Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

April 16, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Dear Secretary:

Re: Request for Comments on Proposed Amendments to 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices Regarding Women on Boards and in Senior Management* (the "Proposed Amendments")

The Canadian Coalition for Good Governance ("CCGG") has reviewed the Proposed Amendments and we thank you for the opportunity to provide our comments.

CCGG's members are Canadian institutional investors that together manage over $2 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies and the improvement of the regulatory environment in order to best align the interests of boards and management with those of their shareholders and to promote the efficiency and effectiveness of the Canadian capital markets.

A list of our members is attached to this submission.

OVERVIEW

CCGG supports the Proposed Amendments subject to the comments below and believes that they are an appropriate regulatory response at this time to the persistent lack of gender diversity on boards and in senior management in Canada. As CCGG commented in its response to the OSC's consultation paper on gender diversity released in July, 2013 (the Consultation Paper), from the institutional investors' perspective gender diversity is a business issue as much as a social or political one, given that research shows the tangible benefits of a diverse board, and CCGG applauds the OSC's continued efforts in this area. We believe that the Proposed Amendments if enacted will have a positive impact on increasing the number of women on boards and in senior management.

We also encourage the OSC to consider the issue of diversity more generally in the future to emphasize the importance of boards being comprised of directors with a wide variety of experiences, views and backgrounds and which reflect, to the extent practicable, the ethnic, cultural and other characteristics of the communities in which the corporation operates and sells its goods or services. In CCGG's view the quality of boards is paramount and that quality increases when the board is composed of directors representing a wide variety of perspectives.[1]

RESPONSES TO SPECIFIC RECOMMENDATIONS

Recommendation #1: *Require disclosure regarding director term limits or an explanation for the absence of such limits*

Board refreshment is important not just for providing an opportunity to increase board diversity but to ensure that 'group think' is avoided and independence maintained. CCGG's view is that a strong annual board, committee and individual director evaluation process where the results are acted upon is the preferred route for board refreshment. As an alternative, however, CCGG supports the proposal to require disclosure of term limits without specifying what length of term is appropriate or that adopting term limits necessarily is a 'best practice'. Each company's circumstances are unique and what constitutes an appropriate term limit for one company or even for one director may not be appropriate for another. For example, while it is true that long service may compromise independence by virtue of 'board capture' by management in some situations, in other situations it may foster independence of mind and constructive assessment of management based on increased confidence resulting from in-depth knowledge of the issuer. Accordingly, issuers should be free to determine what works best for their board given all of the circumstances. Under the Proposed Amendments, issuers that do not believe term limits are suitable and prefer to rely on rigorous annual board evaluations for board refreshment, for example, should be able to provide that explanation without feeling that they are in effect being forced to adopt term limits.

CCGG also supports requiring companies to disclose the number of new directors appointed each year and how many of those new directors are women. See below under Specific Request for Comment #4.

Recommendation #2: *Require disclosure of policies regarding the representation of women on the board or an explanation for the absence of such policies*

CCGG supports recommendation #2 and its 'comply or explain' approach at this time. We believe requiring disclosure of policies regarding the representation of women on the board or the explanation of the absence of such policies will encourage increased representation of women on boards. However, we believe that if progress is not seen within the three year time frame contemplated by the Proposed Amendments then the "comply or explain' approach should be revisited. As witnessed by the progress of majority voting in Canada, 'comply or explain' is at times insufficient and mandating a best practice may be required to reach the goal of widespread adoption.[2] This may in fact turn out to be the case for increasing gender diversity.

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[1] For a statement of CCGG's views on diversity see Building High Performance Boards. http://www.ccgg.ca/site/ccgg/assets/pdf/building_high_performance_boards_august_2013_v12_formatted.pdf
[2] For further discussion of the progression of majority voting in Canada, see our response to the Consultation Paper at http://www.ccgg.ca/site/ccgg/assets/pdf/submission_to_osc_staff_consultation_paper_58-~g_women_on_boards_and_in_senior_management.pdf

Also see below under **Responses to Specific Requests for Comments #1** and ***Amendments to Corporate Governance Guidelines.***

Recommendation #3: *Require disclosure of the board's or nominating committee's consideration of the representation of women in the director identification and selection process or an explanation for the absence of such consideration*

CCGG supports Recommendation #3. It will bring significant additional information to investors about the level of commitment an issuer has to the goal of gender diversity and whether that commitment is reflected in practical terms in the issuer's nomination and selection process. CCGG believes that the OSC will want to avoid issuers responding to the Proposed Amendments by simply stating that they have no policy on gender diversity with the explanation, for example, that they do not feel that a policy is necessary or appropriate or that it is not required by law. A requirement that discloses whether the issue is considered in the nomination process will help to discourage issuers from doing nothing whatsoever to further the objectives of the Proposed Amendments.

