

April 14, 2014

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

By email: comments@osc.gov.on.ca

Dear Secretary:

We are pleased to submit our comments in response to the Proposed OSC Amendments to Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices*. We congratulate the Government of Ontario and the Ontario Securities Commission for taking this important initiative at this time. We believe the lack of diversity on the FP500 is an economic issue that requires strong leadership and action now by governments and regulators.

Canadian Board Diversity Council

The Canadian Board Diversity Council is the leading Canadian organization advancing diversity on Canada's boards. The Council's definition of diversity in respect of boards expands the traditional definition of industry experience, management experience, education, functional area of expertise, geography and age to also include such considerations as gender, ethnicity and Aboriginal status.

Our mission is to encourage companies to tap into an overlooked yet sizeable pool of talent to drive financial performance and sound governance. We achieve our mission through research, education, the identification of board-ready candidates and advocacy.

The business case is clear: companies can benefit from well-credentialed individuals who bring a wider range of skills, experiences and perspectives to corporate governance. This means better discussion, greater diligence in decision-making and ultimately, improved financial performance and shareholder value. In respect of gender diversity, our vision is to see the percentage of FP500 board seats held by women rise to 20% by 2015, and to 30% by 2018.

In preparing this submission, we had the benefit of the views of the 52 CBDC member organizations (Appendix 1). In addition, the submission has been informed by the views of 182 FP500 directors who have attended 23 Board Diversity Best Practices Roundtables we have organized in Vancouver, Calgary, Toronto and Montreal over the last 33 months. 104 of the 182 directors are CEOs, Board Chairs and Nominating and Governance Chairs. Ten Roundtables have been held in the last 14 months including the most recent Roundtable in Calgary on January 15, 2014. This means our submission is also informed by the current views of FP500 directors on the topic of board diversity policy. These Roundtables are the only forum that currently exists in Canada to allow for meaningful discussion and an exchange of views on board diversity policy. The Roundtables have been sponsored by EY (formerly known as Ernst & Young) across Canada and in Toronto by global executive search firm Odgers Berndtson.

Feedback on the Proposed Amendments

Introduction

In our submission dated October 4, 2013, we recommended more onerous disclosure requirements than envisioned in the July 30, 2013 Consultation Paper. Our recommendations reflected the lessons learned in other jurisdictions, namely the UK and Australia, with ‘comply or explain’, as well as the feedback from FP500 directors garnered in our summer 2013 survey and feedback from our own member organizations garnered in the fall in respect of the Consultation Paper. We detailed the results of the two surveys and the ‘lessons learned’ in our October 4, 2013 submission.

We would like to commend the OSC for the rigorous and transparent consultation process it has undertaken which has led to the Proposed Amendments to Form 58-101F1. As is noted by the OSC, these amendments expand the model of disclosure requirements set out in the Consultation Paper. They are reflective of thoughtful, sensible and progressive thought leadership in tackling the need to improve corporate governance in Canada. These amendments reflect our view, and indeed the widely-held view of stakeholders, that non-venture issuers must be *required* to disclose in areas regarding the representation of women on boards and in executive officer positions including targets and term limits and that a review of compliance with new disclosure requirements must be conducted. Otherwise, it is clear that

the large untapped pool of men and women will remain untapped and corporate governance will not be improved through better boards.

We feel there is still a significant risk that the intentions of the OSC will be thwarted in the absence of *more explicit requirements, including definitions*, contained in the amendments. We believe this because of the ‘lessons’ learned from the 1994 Dey Report and, more recently, the 2013 review of Australia’s experience with ‘comply or explain.’ In the case of the Dey Report, five years after the 1994 Dey Report corporate governance guidelines recommendations were released, the 1999 review report revealed that little had changed as there was more “explaining” than “complying.”

We believe greater transparency will be achieved if issuers are required to meet the disclosure requirements as set out in the Proposed Amendments through not only the Annual Proxy Circular, but also in the Annual Report and also on their website. By requiring disclosure in these three ways, the OSC will have a much greater likelihood of realizing its stated purpose of the Proposed Amendments (page 6) which is to, “require greater transparency for investors and other stakeholders...this transparency is intended to assist investors when making investment and voting decisions.”

