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WOMEN'S EXECUTIVE NETWORK™

WXN

April 14, 2014

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

By email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Secretary:

We are pleased to submit our comments in response to the proposed OSC amendments to Form 58-101FI *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices*. We congratulate the Government of Ontario and the Ontario Securities Commission for taking this important initiative at this time. We believe the lack of diversity on the FP500 is an economic issue that requires strong leadership and action now by governments and regulators.

### **Women's Executive Network**

With 17,500 members in Canada, each of whom is in a management, executive, board or professional role in the private, public and non-profits sectors, the Women's Executive Network (WXN) is Canada's largest

organization exclusively for women in leadership roles across sectors. Ontario is the home of the highest number of WXN members. We are also the home of Canada's Most Powerful Women: Top 100 Awards. We have recognized 728 women since the Awards began in 2003 through a rigorous selection process led by an Advisory Board of 20 senior executives from across Canada. In 2008, we launched WXN in Ireland, our first step towards creating a global WXN.

We create and deliver innovative networking, mentoring, professional and personal development to inform, inspire, connect and to recognize our community of smart women and their organizations in the pursuit of leadership experience. Since 1997, WXN has provided Canada's employers of choice with high quality networking and mentoring opportunities for women in management, executive, board and professional roles. Exclusion from informal networks and a lack of mentoring opportunities are two often-cited barriers to women's advancement into leadership roles. We work with 70 companies across Canada ---mostly FP500 and Fortune 500-- who benefit from our 16 year track record of supporting their human capital strategies. Please find below an overview of WXN membership:

- **50%** of our members have 6 – 10 years of full-time work experience in a management, executive or professional role; while the remaining **50%** have 11+ years
- **76%** have completed university degrees: **40%** have undergraduate degrees; **32%** have also completed Masters Degrees, and **4%** have completed PhDs
- **25%** of WXN members have a C-Suite, President, Managing Director or Founder title; **17%** have an EVP or VP title; **32%** have a Director or Senior Manager title; and, **26%** have a Manager title
- **69%** earn an annual personal income of over \$100,000; **13%** earn in excess of \$200,000 per year

## 2. Our Position

Our recommendations have been informed by a September 2013 survey and a March 2014 survey of WXN members. Of our respondents, 16% are recipients of a Canada's Most Powerful Women: Top 100 Award. 94.4% do not currently serve or have never served on an FP500 board.

At first glance, it is easy to define this issue as a women's issue. It is not a women's issue. It is an economic and business issue that affects Canada's competitiveness and prosperity. It affects men and women of all

backgrounds. It is an issue that needs to be resolved for the sake of our children and our grandchildren so they will live in a country where there is greater equality and prosperity. We recognize that change is not easy. Change requires strong leadership and action now by governments and regulators.

## **Feedback on the Proposed Amendments**

### Introduction

In our submission dated October 4, 2013, we recommended more onerous disclosure requirements than envisioned in the July 30, 2013 Consultation Paper. Our recommendations reflected the lessons learned in other jurisdictions, namely the UK and Australia, with ‘comply or explain’, as well as the feedback from FP500 directors garnered in our summer 2013 survey and feedback from our own member organizations garnered in the fall in respect of the Consultation Paper. We detailed the results of the two surveys and the ‘lessons learned’ in our October 4, 2013 submission.

We would like to commend the OSC for the rigorous and transparent consultation process it has undertaken which has led to the Proposed Amendments to Form 58-101F1. As is noted by the OSC, these amendments expand the model of disclosure requirements set out in the Consultation Paper. They are reflective of thoughtful, sensible and progressive thought leadership in tackling the need to improve corporate governance in Canada. These amendments reflect our view, and indeed the widely-held view of stakeholders, that non-venture issuers must be *required* to disclose in areas regarding the representation of women on boards and in executive officer positions including targets and term limits and that a review of compliance with new disclosure requirements must be conducted.

We feel there is still a significant risk that the intentions of the OSC will be thwarted in the absence of *more explicit requirements, including definitions*, contained in the amendments. We believe this because of the ‘lessons’ learned from the 1994 Dey Report and, more recently, the 2013 review of Australia’s experience with ‘comply or explain.’ In the case of the Dey Report, five years after the 1994 Dey Report corporate governance guidelines recommendations were released, the 1999 review report revealed that little had changed as there was more “explaining” than “complying.”

We believe greater transparency will be achieved if issuers are required to meet the disclosure requirements as set out in the Proposed Amendments through not only the Annual Proxy Circular, but also in the Annual Report and also on their website. By requiring disclosure in these three ways, the OSC will have a much greater likelihood of realizing its stated purpose of the Proposed Amendments (page 6) which is to, “require greater transparency for investors and other stakeholders...this transparency is intended to assist investors when making investment and voting decisions.”