See below under ***Amendments to Corporate Governance Guidelines.***

Recommendation #4: *Require disclosure of the consideration given to the representation of women in executive officer positions when making executive officer appointments or an explanation for the absence of such consideration*

For reasons similar to those discussed in the previous item, CCGG supports a requirement to disclose whether consideration is given to the representation of women in executive officer positions when making appointments or an explanation as to why not. The Proposed Amendments as currently drafted contemplate minimal disclosure with respect to gender diversity in senior management and to remove this disclosure recommendation would leave only the requirement to disclose whether a target exists for women in executive officer positions or the absence of such targets. There are many reasons an issuer may not want to establish targets even though it is committed to increasing gender diversity at the organization. Without the requirement to disclose whether the representation of women is considered when making executive officer appointments, investors are left with no sense of the issuer's commitment as reflected in practice.

Also, see below under ***Amendments to Corporate Governance Guidelines.***

Recommendation #5: *Require disclosure of targets adopted regarding the representation of women on the board and in executive officer positions or an explanation for the absence of such targets*

CCGG supports Recommendation #5. Requiring disclosure of whether targets have been adopted or an explanation of why not will give investors important and relevant information. It will also allow investors to assess progress against those targets. While it can be argued that the requirement may have the unintended consequence of discouraging companies from adopting targets if they need to disclose them and thus reveal progress or lack thereof, it is equally plausible that the requirement will encourage companies to adopt targets in order to keep up with best practices.

Recommendation #6: *Require disclosure of the number of women on the board and in executive officer positions*

CCGG supports Recommendation #6. Disclosure of the number of women on the board and in executive officer positions provides investors not only with a snapshot of a company's current situation but also with both the ability to track progress at that company and to make comparisons among companies.

However, requiring disclosure of the numbers and percentages of women in executive officer positions at every subsidiary of an issuer as prescribed in the Proposed Amendments may prove to be onerous, depending on the number of subsidiaries involved. There is also a question about the meaningfulness of this disclosure: often the positions at subsidiaries are held by senior employees of the parent company and the level of executive function actually enjoyed may be less than the title suggests and give a misleading impression of the number of senior women at a particular organization. If all of the senior executives at all of the subsidiaries are included, it might not be comparable to an issuer of similar size that is not structured with various subsidiaries.

The OSC may want to consider limiting this disclosure requirement. Perhaps the requirement could apply to only 'executive officers' (as suggested in the Proposed Amendments) of a 'major subsidiary' as that term is defined in NI 55-104. In the case of other subsidiaries, disclosure could be limited to those members of senior management that also meet the criteria in subsection (i) of NI 55-104 of the definition of 'reporting insider' for the parent, i.e. have access to material undisclosed information or exercise significant power or influence over the business, operations, capital or development of the parent.

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

CCGG supports the Recommendation that compliance with any new disclosure requirements should be reviewed and believes that the need to monitor and report on progress is essential if the Recommendations are to have any impact. However, we suggest that progress be monitored on an annual basis so that after three years the OSC will know whether progress has been made and will be ready to consider alternative strategies if progress proves unsatisfactory. The OSC should be ready to act after three years and not merely starting its review process.

In addition, by that time there will be additional evidence available from international experience with alternative strategies to better evaluate the most effective means of increasing board diversity.

We also suggest that the *quality* of issuers' disclosure be monitored annually as part of the OSC's continuous disclosure review to ensure that disclosure is meaningful and does not become mere boilerplate.

RESPONSES TO 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**

Subject to our comments in ***Amendments to Corporate Governance Guidelines*** below that regulations should be amended to set out certain additional 'best practices', CCGG believes that the disclosure requirements set out in the Proposed Amendments are appropriate in scope and content.

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 Proposed Amendments should not be phased in but should apply to all non-venture issuers to the same extent and at the same time. The disclosure requirements are not onerous and the Proposed Amendments do not prescribe that any particular actions be taken that may be time consuming or difficult to carry out. Again, we emphasize that progress has been very slow in this area and further delays are not warranted.

Further, CCGG wishes to reiterate the view expressed in our response to the Consultation Paper that, for the same reasons as outlined in the previous paragraph, the disclosure requirements in the Proposed Amendments (as well as our recommendations with respect to new "best practices" guidelines outlined below in ***Amendments to Corporate Governance Guidelines***) should apply to issuers listed on the TSX-V as well as to non-venture issuers. We do not believe the Recommendations would impose undue hardship or that the cost to venture issuers will outweigh the benefit to Canadian market participants.

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?**

Yes, we believe that the Proposed Amendments will encourage an appropriate level of board renewal. Please see discussion above under Recommendation #7.

4. **In support of the 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 appointments 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?**

CCGG is of the view that the additional disclosure requirements proposed in (i) and (ii) would be very helpful in furthering the goals of the Proposed Amendments of encouraging greater participation of women on boards as well as the issuer's commitment to board refreshment. An annual on-going tally of the number of new board members and how many are women will provide investors with additional pertinent information as to the board's year over year turnover rate and nomination practices and will make it easier to track changes. Such information should be relatively easy for the issuer to provide.

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?