In the case of Australia, the Council has been monitoring the results on board gender diversity of the ASX amendments to the *ASX Corporate Governance Council Principles and Recommendations* for listed companies which were put into place for financial years beginning January 1, 2011. These amendments introduced a ‘comply or explain’ model of disclosure. As noted in the Consultation Paper, under ASX listing rule 4.10.3, companies must include in their annual report a statement disclosing the extent to which they have followed six specific recommendations.

The Council notes two of these six are ASX Recommendations 3.2 and 3.5. Recommendation 3.2 is that entities should establish a diversity policy; disclose the diversity policy or a summary of that policy; and include in the diversity policy requirements for the board to establish and annually assess measurable objectives and the progress towards achieving them. Recommendation 3.5 is that entities should disclose in the corporate government statement of the annual report an explanation of any departure from the recommendations; and diversity policy should be made publicly available, ideally by posting the diversity policy or a summary of it on the entity’s website.

On March 8, 2013 the ASX released a KPMG Report on the progress made by ASX listed companies in complying with the six recommendations. The Report includes the first full

reporting period (31 December 2011 to 30 December 2012) for a number of entities across the ASX since the diversity recommendations came into effect. The majority of entities across the ASX have a diversity policy or are planning to put one in place. Over 90% of ASX-listed entities have established a diversity policy or provided an explanation as to why not. While a large number of entities disclosed the full policy on their website, others provided very little detail. The detail of disclosure was considerably greater in the larger listed entities.

The ASX Report notes that there has been broad interpretation of the term measurable objectives and that as a result it is unclear how progress on achievement of measurable objectives will be measured over time. “Entities that gave a clear explanation of their intentions and progress to date achieved a far more effective disclosure than those disclosing compliance but providing little detail as to what steps had been taken.” Simply put, what gets measured gets done. This is a fundamental step towards increasing the representation of women on boards of directors. The OSC has the opportunity to learn from the Australian experience by providing greater guidance to issuers at the outset on the development of measurable objectives and the ongoing assessment of progress in its amendment to the Corporate Governance Disclosure Rule.

Specific Feedback

Please find below our specific feedback which addresses the five questions asked on page 10 of the January 16 document.

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

Below please find the six Proposed Amendments as they appear in Appendix A together with our comment on each. At the end of this section, we have commented on Recommendation 7: Conduct a review of compliance with any new disclosure requirements after issuers have provided this disclosure for three annual reporting periods.

10. Term limits (Ontario only) – Disclose whether or not the issuer has adopted term limits for the directors on its board. If the issuer has not adopted term limits, disclose why it has not.

Comment

We are pleased to support this Proposed Amendment: 88.9% of CBDC member organizations ‘strongly support’ or ‘support’ this Proposed Amendment.

11. Policies regarding the representation of women on the board (Ontario only) –

(a) Disclose whether the issuer has adopted a policy for the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not.

(b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:

(i) a short summary of its objectives and key provisions,

(ii) the measures taken to ensure that the policy has been implemented effectively,

(iii) annual and cumulative progress by the issuer on achieving the objectives of the policy, and

(iv) whether and, if so how, the board or its nominating committee measures the effectiveness of the policy.

Comment

We agree with the OSC on the importance of mandatory disclosure but are concerned by the fact that in Australia, many companies are choosing to provide little detail or have yet to put a policy in place. For this reason, we believe the policy must be a) written and b) if not put in place, an issuer must offer an explanation of any risks or opportunity costs associated with the decision not to have such a policy. We are also concerned by the fact that in Australia, there was broad interpretation of the term ‘measurable objectives’. We believe the OSC must provide greater guidance to issuers at the outset of the definition of objectives.

66.7% of CBDC member organizations agree that minor modifications of the Proposed Amendment are needed. We ask the OSC to consider re-wording Proposed Amendment 11(a) to read: “Disclose whether the issuer has adopted a written policy for the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not and explain any risks or opportunity costs with the decision not to have such a policy.”

Secondly, we ask the OSC to consider re-wording Proposed Amendment 11 (b) (i) to read: “a short summary of its measurable objectives including numerical targets (actual and percentage based on board size over the last five years) and key provisions.” This will reinforce the role and importance of Proposed Amendment 14.

12. Consideration of the representation of women in the director identification and selection process (Ontario only) – Disclose whether and, if so how, the board or nominating committee

considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so.