In the case of Australia, WXN has been monitoring the results on board gender diversity of the ASX amendments to the *ASX Corporate Governance Council Principles and Recommendations* for listed companies which were put into place for financial years beginning January 1, 2011. These amendments introduced a ‘comply or explain’ model of disclosure. As noted in the Consultation Paper, under ASX listing rule 4.10.3, companies must include in their annual report a statement disclosing the extent to which they have followed six specific recommendations.

On March 8, 2013 the ASX released a KPMG Report on the progress made by ASX listed companies in complying with the six recommendations. The Report includes the first full reporting period (31 December 2011 to 30 December 2012) for a number of entities across the ASX since the diversity recommendations came into effect. The majority of entities across the ASX have a diversity policy or are planning to put one in place. Over 90% of ASX-listed entities have established a diversity policy or provided an explanation as to why not. While a large number of entities disclosed the full policy on their website, others provided very little detail. The detail of disclosure was considerably greater in the larger listed entities.

*The ASX Report notes that there has been broad interpretation of the term measurable objectives and that as a result it is unclear how progress on achievement of measurable objectives will be measured over time.* “Entities that gave a clear explanation of their intentions and progress to date achieved a far more effective disclosure than those disclosing compliance but providing little detail as to what steps had been taken.” Simply put, what gets measured gets done. This is a fundamental step towards increasing the representation of women on boards of directors. The OSC has the opportunity to learn from the Australian experience by providing greater guidance to issuers at the outset on the development of measurable objectives and the ongoing assessment of progress in its amendment to the Corporate Governance Disclosure Rule.

## Specific Feedback

Please find below our specific feedback which addresses the five questions asked on page 10 of the January 16 document.

### **1. Are the scope and content of the Proposed Amendments appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.**

Below please find the six Proposed Amendments as they appear in Appendix A together with our comment on each. At the end of this section, we have commented on Recommendation 7: Conduct a review of compliance with any new disclosure requirements after issuers have provided this disclosure for three annual reporting periods.

*10. Term limits (Ontario only) – Disclose whether or not the issuer has adopted term limits for the directors on its board. If the issuer has not adopted term limits, disclose why it has not.*

## Comment

We support the Proposed Amendment. 94.2% of WXN individual members ‘strongly support’ or ‘support’ the Proposed Amendment. Interestingly, of Canada’s Most Powerful Women: Top 100 Award Winners, 100% ‘strongly support’ or support the Proposed Amendment. However, we all agree there can be significant value brought by long-standing directors however this needs to be balanced by new directors who offer fresh thinking. As such, we ask the OSC to consider providing guidance to issuers in the area of a proportion of directors who could be excluded from this policy. We like Bev Behan’s example given in her submission that a board could have a policy that no more than two directors will have served for more than 10 years.

*11. Policies regarding the representation of women on the board (Ontario only) –*

(a) Disclose whether the issuer has adopted a policy for the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not.

(b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:

(i) a short summary of its objectives and key provisions,

(ii) the measures taken to ensure that the policy has been implemented effectively,

(iii) annual and cumulative progress by the issuer on achieving the objectives of the policy, and

(iv) whether and, if so how, the board or its nominating committee measures the effectiveness of the policy.

### Comment

We agree with the OSC on the importance of mandatory disclosure but are concerned by the fact that in Australia, many companies are choosing to provide little detail or have yet to put a policy in place. For this reason, we believe the policy must be a) written and b) if not put in place, an issuer must offer an explanation of any risks or opportunity costs associated with the decision not to have such a policy. We are also concerned by the fact that in Australia, there was broad interpretation of the term 'measurable objectives'. We believe the OSC must provide greater guidance to issuers at the outset of the definition of objectives.

83.9% of WXN individual members 'strongly support' or support revisions of Proposed Amendment 11; 76.9% of Canada's Most Powerful Women: Top 100 Award Winners agree. We ask the OSC to consider re-wording Proposed Amendment 11(a) to read: "Disclose whether the issuer has adopted a written policy for the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not and explain any risks or opportunity costs with the decision not to have such a policy."

Secondly, we ask the OSC to consider re-wording Proposed Amendment 11 (b) (i) to read: "a short summary of its measurable objectives including numerical targets (actual and percentage based on board size over the last five years) and key provisions." This will reinforce the role and importance of Proposed Amendment 14.

12. *Consideration of the representation of women in the director identification and selection process (Ontario only)*  
 – Disclose whether and, if so how, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so.

