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Proposed OSC amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices*

Dear Sirs/Mesdames:

Thank you for the opportunity to comment on the proposed OSC amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices*. KPMG is supportive of actions that will help increase the diversity of Canadian boards and we applaud the OSC for undertaking this consultation. Studies have shown the positive impact diversity can have on innovation, growth and profitability in business. The results of the Credit Suisse Research Institute study of gender diversity also correlate board diversity to increased resilience as it found that “stocks with greater gender diversity on their boards...tend to perform best when markets are falling.”¹ In today’s globalized market it is necessary to have a diversity of perspective and experience in order to benefit from effective and balanced decision making.

KPMG supports the need for regulatory action to facilitate improvement in this area. Transparency, measurement, and accountability are keys to successful change and progress in increasing diversity. KPMG is proud to support a commitment to these principles and has demonstrated this commitment through signing the Catalyst Accord².

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

We believe the Proposed Amendments are appropriate.

A non-venture issuer should be required to adopt a performance model whereby diversity is a strategic priority. We believe that Chair of the board should be accountable to communicate the

¹ Credit Suisse Research Institute, *Gender Diversity and Corporate Performance* (August 2012).

² <http://www.catalyst.org/catalyst-accord-women-corporate-boards-canada>



business case for diversity to the rest of the board and the CEO. The Chair of the board should be responsible to create a model for board diversity which includes goals and timelines for achievement. Goals for executive officer representation should be embedded into CEO business accountabilities.

While much attention has recently been paid to the issue of gender diversity, we encourage you to consider broadening the definition of diversity as it relates to representation on boards and in executive officer positions to include gender, ethnicity, age, and cultural background. We believe boards and executive officers stand to benefit from a diversity of perspectives that goes beyond gender.

- 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?**

We do not believe the Proposed Amendments should be phased in. Within a “comply or explain” approach, smaller non-venture issuers who do not currently have a policy for board diversity can demonstrate progress by submitting a plan to become compliant.

- 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?**

There can be no doubt that board renewal will help to increase board diversity. Longer board tenures slow the progress of efforts to increase board diversity and create a barrier to the objectives of the Proposed Amendments. Board renewal not only supports greater diversity but also ensures the continued independence of board members. For example, under the Corporate Governance Code, the United Kingdom has established that service of over nine years may compromise independence. We believe term limits should be encouraged and disclosed as part of a non-venture issuer's corporate governance policies.

- 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?**

Transparency, measurement, and accountability are keys to successful change and progress in increasing diversity. In order to ensure that the Proposed Amendments have an impact on board diversity, there should be transparency not only around term limits but around the succession process. Specifically, non-venture issuers should disclose:

- the skills, experience, qualities and diversity of current directors
- inclusion of diversity as a consideration of the skills and competencies required by the board



- the number of new directors appointed and how many of these new appointments were women *in each of the last three years*. Information for one year will not provide investors with the information needed to assess whether a non-venture issuer is making progress.

Disclosure of this information can be clearly linked to a board's recruitment and selection policies and practices, their diversity policies and to the measurement of the effectiveness of these policies. Transparency as it relates to actual renewal and the representation of women will help to hold the board accountable to their plan and goals.

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?

KPMG supports measures that will ensure the success of the 'comply or explain' approach in having a real impact on board diversity. Unwritten or informal policies will not lead to measurable success or increased accountability to increase the representation of women on boards. To have a significant impact on the objective of the legislation, non-venture issuers must be prepared to make a visible and transparent commitment to increasing the diversity of their boards and executive officer positions through formal written policies. A formal policy will create a clear path forward as well as accountability to execute.

In closing, KPMG fully supports the proposed disclosure regulations outlined in the proposed OSC amendments to Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices*. These regulations are an important step to ensure that Canada fully benefits from a diversity of perspective and experience on Canadian boards and senior management.

We urge the OSC to include a plan to review the effectiveness of the amendments specifically following three years of the comply or explain model. The OSC has established through research the positive impact board and senior executive diversity can have on our Canadian economy. This work is vital and we must ensure the measures outlined in the model are achieving the objective of impacting board diversity.

Thank you for the opportunity to comment on the proposed OSC amendments to Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices*. Should you wish to discuss our comments in more detail, we would be pleased to respond.

Yours truly,


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