



April 16, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Sent by email to: commments@osc.gov.on.ca

Re: Women on Boards and in Senior Management - Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices*

Dear Mr. Stevenson:

We are writing in response to the Ontario Securities Commission (OSC) request for comments on proposed amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices* relating to the topic of women on boards and in senior management,¹ and as follow-up to our earlier submission² on OSC Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management*.³ We commend the Ontario government for continuing to explore this issue, and the OSC for seeking feedback from market participants on its proposals.

With approximately C\$6 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. Our ESG company evaluations, engaged proxy voting and active dialogue with companies in our funds have given us some insight into good practices and weaknesses in diversity disclosure and practice. As noted in our earlier submission, the correlation between gender diversity and company outperformance is compelling from an investment value perspective. If companies tend to outperform when their boards and senior management are more diverse, the implication is that companies not taking steps to increase diversity are risking underperformance – an unacceptable situation. We also believe companies have a responsibility to encourage diversity as a social imperative. Therefore, we are engaging companies in our funds on diversity issues through dialogue and proxy voting.

Our comments follow the structure of the Request for Comment, referencing the OSC's specific consultation questions where applicable.

¹ Ontario Securities Commission (2014). Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices* http://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20140116_58-101_pro-amd-f1.htm

² NEI Investments (2013). OSC Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management* <https://www.neiinvestments.com/Documents/PublicPolicyAndStandards/2013/OSC%20Gender%20Diversity%20Proposals.pdf>

³ Ontario Securities Commission (2013). Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management* http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20130730_58-401_disclosure-requirements-women.htm

NEI INVESTMENTS

T: 416.594.6633 F: 416.594.3370
NEIinvestments.com Toll Free: 1.888.809.3333
1200 - 151 Yonge Street Toronto, Ontario M5C 2W7

Comments on consultation questions

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

In our previous submission, we recommended action in several areas to enhance not only diversity, but also board independence and effectiveness:

- introducing specific policies and practices relating to diversity;
- formalizing processes for director recruitment, and diversifying the candidate pool; and
- making room for diversity through board renewal policies and by avoiding director interlocks and over-boarding.

The proposed amendments address the issues we raised to a significant degree, and the additional disclosure that would appear in proxy circulars as a result would be helpful for our proxy voting decision-making. Some additional suggestions are outlined below.

Scope of diversity definition

As indicated in our earlier submission, our perspective on the value of diversity embraces not only gender but also other attributes such as ethnicity, aboriginal status, sexual orientation and disability, as well as representation of different age groups. In addition, we advocate for companies to recruit directors with wider diversity of experience and expertise, including environmental, social and governance issues that are material to the business. Therefore, we would encourage the OSC to expand its future efforts on diversity to include other aspects of identity diversity, as well as diversity of experience. However, we recognize that the current mandate to the OSC from the Ontario government is limited to gender diversity.

Inclusion of men in diversity provisions

We suggest that the OSC consider making reference to women and men in the requirements for disclosure on diversity targets and numbers in Form 58-101F1 Items 14 and 15. As noted in our earlier submission, a board that consisted entirely of women would be no more diverse than the present boards that consist entirely of men. We prefer diversity approaches that make reference to representation of both women and men on the board, with the minimum target percentage for each in the range of 30-40% to allow for flexibility.

Corresponding changes to National Policy 58-201 - Corporate Governance Guidelines

We note that no corresponding changes have been proposed to the Corporate Governance Guidelines, which provide context for the disclosure requirements in Form 58-101F1. In general, we see value in defining the outcomes that disclosure requirements are intended to support, so results can be assessed. Under a “comply or explain” system, setting out diversity principles may also be helpful to issuers that are choosing to address gender diversity, but using an approach that is not consistent with the disclosure requirements, and therefore need to “explain”. Any additions to the Guidelines could draw on

language in OSC Report 58-402⁴ outlining stakeholder perspectives on the value of diversity on boards and in senior management (p12).

Disclosure on diversity at other levels of the company

We reiterate the suggestion in our earlier submission that, in addition to addressing diversity at the board and senior executive level by incorporating diversity content to the corporate governance framework, the OSC might explore the diversity issue at other levels of the company within the context of continuous disclosure obligations under National Instrument 51-102. Diversity could be considered alongside other potentially material social issues such as human rights and aboriginal relations, which were not addressed during the OSC's 2010 sustainability reporting initiative.⁵

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 see a necessity to phase in the proposed amendments for smaller non-venture issuers. Under the "comply or explain" regime, if smaller non-venture issuers do not at present have the capacity to address all aspects of diversity strategy covered by the disclosure requirements, they will have the option to explain the situation. Smaller non-venture issuers should not be discouraged from pursuing diversity objectives, as their efforts will help to build the diversity of the overall pool of directors and executives.