Comment

We agree with the OSC on the importance of mandatory disclosure but also strongly believe that the OSC must be more explicit in what it requires issuers to disclose in respect of how women are identified. 86.3% of WXN individual members ‘strongly support’ or ‘support’ our recommendations below to do so. If the OSC does so, we believe the OSC’s disclosure requirements will make a describable difference in the number of women appointed and in making boards better. *This is the key issue in our view which the Proposed Amendments must address, as our research shows in each of the last four years that only 1 in 5 directors are identified through a rigorous process which goes beyond the individual directors’ own networks. To put it bluntly, as women have typically not been in those networks in meaningful numbers, women have not been considered. As one highly-regarded TSX60 Chair stated recently, “[i]f you want to be successful in putting together the best board, it is important to fish in more than one pond.”*

In our October 4, 2013 submission, we had recommended that an issuer be required to offer an explanation if an external search consultancy had not been used in the appointment of a director and an explanation of the terms of the mandate (in the case of when an external search consultancy is used and in the case when not and the Nominating and Governance Committee executes the mandate on its own) in respect of the identification of female candidates and the percentage of women to be on the short list of candidates. However, our thinking has continued to evolve in this regard as well over the past few months in discussion with other stakeholders and has been influenced by the successful 10 year experience of the NFL’s The Rooney Rule. In this case, it was demonstrated that there were enough qualified candidates but they were completely overlooked in the recruiting process.

We believe there is a large, untapped pool of women candidates in Canada, notably those who do not have corporate board experience but who have the skills, functional areas of expertise, management experience and credentials to add tremendous value to a company at the board level. It is this pool of women who are often overlooked by boards and by search firms as they have no board experience and they are ‘a riskier’

bet, yet we believe the contrary to be true: it is riskier for boards not to assess individuals in this pool because the opportunity cost of not identifying the best to sit on boards is too high. At the end of the day, the OSC's new disclosure requirements will be seen to be successful by our business community and by countries around the world if the percentage of board seats held by women rises significantly *and* this change in board composition is seen by our business community as having improved corporate governance by improving board effectiveness.

We believe the OSC needs to be more explicit in Proposed Amendment 12 by requiring disclosure of the number of female candidates included in the search (whose skills, functional area of expertise and credentials are assessed), the number of female candidates included in the search without any prior public company board experience, the number interviewed either by the search firm or the Committee, and the number (and percentage) on the short list.

We ask the OSC to consider re-wording Proposed Amendment 12 to read:

“(a) Disclose whether and, if so how, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so and explain any risks or opportunity costs with the decision not to have such a policy.

(b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:

(i) the number of female candidates included in the search (whose skills, functional area of expertise and credentials are assessed),

(ii) the number of female candidates included in the search without any prior public company board experience

(iii) the number interviewed either by the search firm and/or the Committee,

(iv) the number (and percentage) on the short list.”



*13. Consideration given to the representation of women in executive officer appointments (Ontario only) – Disclose whether and, if so how, the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.*

Comment

We are pleased to see this Proposed Amendment. 94.3% of individual WXN members and 92.3% of Canada's Most Powerful Women: Top 100 Award Winners 'strongly support' or 'support' Proposed Amendment 13. We believe Proposed Amendment 13 will lead to an increase in the number of women who have the requisite skills, management experience and credentials at an executive officer level to be considered for corporate board appointments.

*14. Issuer's targets regarding the representation of women on the board and in executive officer positions (Ontario only) –*

- (a) For purposes of this Item, a "target" means a number or percentage, or a range of numbers and percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date.
- (b) Disclose whether the issuer has adopted target(s) regarding women on the issuer's board. If the issuer has not adopted such target(s), disclose why it has not.
- (c) Disclose whether the issuer has adopted target(s) regarding women in executive officer positions of the issuer. If the issuer has not adopted such target(s), disclose why it has not.
- (d) If the issuer has adopted target(s) referred to in either Item 14(b) or (c), disclose the annual and cumulative progress of the issuer in achieving its target(s).

Comment

We are pleased to see this Proposed Amendment. 86.7% of individual WXN members 'strongly support' or 'support' Proposed Amendment 14. We believe Proposed Amendment 14 has the potential to play a vitally

important role in increasing the number of women executive officers and corporate directors *if it is strengthened* and again reflects the old adage: what gets measured gets done.

Our support for overarching national timelines and targets together with the ‘comply or explain’ approach that includes company targets mirror the call to action of the 2011 Lord Davies Report. As its first recommendation, it recommended chairs of the FTSE350 companies on the London Stock Exchange set out the percentage of women they aim to have on their boards in 2013 and 2015 and that FTSE100 boards should aim for a minimum of 25% female representation by 2015. We note there has been strong improvement in the FTSE100 since the Lord Davies Report. According to the April 2013 Davies Review Report, women hold 17.3% of FTSE100 seats as of March 2013 up from 15.6% the year before. According to the Report, only 6 of the FTSE100 have all-male boards.

In this spirit, we would like to see the OSC require all non-venture issuers to establish and disclose targets by 2016.

