting is critically important to the process of driving change in the representation of women. The OSC's model of disclosure requirements requires non-venture issuers to disclose the proportion (in percentage terms) of:

- Female employees in the whole organization
- Women in senior executive positions (as defined by the OSC)
- Women on the board

As referenced in the previous section, we submit that non-venture issuers should also be required to disclose the measurable objectives they have set as part of their policy for gender diversity within a specific time-frame.

We encourage the OSC to examine the excellent Performance Reporting Framework developed through a collaboration of multiple entities in Australia in the *Guidelines for Gender Balance*

Performance and Reporting Australia (May 2013). Australian issuers have successfully implemented the framework and are now collecting data that includes workplace profile, recruitment and promotion, and evaluation and development.

This is consistent with McKinsey's recommendation in *Women Matter* that companies should "know the numbers." This research indicates that:

> "Companies that begin with a robust, fact-based understanding of their starting point are 2.4 times more likely to transform their companies than those that are less well prepared. It helps them detect the obstacles they need to tackle, to set realistic but challenging goals, and to track progress." (p. 15)

It may not be practical to report on all of the indicators in the Australian guidelines. However, we submit that the OSC could and should require non-venture issuers to disclose their gender balance reporting framework. This could include a variety of management indicators tracking their progress in advancing women in senior roles within the company, such as the number of women in P&L roles.

We also suggest that the 'comply or explain' requirement apply only to the non-venture issuer, but that these issuers be encouraged to provide additional gender-related data for their subsidiaries on a voluntary basis.

5. What practices should the OSC recommend for facilitating increased representation of women on boards and in senior management? e.g. Gender diversity policy and comply or explain.

We fully support the 'comply or explain' approach, and have indicated the disclosure areas that we believe will be most effective in driving change.

In addition, like many governance experts such as GMI Ratings,[27] and as explained in our letter, we support the addition of term limits to facilitate optimal board renewal. While most boards understand the importance of renewal and rejuvenation and support this, only about 25% of FP300 corporations disclose mandatory retirement age or term limits. In contrast, regulators in the UK, Australia, India, Hong Kong, Singapore and other countries are imposing term limits of nine or ten years for directors. Unless the increasingly older and or long-serving directors are required to step down by term limits, there will be little renewal and little room for new blood and fresh perspectives.

As outlined in our letter, we submit that two standing committees of the board should play an active role in the advancement of women on the board and in senior management:

- The nominating committee of the board should play an active role in setting goals and monitoring the success of gender diversity policies at the board level
- The human resources committee of the board, working with the CEO, should set policies and monitor progress in increasing the number of women in senior management

[27] Gladman, Kimberly, Ph.D., CFA, Managing Director, ESG Research and Lamb, Michelle, Senior Research Associate, *Director Tenure and Gender Diversity in the United States: A Scenario Analysis*, GMI Ratings, June 2013.

While we know of no research that has established a direct link between the gender composition of nominating committees and progress in women's representation on boards and in senior management, we believe it would be worthwhile tracking this information to establish whether or not such a link exists. Since this information can easily be derived from the existing proxy disclosure of non-venture issuers, this places no additional disclosure burden on them.

Should the OSC recommend that non-venture issuers develop gender performance and reporting systems such as those outlined in the *Guidelines on Gender Balance Performance Reporting Australia*, boards and CEOs would gain more insight into the measurable objectives that their corporations should establish to demonstrate progress on achieving greater gender balance throughout their organizations. We are of the view that individual issuers should develop company-specific goals tied to specific time frames in order to ensure progress.

Finally, the OSC should monitor annual reporting of the progress increasing the representation of women on boards and in senior management. Within three years of the implementation of the 'comply or explain' guidelines, it should conduct a public review of this progress.

Appendix B – Supplementary Research References

The following are excerpts from research that we used in formulating our letter of response to the *OSC Staff Consultation Paper 58-401, Disclosure Requirements Regarding Women on Boards and in Senior Management* and in answering the specific consultation questions. We have deemed it useful to attach them here for those seeking a deeper understanding of the rationale for these policy changes.

As standards of corporate governance have risen over the past two decades, so have the demands of corporate directorships. The responsibilities and roles of boards have been clarified and nomination processes shaped accordingly to arrive at a good mix of skills, expertise and backgrounds around corporate board tables. Competence matrices used to identify and recruit new members include key domains such as strategy, risk oversight, executive compensation and talent management, financial oversight, communications and stakeholder relations as well as corporate social responsibility. Additional desired attributes for corporate directors include competencies such as independence, leadership skills, sound business judgment, a strategic orientation, the courage and knowledge base to ask thoughtful oversight questions, good people skills, good communication skills and the ability to work well with others.