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 strongly support the proposal to include disclosure regarding terms limits. In our earlier submission, we expressed concern that director entrenchment not only stands in the way of enhancing diversity of identity and experience, but can also undermine the principle of board independence.

The rate of increase in the representation of women on boards in Canada appears to have accelerated somewhat over the past year,⁶ suggesting that even before requirements have been established, discussion and consultation on diversity disclosure has stimulated action by some issuers to recruit women directors. This leads us to hope that introducing disclosure on terms limits could have a similar positive impact in stimulating renewal of boards.

Where issuers have adopted term limits, they should not only disclose that this is the case, but also disclose those term limits and indicate where and why discretion has been exercised to override them in the case of individual directors. This may already be implied in Form 58-101F1 Item 10, but the requirement could be clarified.

We do not suggest that a specific term limit should be imposed, as it is difficult to define a length of tenure that begins to erode a director's independence. Instead, we encourage companies to adopt term limit policies that treat directors

⁴ Ontario Securities Commission (2013). OSC Report 58-402 *Report to the Minister of Finance and Minister Responsible for Women's Issues on Disclosure Requirements Regarding Women on Boards and in Senior Management*. The report is included as an appendix to the present consultation document.

⁵ Ontario Securities Commission (OSC) Notice 51-717 *Corporate Governance and Environmental Disclosure*
http://www.osc.gov.on.ca/en/NewsEvents_nr_20091218_osc-51-717-cor-gov-env-dis.htm

⁶ Catalyst (2014). A Push for Change – Women on Public Company Boards in Canada and Australia. <http://www.catalyst.org/knowledge/push-change>



consistently and fairly, and define the maximum length of time they should expect to serve, but allow for the exercise of good business judgment in determining the value of the continuing presence of specific directors on the board.

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?

Although investors can verify for themselves how many new directors have been appointed, and how many are women, by looking back at previous disclosure, in the proxy voting context it would be helpful to make this information easily and immediately accessible through the proxy circular. This requirement appears relatively simple for issuers to implement.

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 suggest that a possible test for the existence of informal policy would be the ability of the issuer to disclose the summary information in Item 11(b)(i). If an issuer is not able to articulate a summary of diversity policy objectives and provisions, then it should disclose that it does not have a formal or informal policy for the purposes of this instrument, and explain why not.

If a formal policy is disclosed publicly, it would be helpful if issuers indicated where it can be found.

We suggest adding a requirement within Item 11 to disclose where responsibility has been assigned at board level for the implementation of diversity policy. This will be helpful for shareholders who wish to engage issuers on diversity, as they will be able to direct their comments to the appropriate board committee.

We welcome the requirement in Item 11 for companies that have not adopted policies to disclose why not, given the strong business and ethical case for diversity.

Conclusion

In conclusion, once again we would like to commend OSC for seeking comments. We view the proposed amendments positively, and hope that this initiative will be taken up by the Canadian Securities Administrators as national policy. We strongly support the proposal to incorporate requirements for disclosure on adoption of term limits, and reiterate the following suggestions:

- define the intended outcomes of diversity disclosure provisions through corresponding changes in the Corporate Governance Guidelines;
- include a requirement to identify where board responsibility lies for diversity;
- make reference to women and men in requirements to disclose diversity targets and numbers;
- consider expanding the scope of diversity efforts to embrace not only gender, but also other aspects of identity diversity, and diversity of expertise; and



- explore diversity risk and opportunity at other levels of the company, alongside other potentially material social issues such as human rights and aboriginal relations, in the context of continuous disclosure obligations under National Instrument 51-102.

If you have any questions regarding this letter, please do not hesitate to contact **Michelle de Cordova, Director, Corporate Engagement & Public Policy** (mdecordova@neiinvestments.com 604-742-8319).

Sincerely,

NEI Investments

A handwritten signature in black ink, appearing to read "Robert Walker", followed by a long horizontal line extending to the right.

Robert Walker
Vice President, ESG Services & Ethical Funds

CC:

Board of Directors, NEI Investments

Ms. Michelle de Cordova, Director, Corporate Engagement & Public Policy, NEI Investments