Comment

We agree with the OSC on the importance of mandatory disclosure. 80% of CBDC member organizations 'strongly support' or 'support' the Proposed Amendment. *This is the key issue in our view which the Proposed Amendments must address, as our research shows in each of the last four years that only 1 in 5 directors are identified through a rigorous process which goes beyond the individual directors' own networks. To put it bluntly, as women have typically not been in those networks in meaningful numbers, women have not been considered. As one highly-regarded TSX60 Chair stated recently, "[i]f you want to be successful in putting together the best board, it is important to fish in more than one pond."*

We believe there is a large, untapped pool of women candidates in Canada, notably those who do not have corporate board experience but who have the skills, functional areas of expertise, management experience and credentials to add tremendous value to a company at the board level. It is this pool of women who are often overlooked by boards and by search firms as they have no board experience and they are 'a riskier' bet, yet we believe the contrary to be true: it is riskier for boards not to assess individuals in this pool because the opportunity cost of not identifying the best to sit on boards is too high. At the end of the day, the OSC's new disclosure requirements will be seen to be successful by our business community and by countries around the world if the percentage of board seats held by women rises significantly *and* this change in board composition is seen by our business community as having improved corporate governance by improving board effectiveness.

13. Consideration given to the representation of women in executive officer appointments (Ontario only) – Disclose whether and, if so how, the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.

Comment

We are pleased to support this Proposed Amendment. 62.5% of CBDC member organizations 'strongly support' or 'support' it. We believe Proposed Amendment 13 will lead to an increase

in the number of women who have the requisite skills, management experience and credentials at an executive officer level to be appointed to corporate boards.

14. Issuer's targets regarding the representation of women on the board and in executive officer positions (Ontario only) –

(a) For purposes of this Item, a "target" means a number or percentage, or a range of numbers and percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date.

(b) Disclose whether the issuer has adopted target(s) regarding women on the issuer's board. If the issuer has not adopted such target(s), disclose why it has not.

(c) Disclose whether the issuer has adopted target(s) regarding women in executive officer positions of the issuer. If the issuer has not adopted such target(s), disclose why it has not.

(d) If the issuer has adopted target(s) referred to in either Item 14(b) or (c), disclose the annual and cumulative progress of the issuer in achieving its target(s).

Comment

We are pleased to see this Proposed Amendment. We applaud the OSC for considering the strong support from stakeholders for issuers to disclose their targets. We believe Proposed Amendment 14 has the potential to play a vitally important role in increasing the number of women executive officers and corporate directors *if it is strengthened* as described in our recommendations below. Our view reflects the old adage: what gets measured gets done. Indeed, twice as many CBDC member organizations support a strengthened Proposed Amendment 14 than the Amendment as it is currently worded.

Our support for overarching national timelines and targets together with the 'comply or explain' approach that includes company targets mirror the call to action of the 2011 Lord Davies Report. As its first recommendation, it recommended chairs of the FTSE350 companies on the London Stock Exchange set out the percentage of women they aim to have on their boards in 2013 and 2015 and that FTSE100 boards should aim for a minimum of 25% female representation by 2015. We note there has been strong improvement in the FTSE100 since the Lord Davies Report. According to the April 2013 Davies Review Report, women hold 17.3% of FTSE100 seats as of March 2013 up from 15.6% the year before. According to the Report, only 6 of the FTSE100 have all-male boards.

In this spirit, we would like to see the OSC require all non-venture issuers to establish and disclose targets by 2016.

In addition, we would like to see the OSC offer guidance in Proposed Amendment 14 to issuers as to what reasonable targets would be for them to set now, noting that targets would vary by industry. According to our 2013 Annual Report Card research, financial services companies for example have a far higher percentage (23.3%) of board seats held by women than do mining, oil and gas companies (9.0%).

Finally, we would like to see targets defined as actual numbers and percentages, instead of one or the other to provide full transparency to investors.

We ask the OSC to consider re-wording Proposed Amendment 14 to read:

“(a) For purposes of this Item, a "target" means a number and percentage, or a range of numbers and percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date. A target of 3 is a reasonable number for consideration, however the target number can be higher or lower depending on factors such as the industry in which the issuer operates and the board's current gender diversity.