CCGG believes that the proposed disclosure item should explicitly indicate that the term "policy" means a written policy. Written policies can be more or less elaborate and requiring that a policy be formal and written does not entail a vast amount of work on the part of the issuer: a written policy can simply say "we will seek to increase the number of women on boards by increasing the number of women considered as board candidates" and excessive detail need not be required. It does require, however, that the issuer turn its attention to the matter to some degree. On the other hand, an informal unwritten policy is likely to mean an unarticulated policy and less likely to be of practical impact or import. It is not overly cynical to suspect that an informal unwritten policy may be the equivalent of no policy at all, certainly not one that is likely to be acted upon in any serious manner.

It is important to note that the expectation that a policy, code or mandate be written is made clear in other regulatory contexts, e.g. National Policy 58-201 Corporate Governance Guidelines section 3.8 Code of Business Conduct and Ethics: "The board should adopt a *written* code of business conduct and ethics", or section 3.4: "The board should adopt a *written* mandate in which it explicitly acknowledges responsibility for the stewardship of the issuer" (emphasis added). To do anything less with respect to gender diversity policies would support the inference that they are of lesser importance. If the purpose of the Proposed Amendments is to encourage issuers to turn their attention to increasing the representation of women on boards and in senior management, it is not too onerous to specify that the policy be a formal written policy.

In addition, specifying that 'policy' means a formal written policy will avoid the challenges of reporting publicly on an unwritten policy.

ADDITIONAL COMMENTS

Amendments to Corporate Governance Guidelines

CCGG recommended in its response to the Consultation Paper that in addition to proposing disclosure requirements with respect to gender diversity, the OSC amend the governance guidelines for best practices found in National Policy 58-201 *Corporate Governance Guidelines* (the "Governance Guidelines") to include the following guidelines as 'best practices':

- Public companies should adopt a gender diversity policy
- Nominating committees should consider gender diversity when identifying candidates for nomination to the board and in making recommendations should consider gender diversity of the board as a whole.
- Boards should consider gender diversity when carrying out management succession planning responsibilities

We recognize that the OSC has decided not to propose such measures at this time and have limited our response above to commenting on the Proposed Amendments, but CCGG wishes to reiterate that we believe establishing positive guidelines with which companies can comply or explain why they have chosen not to comply, which is a true 'comply or explain' regime, is more likely to promote change than simple disclosure requirements. It further supports the view that gender diversity is a normative 'best practice'.

As the Proposed Amendments currently stand, they are not really 'comply or explain' with respect to gender diversity because there is no governance guideline with which to 'comply'; it is really only a 'disclose' policy. CCGG is of the view that the impact of the Proposed Amendments and the likelihood of the goal of greater diversity being achieved would be increased if the adoption of a gender diversity policy, for example, was explicitly considered to be a 'best practice' within the Governance Guidelines.[3]

Proxy access and gender diversity

Today shareholders in Canada have no meaningful access to the director nomination process. Providing shareholders with greater access to the nominating process will enable investors to help address the gender imbalance on boards by bringing forward women candidates if boards continue to lag with proposing their own. We encourage the OSC to focus on greater proxy access for shareholders, both to address the gender diversity issue with respect to boards and more generally to assist in increasing shareholder democracy. CCGG supports shareholders holding 3% of the outstanding shares, in aggregate, being able to nominate up to 25% of the directors and have information about those nominees included in management proxy materials in the same manner as management nominees. CCGG encourages the OSC to support and further such initiatives to the extent possible within its mandate.

In summary, we support the Proposed Amendments and OSC's initiative to advance the representation of women on boards and in senior management and encourage the OSC to consider the issue of broader diversity in future as well.

Thank you for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Erlichman, at 416.868.3585 or serlichman@ccgg.ca or our Director of Policy Development, Catherine McCall, at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,

Daniel E. Chornous, CFA
Chair of the Board
Canadian Coalition for Good Governance

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[3] As we stated in our response to the Consultation Paper, this does not mean that the specific content of the policy should be prescribed. The OSC should recommend that issuers adopt a policy that sets out goals with respect to gender representation on the board and a timeline for meeting those goals but not stipulate that a company must adopt, for example, a goal of having 30% of the board be comprised of women by 2017. This would be consistent with the methodology of the Governance Guidelines which recommend, for example, that boards should adopt a written code of business conduct and ethics that addresses conflicts of interests but do not stipulate what should be contained within it.

CCGG MEMBERS

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund Board
Aurion Capital Management Inc.
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Limited
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management Ltd.
Canada Pension Plan Investment Board (CPPIB)
Canada Post Corporation Registered Pension Plan
CIBC Global Asset Management Inc.
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management Ltd.
Desjardins Global Asset Management
Franklin Templeton Investments Corp.
GCIC Ltd.
Greystone Managed Investments Inc.
Healthcare of Ontario Pension Plan (HOOPP)
Industrial Alliance Investment Management Inc.
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel Ltd.
Lincluden Investment Management Limited
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada (Pension Plan)
New Brunswick Investment Management Corporation (NBIMC)
Northwest & Ethical Investments L.P. (NEI Investments)
Ontario Municipal Employees Retirement Board (OMERS)
Ontario Pension Board
Ontario Teachers' Pension Plan (Teachers')
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