In addition, we would like to see the OSC offer guidance in Proposed Amendment 14 to issuers as to what reasonable targets would be for them to set now, noting that targets would vary by industry. According to the Canadian Board Diversity Council’s 2013 Annual Report Card research, financial services companies for example have a far higher percentage (23.3%) of board seats held by women than do mining, oil and gas companies (9.0%).

Finally, we would like to see targets defined as actual numbers and percentages, instead of one or the other to provide full transparency to investors.

We ask the OSC to consider re-wording Proposed Amendment 14 to read:

“(a) For purposes of this Item, a "target" means a number and percentage, or a range of numbers and percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date. A target of 3 is a reasonable number for consideration, however the target number can be higher or lower depending on factors such as the industry in which the issuer operates and the board’s current gender diversity.

- (b) Disclose whether the issuer has adopted target(s) regarding women on the issuer's board. If the issuer has not adopted such target(s), disclose why it has not.
- (c) Disclose whether the issuer has adopted target(s) regarding women in executive officer positions of the issuer. If the issuer has not adopted such target(s), disclose why it has not.
- (d) If the issuer has adopted target(s) referred to in either Item 14(b) or (c), disclose the annual and cumulative progress of the issuer in achieving its target(s).
- (e) All issuers are required to have targets in place by December 31, 2016 and to disclose those targets.”

*15. Number of women on the board and in executive officer positions (Ontario only) –*

- (a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women.
- (b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all subsidiary entities of the issuer, who are women.

Comment

We are pleased to see this Proposed Amendment.

*Recommendation 7: Conduct a review of compliance with any new disclosure requirements after issuers have provided this disclosure for three annual reporting periods.*

While we are pleased to see a compliance review recommendation, we are concerned that a review following three annual reporting periods is too long for the first review. We believe it is important that an annual review be conducted each year, similar to the annual review done in the UK each year following the Davies Report and similar to the two year review published in March 2013 in Australia. If the amended Rule is put in place for June 1, 2014, then a review conducted in 2016 will provide investors with the opportunity to measure progress. If the 2016 review shows that at December 31, 2015 little action has

been taken in creating and implementing a detailed diversity policy, we suggest that the OSC re-visit this 'comply or explain' model with a view of identifying more stringent requirements.

**2. Should the Proposed Amendments be phased in, with only larger non-venture issuers being required to comply with them initially? If so, which issuers should be required to comply with the Proposed Amendments initially? Should the test be based on an issuer's market capitalization or index membership? When should smaller non-venture issuers be required to comply with the Proposed Amendments?**

No. We do not believe the Proposed Amendments should be phased in. The Proposed Amendments are reasonable, with sufficient flexibility provided to issuers in the 'comply or explain' approach. As is noted in the January 16, 2014 Proposed Amendments document, many stakeholders believe that now is an appropriate time to take action.

**3. Do you agree that the Proposed Amendments requiring non-venture issuers to provide disclosure regarding term limits will encourage an appropriate level of board renewal?**

Together with the other Amendments and the proposed revisions we have recommended, we believe that term limits disclosure is an important element in encouraging an appropriate level of board renewal. Our thinking has evolved on the question of term limits on the basis of ongoing discussion with other stakeholders. We agree that there can be significant value brought by long-standing directors, however this needs to be balanced by new directors who offer fresh thinking. As such, we ask the OSC to consider providing guidance to issuers in the area of a proportion of directors who could be excluded from this policy. We like Bev Behan's example given in her submission that a board could have a policy that no more than two directors will have served for more than 10 years.

**4. In support of disclosure regarding director term limits, should there be greater transparency regarding the number of new directors appointed to an issuer's board and whether those new appointees are women? Specifically, should there be an additional disclosure requirement that non-venture issuers disclose: (i) the number of new directors appointed to the issuer's board at its last annual general meeting and (ii) of these new appointments, how many were women?**

Yes. This is an excellent recommendation and one that we had not considered.

- 5. Item 11 of the Proposed Amendments requires disclosure of policies regarding the representation of women on the board or an explanation for the absence of such policies. The term "policy" can be interpreted broadly. Should the proposed disclosure item explicitly indicate that the term "policy" can include both formal written policies and informal unwritten policies? What are the challenges for non-venture issuers reporting publicly on informal unwritten policies adopted by their boards?**

We believe that there must be disclosure of written board diversity policy to remove any ambiguity. We feel there is still a significant risk that the intentions of the OSC will be thwarted in the absence of *more explicit requirements, including definitions*, contained in the amendments. For these reasons, we have recommended revisions to the Proposed Amendments.

Thank you for the opportunity to share our feedback on the Proposed Amendments on behalf of our 17,500 members, all of whom are in management, executive, board and professional roles.

With warm regards,

A handwritten signature in cursive script that reads "Pamela Jeffery". The signature is written in black ink and is positioned above the printed name and title.

Pamela Jeffery  
Founder