(b) Disclose whether the issuer has adopted target(s) regarding women on the issuer's board. If the issuer has not adopted such target(s), disclose why it has not.

(c) Disclose whether the issuer has adopted target(s) regarding women in executive officer positions of the issuer. If the issuer has not adopted such target(s), disclose why it has not.

(d) If the issuer has adopted target(s) referred to in either Item 14(b) or (c), disclose the annual and cumulative progress of the issuer in achieving its target(s).

(e) All issuers are required to have targets in place by December 31, 2016 and to disclose those targets.”

15. Number of women on the board and in executive officer positions (Ontario only) –

(a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women.

(b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all subsidiary entities of the issuer, who are women.

Comment

We are pleased to see this Proposed Amendment. 62.5% of CBDC member organizations 'strongly support' or 'support' Proposed Amendment 15.

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

While we are pleased to see a compliance review recommendation, we are concerned that a review following three annual reporting periods is too long for the first review. We believe it is important that an annual review be conducted each year, similar to the annual review done in the UK each year following the Davies Report and similar to the two year review published in March 2013 in Australia. This annual review will determine the extent to which companies have embraced the disclosure requirements and provided meaningful information to shareholders as outlined in the description of the information that is to be shared. If the amended Rule is put in place for June 1, 2014, then a review conducted in 2016 will provide investors with the opportunity to measure progress. If the 2016 review shows that at December 31, 2015 little action has been taken in creating and implementing a detailed diversity policy, we suggest that the OSC re-visit this 'comply or explain' model with a view of identifying more stringent requirements.

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?

No. We do not believe the Proposed Amendments should be phased in. The Proposed Amendments are reasonable, with sufficient flexibility provided to issuers in the 'comply or explain' approach. As is noted in the January 16, 2014 Proposed Amendments document, many stakeholders believe that now is an appropriate time to take action. This mirrors the results of our survey of FP500 corporate directors in the summer of 2013, prior to the release of the July 30 consultation paper. We asked for their opinion on which of the following three types of action they would support: 1-quotas or 2-a requirement to publicly describe the company's approach to, and progress toward achieving increased gender diversity on the board or 3-no change needed. 8% supported quotas; 54% supported the requirement; and, 38% supported the status quo.

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?

Together with the other Amendments and the proposed revisions we have recommended, we believe that term limits disclosure is an important element in encouraging an appropriate level of board renewal.

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?

Yes. This is an excellent recommendation and one that we had not considered. 77.8% of CBDC member organizations 'strongly support' or 'support' this additional disclosure requirement.

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 believe that there must be disclosure of written board diversity policy to remove any ambiguity. We feel there is still a significant risk that the intentions of the OSC will be thwarted in the absence of *more explicit requirements, including definitions*, contained in the amendments. For these reasons, we have recommended revisions to the Proposed Amendments.

Thank you for the opportunity to share our feedback on the Proposed Amendments on behalf of our member organizations.

With warm regards,



Pamela Jeffery
Founder

Appendix 1: Founding and Corporate Members

Accenture	KPMG
BC Hydro	Laurentian Bank of Canada
BCE	Maytree Foundation
BMO Financial Group	McCarthy Tetrault LLP
Beedie School of Business	Miller Thomson LLP
CIBC	National Bank of Canada
Canada Mortgage and Housing Corporation	Norton Rose Fulbright LLP
Canadian Institute of Diversity & Inclusion	Odgers Berndtson
Canadian Oil Sands	Postmedia Network
Canadian Pacific	PotashCorp
Canadian Society of Corporate Secretaries	PricewaterhouseCoopers LLP
Canadian Women in Communications	RBC
Cisco Canada	Scotiabank
Coast Capital Savings Credit Union	Sionna Investment Manager
Crowe Soberman LLP	Suncor
Deloitte	Sun Life Financial of Canada
Desjardins	TD Bank Group
The Directors College	Talisman
EY	TELUS
HSBC Bank Canada	Toronto Hydro
Husky Energy	Torys LLP
Hydro-Québec	TELUS
IAMGOLD	Toronto Hydro
Iron Ore Company of Canada	Vancouver Airport Authority
Institute of Corporate Directors	VIA Rail Canada
Jeffery Group	Women in Capital Markets