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Montréal, April 15, 2014

Ontario Securities Commission
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Attention: The Secretary

Gentlemen and Mesdames,

Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the OSC Consultation Paper)

This letter is submitted in response to the OSC Consultation Paper published on January 16, 2014 We thank you for affording us the opportunity to comment on this important topic.

General

We believe that the decision-making process of issuers benefits from a diversity of opinions and viewpoints. This diversity is enhanced when leadership roles are filled with qualified individuals who have different business experiences, industry-specific expertise, education, skills and individual qualities and attributes such as gender, age, ethnicity and geographic background.

We support the comments set forth in the attached letter from Norton Rose Fulbright dated April 11, 2014. In particular, we believe that a "comply or explain" regime is an effective, yet flexible approach for increasing the number of women on boards and in executive positions. As opposed to quotas and their "one-size-fits-all" approach, a "comply or explain" model would require issuers to develop their own strategies and objectives and to decide how and to what extent diversity should be taken into account as a criterion for board nomination. Furthermore, the "comply or explain" regime is in line with the traditional position of the Canadian Securities Administrators with respect to governance, developed in NI 58-101. In fact, this choice of regime has solid historical roots in Canada and was made following the publication of the UK *Cadbury Report* in 1992, the Canadian *Dey Report* in 1994 and the Canadian *Saucier Report* in 2001.

Diversity should be fully integrated in talent management processes and succession plans for executive ranks in order to be meaningful and become an integral part of the corporate culture of an organization. We are therefore of the view that the new disclosure requirements would benefit from a broader definition of "executive officer" than the one used in NI 58-101, to encompass not only CEOs, CFOs and vice-presidents, but also senior managers.

We believe that disclosure requirements relating to the type of statistics and accompanying qualitative information should be flexible enough to allow issuers to provide information in a way that makes sense within their organization. For instance, an issuer should be able to decide whether statistics and data relating to diversity should be provided only on a consolidated basis.

Thank you for allowing us to comment on this subject.

Yours truly,

Daniel Desjardins
Senior Vice President, General Counsel
and Corporate Secretary

NORTON ROSE FULBRIGHT

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April 11, 2014

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Attention: The Secretary

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This letter is submitted in response to the OSC Consultation Paper published on January 16, 2014. It reflects the views of a working group made up of issuers having a combined market capitalization of more than $70 billion (the **Working Group**). We thank you for affording us the opportunity to comment on this important topic.

General

The Working Group believes that the decision-making process of issuers benefits from a diversity of opinions and viewpoints. This diversity is enhanced when leadership roles are filled with qualified individuals who have different business experiences, industry-specific expertise, education, skills and individual qualities and attributes such as gender, age, ethnicity and geographic background.

In recent years, the proportion of women serving as directors of public companies has remained unchanged in Canada. Notwithstanding the fact that there are many board-ready potential female directors, less than 20% of directors of Canadian public companies are women.[1] The Working Group is of the view that Canadian boards would benefit from a more diversified composition and generally supports the proposed amendments to Form 58-101F1 *Corporate Governance Disclosure* (**Form 58-101F1**) of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **Proposed Amendments**).

As further explained in its letter of September 26, 2013 in response to OSC Staff Consultation Paper 58-401, the Working Group believes that the "comply or explain" regime proposed by the OSC is an appropriate solution. You will find below comments on each question set forth in this OSC Consultation Paper, with details of the views of the members of the Working Group.

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[1] See for instance: Spencer Stuart, *Board Index 2012*, available at www.spencerstuart.com, at p. 16; Korn Ferry, *Corporate Board Governance and Director Compensation in Canada*, available at www.kornferryinstitute.com, at p. 30; TD Economics, « Get on Board Corporate Canada », available at www.td.com, at p. 2.

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

   The Working Group believes that a "comply or explain" regime is an effective, yet flexible approach for increasing the number of women on boards and in executive positions. As opposed to quotas and their "one-size-fits-all" approach, a "comply or explain" model would require issuers to develop their own strategies and objectives and to decide how and to what extent diversity should be taken into account as a criterion for board nomination. Furthermore, the "comply or explain" regime is in line with the traditional position of the Canadian Securities Administrators with respect to governance, developed in NI 58-101. In fact, this choice of regime has solid historical roots in Canada and was made following the publication of the UK *Cadbury Report* in 1992, the Canadian *Dey Report* in 1994 and the Canadian *Saucier Report* in 2001.

   Diversity should be fully integrated in talent management processes and succession plans for executive ranks in order to be meaningful and become an integral part of the corporate culture of an organization. The Working Group is therefore of the view that the new disclosure requirements would benefit from a broader definition of "executive officer" than the one used in NI 58-101, to encompass not only CEOs, CFOs and vice-presidents in charge of a principal business unit, division or function but all vice-presidents and other members of senior management.

   The Working Group believes that disclosure requirements relating to the type of statistics and accompanying qualitative information should be flexible enough to allow issuers to provide information in a way that makes sense within their organization. For instance, an issuer should be able to decide whether or not to include subsidiary entities in its disclosure relating to diversity and if so, whether statistics and/or data should be provided on a consolidated basis.

   Overall, the Working Group is of the view that, with respect to gender diversity, the scope and content of the Proposed Amendments are generally appropriate. That being said, several members of the Working Group would have preferred a broader approach to diversity, including various types of differences, including age, ethnicity and national origin.

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?*

   The members of the Working Group would benefit from having some time to adjust to these new requirements. Therefore, the Working Group would suggest that the Proposed Amendments should not be effective until at least one year after they are adopted.

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?*

   Some consider director term limits and mandatory retirement age as good governance practices, not specifically as they relate to diversity but more as a way to ensure a degree of renewal and to promote independence. However, others are of the view that issuers benefit from directors serving a longer term to ensure continuity and to bring to the board a deeper understanding of the industry. The OSC should not impose disclosure on term limits without further consultation on board renewal with issuers. If it nevertheless decides to do so, the Working Group believes the focus of the OSC should be on board renewal more generally, including mandatory retirement age and other renewal policies.

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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?*

   The Working Group is of the view that the number of new directors appointed to the board and whether those new appointees are women is implicit from reading an issuer's proxy management circular and that there is no need for additional disclosure in this regard.

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?*

   Whether a diversity policy is formalized in writing as a stand-alone document or presented in an issuer's proxy management circular should not be critical as long as it has the required impact within its organization. The Working Group is therefore of the view that issuers should have flexibility in the form that the policy takes. Such policy could also cover other types of diversity.

Conclusion

In short, members of the Working Group generally support the OSC's initiative and believe it is a good step to increase diversification on boards and in executive positions across the country. The Working Group is of the view that a "comply or explain" model of disclosure would raise awareness on the issue of gender diversity on boards and would pave the way towards tangible improvements for Canadian corporations and Canada as a whole. The Working Group also believes that the scope and content of the Proposed Amendments are appropriate but the concept of diversity could be broadened. We hope such initiative will result in better boards and better management in Canada.

Thank you for allowing us to comment on this subject.

Yours truly,

(s) Norton Rose Fulbright Canada LLP