



April 16, 2014

SENT VIA EMAIL [comments@osc.gov.on.ca]

The Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario
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Re: Request For Comments: Proposed OSC Amendments to Form 58-101F1 *Corporate Governance Disclosure of NI 58-101 Disclosure of Corporate Governance Practices*

Shaw Communications Inc. ("**Shaw**") would like to thank the Ontario Securities Commission (the "**OSC**") for the opportunity to respond to the request for comments dated January 16, 2014 regarding proposed OSC amendments to Form 58-101F1 *Corporate Governance Disclosure of NI 58-101 Disclosure of Corporate Governance Practices*.

We do not plan to comment on the proposals regarding disclosure of (i) policies regarding the representation of women on the board of reporting issuers, (ii) the consideration of the representation of women in the director identification and selection process, (iii) targets adopted regarding the representation of women on the board and in executive officer positions or (iv) the number of women on the board and in executive officer positions.

Our comments are limited to the proposal that an issuer must disclose whether or not it has adopted term limits for the directors on its board and, if not, why it has not.

We appreciate that the proposed requirement does not as such impose any requirement for director term limits on an issuer, but instead is described as a "comply or explain" model. But that description of the requirement explicitly suggests that adopting term limits is or should be the proper corporate governance practice and therefore not doing so is not preferred practice. We do not accept the proposition that adopting term limits is or should be advisable or preferred behaviour for a reporting issuer.

Our position is based on a number of considerations, including:

- The importance for Shaw and other issuers of retaining directors who hold significant investments in the issuer on its board of directors;
- The importance of ensuring that directors with significant and unique business experience in the issuer's industry be retained;

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- The additional value which directors with the level of understanding of the issuer's business, history and culture acquired through long service on the board provide;
- The absence of any empirical evidence that a director's ability to act independently of management declines after any specific period of service; and
- A concern that term limits will end up being a substitute for proper board self-assessment and renewal.

Significant Investors. We consider that it is valuable to include on the board of directors individuals who, among other qualifications, hold significant investments in the issuer. In the case of Shaw

- thirteen of our current board members own or control equity securities of Shaw having a disclosed value in excess of \$1 million;
- six of Shaw's directors (including three who are independent) own or control, together with their associates, equity securities of Shaw having a disclosed value in excess of \$10 million;
- five of those six directors own or control (together with their associates) equity securities of Shaw having a disclosed value exceeding \$100 million.

We consider that there is significant value to Shaw and its shareholders arising from having shareholders like this represented on its board because the magnitude of their financial stake strongly motivates independent thinking and analysis and brings a long-term perspective.

Our experience has been that significant shareholders do not become stale or habituated in their roles as a result of longevity on the board given their ongoing important financial interest in the performance of the issuer. In addition, our three independent directors referred to above who (together with their associates) hold significant investments in Shaw acquired the majority of those investments as part of the consideration for selling important operating businesses to Shaw. Accordingly, these directors bring a unique and fundamentally irreplaceable perspective on the operations of the business they developed and the communities in which they operated. To us, it would be a fundamentally flawed outcome if a perceived "good governance" principle were to characterize a decision to retain the benefit of insights from directors with this type of experience, perspective and alignment of interest as not being preferred practice.

Industry Experience. A second problem with term limits which applies to Shaw but which we expect is also applicable to issuers engaged in many other industries is the relative narrowness of the field of suitable candidates for the board of directors who can add value through strategic, operational or technological insights derived from relevant industry experience.

This factor is particularly evident in the Canadian cable television industry, as there are relatively few public companies operating in this sector in Canada and CRTC requirements effectively dictate that 80% of Shaw's directors must be Canadians. At present our board includes a number of members who have enjoyed significant careers in the cable industry, and

we do not believe it would be good governance to ask them to leave the Shaw board at the end of some arbitrary “term” when we have no assurance that we could replace them with industry executives with comparable experience.

We believe that there are many issuers in various industries that would face similar challenges if they are encouraged to replace qualified and proficient directors simply because of an arbitrary time limit without consideration of whether comparable replacements really are available.

No Evidence of Loss of Independence

Those who support term limits on a board of directors typically justify the value of imposing a term limit on the concern that after a certain period of time on the board a director is likely to lose the ability to challenge and act independently of management. However, we have not identified any study or empirical evidence confirming this speculation, including in the materials that the OSC has referred to in developing the proposal for term limits.

Our experience over the more than 30 year period that Shaw has been a public company has been the reverse. We have not seen any indication that the ability of a director to challenge and act independently of management plateaus or decreases after any particular period of time as a director. Neither has it been Shaw’s experience that the absence of a limit on the length of time a director can serve on the board has prevented or impeded ongoing renewal of board membership.

No Direct Link to Board Diversity

We note that suggestions for the introduction of term limits were made by commentators as part of the earlier consultation by the OSC on measures it might adopt to promote gender diversity on the boards of directors of Canadian public companies. Our inference is that the proposal to anoint term limits as a corporate governance norm would not have been made but for the perceived linkage to achieving gender diversity. We note, however, that there is nothing inherent or explicit in a term limit policy that provides any indication that the adoption of term limits will result in an increased level of gender diversity nor any empirical studies or evidence that we are aware of confirming that any such outcome is likely. In Shaw’s own circumstances, 25% of our independent directors are women.

No Substitute for Proper Board Governance

None of the foregoing comments are intended to detract from the principle, which Shaw fully supports, that ongoing assessment of individual directors, board performance and board composition is appropriate and necessary and that renewal of board membership as recommended based on such assessments is vital. But this outcome can and should be achieved by a properly functioning board and governance and nominating committee which considers and assesses the performance of the board and its committees on at least an annual basis and recommends changes when they should be made.

Prescriptive time limits will have little or no positive impact where there is a dysfunctional board and governance and nominating committee and will not be necessary or appropriate where the governance and nominating committee is robust and its function is supported by the culture of the organization – attributes which formal and prescriptive rules will not achieve.

Controlled Companies

Whether or not director term limits are appropriate for reporting issuers generally (and we have outlined above our reasons why they are not), we suggest that such limits are even less appropriate in the context of a company such as Shaw where voting control is concentrated in a single shareholder or group of shareholders. Typically in controlled situations, the board will include both directors who are independent of the control group and individuals who are themselves members of the control group or officers of a controlling corporate shareholder. We believe it would not be good governance practice to impose term limits on directors, whether independent of the controlling shareholders or not, in a controlled company context. For example, would anyone suggest that it would make sense to have the CEO of a controlling corporate shareholder or an individual who personally holds a majority of the voting shares of an issuer step down as a director after serving for a stipulated period of time? In our view, imposing a mandatory term limit for the directors of a controlled company would simply increase the risk of a dysfunctional relationship developing between the board and the controlling shareholders.

Conclusion. Accordingly, our answer to the third question in the specific requests for comments is "No". We do not believe that the proposal to require disclosure regarding time limits will encourage a level of board renewal that is appropriate. Instead, by in effect biasing the decision of issuers in favour of the adoption of term limits, the policy will encourage mechanical board renewal processes not tailored to the circumstances of the affected issuer that are likely to be less, not more, appropriate than the outcomes that can be expected to result from a properly functioning board and governance and nominating committee.

Thank you for the opportunity to comment on the proposed amendments. If you have any questions or would like clarification on any of the above, please do not hesitate to contact the undersigned.

Yours truly,



Michael W. O'Brien
Lead Director and
Chair, Governance and Nominating Committee