



F&C Management Limited

1 Broadway, 14th Floor

Cambridge, MA 02141

Telephone 617 401-2521

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

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

14 April 2014

Re: Comment on proposed local amendments to [Form 58-101F1 of National Instrument 58-101 Disclosure of Corporate Governance Practices](#)

Dear Secretary,

As a global asset manager, F&C¹ takes great interest in the governance and disclosure of markets around the world, including Canada. We are encouraged by the Canadian market's continued focus on establishing the highest corporate governance standards, including the new listing requirements that all TSX listed companies adopt a majority voting policy, requiring directors of TSX listed issuers to be elected by a majority of the votes cast in uncontested director elections. We believe the new majority vote standard enhances board accountability to shareholders, as directors receiving minority support must resign.

In the spirit of ongoing reform, we welcome the opportunity provided by the Government of Ontario and the Ontario Securities Commission (OSC) to comment on proposed amendments that would require TSX-listed issuers that are reporting issuers in Ontario to provide annual disclosure on matters including:

- policies regarding the representation of women on the board,

¹ F&C Management directly managed \$136.7 billion in assets as of 31 December 2013. In addition, F&C has been mandated to vote and/or engage in dialogue on behalf of a further 23 investment institutions whose assets, including equities and corporate bonds, total \$89.5 billion.

- the board's or 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,
- targets regarding the representation of women on the board and in executive officer positions, and
- the number of women on the board and in executive officer positions.

F&C's position on importance of women on boards

Last year F&C shared with all of its investee companies, including those listed on the TSX, a set of practical steps to achieve more diverse and effective boards. In our view, a principal objective of each board appointment should be to maximize board effectiveness by enhancing the range of competencies, skills, talent, experience and relevant perspectives present at the board table. Achieving this objective requires a proactive structured approach to board recruitment with a special emphasis on diversity attributes (including competencies, experience, gender, psychological type, ethnicity, as well as national, cultural and social backgrounds) that reflect the nature, scope and aspirations of the business. Gender diversity of boards and management teams is of particular importance for greater effectiveness. Aside from contributing gender-specific perspectives, there is strong research evidence that gender diverse groups produce better results². Healthy gender balance can positively influence group dynamics, leading to more "out-of-box" thinking and better decision-making.

Importance of annual disclosure

The proposed amendments related to diversity are not overly burdensome for issuers compared to more prescriptive shareholder proposals faced by many Canadian companies, which request specific quotas or other mandates for representation of women. The OSC's proposed amendments represent a reasonable step forward by requiring annual disclosure on a comply-or-explain basis of an issuer's existing policies, practices and performance related to the representation of women on the board and in executive officer positions. In our experience, disclosure requirements can in fact lead to improved performance, as the requirement to disclose creates internal pressure to articulate and measure a company's actions. We expect TSX listed issuers to be in a position to report to stakeholders on the company's approach to promoting greater diversity at the board level, in senior management and throughout the organization.

² E.g. see McKinsey Women Matter series on www.mckinsey.com, and Credit Suisse Research Institute report

"Gender Diversity and the Impact on Corporate Performance", August 2012

Potential pitfalls of implementation-lessons from the SEC diversity disclosure amendments

As the OSC is aware, the United States Securities & Exchange Commission (SEC) approved board diversity disclosure amendments in December 2009, requiring public companies to disclose the following:

- whether the nominating committee/board considers diversity in identifying nominees for director;
- how diversity is considered in the nomination process; and
- if the nominating committee/board has a policy with regard to the consideration of diversity in identifying director nominees, how this policy is implemented, and how its effectiveness is assessed.

There are clear parallels to the OSC's proposed amendments, which in fact go beyond those of the SEC by including disclosure on executive officers as well as the board. It is crucial to note that the impact of the SEC's Proxy Disclosure Enhancements has been limited to date. A recent analysis of diversity disclosure among US Fortune 50 companies shows that compliance with the three year old disclosure enhancement is relatively poor³. Reasons cited in the *Columbia Business Law Review* note include the SEC's ambiguous explanation of "diversity" and too much discretion left to companies in defining the nomination process. Stronger guidelines on what constitutes sufficient disclosure and a mechanism for policing compliance could have strengthened the impact of the SEC's Proxy Disclosure Enhancements and aided companies in achieving compliance. These recommendations for enhanced guidance highlighted in the above referenced analysis may provide insight to the OSC as it seeks to implement its own proposed amendments across the TSX. We strongly encourage the OSC to learn from deficiencies in the SEC's similar disclosure amendments to achieve greater impact.

F&C also supports a suggestion put forward by the Shareholder Association for Research and Education (SHARE) in its October 2013 response to the Staff's consultation paper suggesting that the OSC or the government of Ontario put systems in place to monitor progress in improving diversity on boards and in senior management.⁴ In our view, monitoring mechanisms such as those suggested by SHARE would help ensure the proposed amendments have their intended impact on disclosure, and ultimately on performance. This would also help the OSC avoid a clear

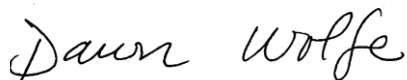
³ Tamara S. Smallman, *The Glass Boardroom: The SEC's Role in Cracking the Door Open so Women May Enter*, 2013 Colum. Bus. L. Rev. 801 (2013).

⁴ http://www.share.ca/files/SHARE_OSC_Board_Diversity_submission.pdf

deficiency in the similar SEC amendments for US companies, which do not provide for monitoring or enforcement. It is further worth noting that annual public disclosure of diversity performance of corporate boards is currently being carried out in the United Kingdom. Reports have been published for the past three consecutive years on diversity of the FTSE350 corporate boards, detailing progress on each of the recommendations produced in Lord Davies of Abersoch's '*Women on Boards*' report published in February 2011.⁵ We encourage the OSC staff to use these reports as a valuable frame of reference in its consideration of how to monitor compliance and the impact of the proposed disclosure amendments.

F&C appreciates this opportunity to support the proposed amendments on disclosure requirements regarding women on boards and in senior management.

Sincerely,

A handwritten signature in cursive script that reads 'Dawn Wolfe'.

Dawn Wolfe

Vice President, Governance & Sustainable Investment

F&C Management Ltd.

dawn.wolfe@fandc.com

⁵ <https://www.gov.uk/government/publications/women-on-boards-2014-third-annual-review>