

VIA EMAIL

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

April 15, 2014

Re: Request for Comment on Proposed Amendments (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).

This letter is submitted on behalf of the Institute of Corporate Directors (ICD) in response to the invitation to comment on the Proposed Amendments published by the OSC on January 16, 2014.

The ICD is a not-for-profit, member-based association with more than 8,000 members and eleven chapters across Canada. Our vision is to be the pre-eminent organization in Canada for directors in the for-profit, not-for-profit and Crown corporation sectors. Our mission is to foster excellence in directors to strengthen the governance and performance of Canadian corporations and organizations. This mission is achieved through education, certification and advocacy of best practices in governance.

In order to develop this response, the ICD assembled a Task Force of distinguished directors consisting of:

- Jalynn Bennett
- Robert Prichard
- Sarah Raiss
- John Thompson
- Martine Turcotte

The undersigned was Chair of the Task Force and Aaron Emes, Partner and Patrice Walch-Watson, Partner, Torys LLP, were Counsel to the Task Force.

This letter reflects the views of the Task Force, the input of our Chapters across the country and has been approved by the National Board of the ICD.

The ICD is a strong proponent of greater board diversity and we commend the OSC for its measured and thoughtful consideration of this important issue. We support the overall approach as outlined in the Proposed Amendments and are pleased to note that many of these align with recommendations the ICD made in its comments regarding *Staff Consultation Paper 58-401*¹ and in our 2011 report, *Diversity in the Boardroom – Findings and Recommendations of the Institute of Corporate Directors*².

Notwithstanding our general support there are items within the *Request for Comment* that we feel require greater consideration. Before addressing these issues in our responses to the “Specific Requests for Comment”, we would like to make two general remarks.

First, we believe the OSC and the Province of Ontario deserve a great deal of credit for assuming a leadership position on this file. It is our hope that the forward-thinking approach taken in Ontario results in a national initiative that is adopted by other provincial regulators. Canadian boards, issuers and shareholders should not be put in a position of having to navigate a ‘patchwork’ of regulations and expectations. We would, therefore, encourage the OSC to continue to work within the CSA to develop a national proposal reflective of the Ontario approach.

Second, as we noted in our comment letter in response to *Staff Consultation Paper 58-401*, the ICD considers diversity along broader lines than gender and considers diversity of ethnicity, age, experience, functional expertise, personal skills, stakeholder perspectives and geographic background to also be important. We believe the proposed amendments should be considered a first step towards a broader diversity agenda and we look forward to working with the OSC and others on proposals to add greater value to Canadian corporations by diversifying the skill-sets, professional and personal experiences in our boardrooms.

Specific Requests for Comment

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 ICD advocated for a “comply or explain” regime in our comment letter on 58-401 and we strongly agree with the OSC that this is the appropriate model. On the question of scope, we do not believe that any additional disclosure requirements are required at this time and believe that two items in particular require further discussion.

¹ https://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20130923_58-401_icdeng.pdf

² http://www.icd.ca/getmedia/6520e80b-add0-4549-affc-70eb42a11c0e/2011_BoardDiversity_EN.pdf.aspx



- I. Targets: We are in favour of measurement and recognize that some issuers may find target-setting to be a useful tool within the context of their board renewal policies. It is important to note, however, that other organizations may find targets do not fit within their cultures and may have other approaches to enhancing diversity they believe to be more appropriate.

The ICD would support a proposal wherein issuers disclose whether they have a target regarding the representation of women on the board and, if so, how they measure up against that target over time. If the issuer does not have a target, the issuer should be asked to disclose how they otherwise plan to encourage diversity.

- II. Subsidiaries: Proposed item 15(b) would require that issuers disclose the number and proportion of executive officers of the issuer, including all subsidiary entities of the issuer, who are women. We believe the inclusion of subsidiaries in this proposal is unnecessary and overly burdensome in the circumstances of many issuers.

Consider, for example, the corporation with dozens of subsidiaries across multiple industries and jurisdictions. In this situation, strategic policy decisions are generally made by executive officers and directors of the reporting issuer and may have little to do with the day-to-day operating decisions made by employees of its many subsidiary companies who are unlikely to be “executive officers” of the reporting issuer in substance, notwithstanding that they may have such a title at the subsidiary level, except in cases where they are also executive officers of the reporting issuer. Performing this analysis may also be a significant burden for many reporting issuers as they try to determine the appropriate approach for each subsidiary entity, even though disclosure about the executive officers of substance would already be captured through disclosure about the reporting issuer.

Accordingly, we propose eliminating the requirement to disclose the number and proportion of executive officers at subsidiary entities of the issuer, who are women by deleting in 15(b) the words “, including all subsidiary entities of the issuer”.

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?*

In our opinion, the new requirements will not likely be overly burdensome and we believe they should be introduced for all non-venture issuers at the same time..

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?*

We note that the question of term limits was not addressed in *Staff Consultation Paper 58-401*.

The ICD believes that the issue of term limits is much broader than solely its relationship to diversity. Board renewal is complex and requires time, thought and analysis and must always align with the company's best interests while complementing its strategic direction. While the ICD is a proponent of the continuous upgrading of organizations' boards, we do not think that renewal should come down simply to a matter of counting. Although term limits can be beneficial and have their proponents, there are other ways to enhance board renewal. For example, board rejuvenation centred on rigorous, continual evaluation and concern to board need based on a board skills matrix is, arguably, a much better practice.

We would welcome the opportunity to work further with the OSC in its consideration of term limits. We believe this issue requires a broader consultation than it has received so that we truly do arrive at best practice in Canada.

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 ICD would support additional disclosure in this respect. However, as noted above, term limits are a broader issue than board diversity and we believe that it would be incorrect to draw correlations between an issuer's appointment of a woman to their board and that issuer's adoption of term limits. For this reason, we recommend the OSC not place this type of disclosure within the context of term limits.

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?

The ICD believes that issuers are best positioned to determine their approaches to board diversity policies.

Conclusion

We thank the OSC for the opportunity to comment on the Proposed Amendments and commend staff for the quality of the research, analysis and consultation applied to this process.

If you have any questions regarding our comments, please contact the undersigned.

Yours truly,

Stan Magidson, LL.M., ICD.D
President and CEO