The UK *Women on Boards* Report noted:

- "Around the world, women have become the new majority in the highly qualified talent pool. In Europe and the USA, women account for approximately six out of every ten university graduates and in the UK women represent almost half of the labour force. These are trends that British business cannot ignore. The failure of any business or economy to maximize the talents of all of its people will result in below-par performance. Tapping into the under-utilised pool of female talent at the board level is vital if British companies are to remain competitive and respond to rapidly changing expectations and market demands. British corporate competitiveness is at stake."[28]

- The McKinsey study *Why Women Matter* showed that in the best-performing companies, women are strongly represented at board or top-management levels.[29] Companies with three or more women in senior management functions score more highly, on average, on the organizational performance profile than companies with no women at the top, and performance increases significantly beyond a certain critical mass: specifically, when there are at least three women on management committees with an average membership of 10 people.

As noted in *Getting on Board*[30]:

> "There is a distinct need for diversity in skill sets, expertise, experience and viewpoints on boards, driven by evolving strategic goals and market challenges. Board effectiveness demands robust debate in which norms are challenged and a

[28] *Women on Boards*, UK, p. 9
[29] McKinsey and Company, *Why Women Matter*, 2012
[30] Ernst & Young, *Getting on Board*, p.2, www.ey.com/governance

> breadth of perspectives inform board strategic discussions and actions. Indeed, a high-performing board is now, by definition, diverse."

Companies with more women on their boards outperform their rivals.[31] Research has shown that these companies are more likely to have higher standards of corporate governance and reduced risk. The UK report *Women on Boards* notes:

> "There is a body of research which demonstrates how the appointment of female directors can improve a company's performance. Female directors enhance board independence. Better decision-making is assumed to occur as a result of directors having a range of experiences and backgrounds. Women take their non-executive director roles more seriously, preparing more conscientiously for meetings. Women ask the awkward questions more often, decisions are less likely to be nodded through and so are likely to be better."[32]

This is particularly the case when women achieve a critical mass on boards or senior manage-ment teams. As noted in *Women on Boards*:

> "A Canadian study entitled *Not Just the Right Thing, but the Bright Thing*, looking at public, not-for-profit and private boards, found that boards with three or more women on them showed very different governance behaviours to those with all-male boards. The more gender-balanced boards were more likely to identify criteria for measuring strategy, monitoring its implementation, follow conflict of interest guidelines and adhere to a code of conduct. They were more likely to ensure better communication and focus on additional non-financial performance measures, such as employee and customer satisfaction, diversity and corporate social responsibility. They were also more likely to have new director induction programmes and closer monitoring of board accountability and authority.
>
> "UK FTSE 100 companies with more women adopted the governance recommendations from the Higgs Review earlier than those without. In particular they focused on: better succession planning and the use of external search consultants, new director induction and training; audit and balance of the whole board's skills, knowledge and experience; and regular reviews of board performance.
>
> "These findings are again confirmed in more recent research. A 2010 survey commissioned by search consultancy Heidrick & Struggles and conducted by Harvard Business School researchers suggests that women appear to be more assertive on certain important governance issues such as evaluating the board's own performance and supporting greater supervision on boards. The researchers suggest that this chan-ging dynamic may bring in a new era of strengthened governance."[33]

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[31] *Women on Boards*, UK, p. 7
[32] Ibid, p. 8
[33] *Women on Boards*, UK, p. 10

The same report noted further that:

> "Women bring different perspectives and voices to the table, to the debate and to the decisions. Studies, stemming from Solomon Asch's original work on conformity to majority opinion, have shown that three women are required to change boardroom dynamics, allowing them to become more vocal and their voices to be heard. Further studies have shown that the environment for women in senior roles improves once about a third of leaders at that level are female, and that a 'critical mass' of 30% or more women at board level or in senior management produces the best financial results."[34]

GMI Ratings recently published a study[35] which argued that beyond gender diversity, term limits are necessary for good governance:

> "Many observers have noted that long director tenures complicate efforts to quickly increase board diversity at public companies, since relatively few board seats turn over each year. A number of investors have also expressed concern about long tenure in its own right, believing that it may impair independence. The current report finds that over one-quarter of board seats in the US are held by men with at least ten years' tenure, and analyzes the potential effect of replacing various percentages of these long-tenured men with women. For example, if less than half (46%) of the male directors in the S&P 500 with 10-plus years of seniority were replaced by female directors, 30% of that index's board seats would be held by women. In the Russell 1000 and 3000 indices, 54% and 62%, respectively, of the men with over ten years' tenure would need to be replaced by women to reach the threshold of 30% female representation. These findings may be of interest to investors advocating for board diversity as well as improved independence standards."

A recent research article provocatively titled *Why Women Make Better Directors* summarized the quantitative research involving more than 600 corporate directors, and concluded that female directors are better with complex issues, are more willing to "rock the boat", and are more open to new ideas than their male counterparts. Among the study's specific points are:

- " …our research has found that women on boards are significantly better than men at making decisions because of their 'Complex Moral Reasoning' (CMR) abilities. CMR involves acknowledging and considering the rights of others in pursuit of fairness by using a social cooperation and consensus building approach that is consistently applied in a non-arbitrary fashion. The dramatic importance of this is highlighted when one considers that the role of directors is solely to make decisions or, more precisely, to help the board make decisions."[36]

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[34] *Women on Boards*, UK, pp. 8 and 9

[35] Gladman, Kimberly, Ph.D., CFA, Managing Director, ESG Research and Lamb, Michelle, Senior Research Associate*, Director Tenure and Gender Diversity in the United States: A Scenario Analysis*, GMI Ratings, June 2013 http://www3.gmiratings.com/wp-content/uploads/2013/06/GMIRatings_WOB_TenureGender_062013.pdf

[36] *Why Women Make Better Directors*, Chris Bart, G. McQueen, International Journal of Business Governance and Ethics, Vol. 8, No., 1, 2013, p. 95

- "This means that female corporate directors are significantly more inclined to work through decision-making by taking the interests of multiple stakeholders into account in order to arrive at a fair and morally consistent decision…Their effectiveness stems from their predisposition to be more inquisitive and to see more possible solutions."[37]

- "Our results demonstrate that female corporate directors can make significant contributions to any board through what appears to be their innately superior decision-making framework (i.e, what's fair?) *and* process skills (i.e., consider everyone's point of view). And it is this higher quality decision-making capability which we now posit helps better explain the higher rates of return, more effective risk management and even lower rates of bankruptcy when women are present on the board."[38]

- "In short, women make better directors than men. Board Chairs everywhere need to take our findings into consideration in making their next board appointments. And if they do not, it would only seem reasonable to ask: from a fiduciary standpoint, in whose best interests are they really serving? Because certainly, it's not the corporation's!"[39]

The Australian regulatory model requires data collection in the following areas:

- Workplace profile data, including:
  - ✓ Number of all employees by gender (full-time and part-time)
  - ✓ Number of employees by gender in operational roles within the company's core *business(es)*
  - ✓ Number of employees by gender in functional roles
  - ✓ Number of employees by gender in support roles
  - ✓ Number of senior executives by gender (full-time and part-time)
  - ✓ Number of board members by gender
  - ✓ Number of middle management by gender (full-time and part-time)
- Recruitment and promotion data including:
  - ✓ Number of new appointments to senior executive roles by gender
  - ✓ Number of exits from senior executive roles by gender
  - ✓ Number of employees by gender identified as "top talent" (strong candidates for internal promotion in performance evaluation processes)
  - ✓ Tracking of career progress via promotion through the operational hierarchy by gender for employees who have been at the company five or more years
- Evaluation and development data including:
  - ✓ Number of employees who participate in leadership development or management training programs by gender
  - ✓ Number of employees who participate in mentoring programs by gender

[37] Ibid, p. 97
[38] Ibid, p. 97
[39] Ibid, p. 98

In the light of the Catalyst research which shows that giving women P&L responsibility early in their careers is predictive of ascension to senior management (and beyond), the OSC may want to consider tracking the percentage of P&L roles held by women by management level.

The *Guidelines for Gender Balance Performance and Reporting Australia (May 2013)* point out that "participation of women in senior roles is unlikely to increase without greater progress in:

- Determining those gender balance initiatives that **should be formally adopted as measurable objectives**, and
- Being accountable to stakeholders on **progress toward achieving those measurable objectives**."[40] (Emphasis added.)

They also state:

> "The Guidelines Development Committee believes that the cultural shift that can take place within entities as they set their own targets and work toward achieving them can lead to more optimal outcomes than a compliance-based approach to meeting quotas."[41]

The *2012 Spencer Stuart Board Index* found that CEOs are increasingly prohibited from serving on public boards or are limited to a single board. This quote appears on page 17 of the *Index:*

> "58% of respondents report some limit on the CEO's outside board participation: 3% permit no outside directorships and 48% limit outside directorships to one or two." (The table shows 24% limit to one and 24% to two; 42% have no limit).

[40] *Guidelines for Gender Balance Performance and Reporting Australia*, Chartered Secretaries Australia, Financial Services Institute of Australasia, Stockland Property Group, IGM Consulting, Women Lawyers Association of Queensland, Women on Boards, May 2013, p. 2, www.csaust.com/genderbalance or www.womenonboards.org.au.

[41] Ibid, p. 2