

September 23, 2013

VIA EMAIL

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

Dear Sirs/Mesdames:

Re: Request for Comment - Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management*

This letter is submitted on behalf of the Institute of Corporate Directors (“ICD”) in response to the invitation to participate in the consultation called for in the Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management* (the “**Proposal**”) dated July 30, 2013.

The ICD is a not-for-profit, member-based association with more than 7,600 members and 11 chapters across Canada. Our vision is to be the pre-eminent organization in Canada for directors in the for-profit, not-for-profit and Crown sectors. Our mission is to foster excellence in directors to strengthen the governance and performance of Canadian corporations and organizations. This mission is achieved through education, certification and advocacy of best practices in governance.

We commend the Government of Ontario and the Ontario Securities Commission (“OSC”) for their initiative in addressing the advancement of women on boards of directors and in senior management of Canadian publicly-traded companies. We are pleased to set out below our perspectives on the Proposal.

Background to ICD Submission

The ICD is an active proponent of advancing the participation of women in business. Our members strongly believe greater board diversity can contribute to better corporate governance. In December 2011 we published a report entitled *Diversity in the Boardroom - Findings and Recommendations of the Institute of Corporate Directors*¹. This report sets out why the ICD believes diversity is important to corporate governance and the ICD’s

¹ The report is appended to this Comment Letter for your reference.

recommendations for enhancing board diversity. These recommendations are as follows:

- Considering diversity as an important part of the criteria that are used to determine board composition.
- Adopting formal diversity policies that outline the essential criteria and experiential attributes that fulfill the needs of the board.
- Directing search firms, where used, to include diverse candidates in searches whenever possible (and subject to satisfying the qualifications of the position).
- Encouraging search firms to include qualified candidates who are unknown to current board members.
- Facilitating diversity agendas that permeate all levels of an organization, starting at the top with the Board, CEO and senior management ranks.
- Considering limits on the tenure of board members to encourage ongoing board renewal, being mindful of the need for a healthy degree of board continuity and experience.

In preparing this submission, the ICD had the benefit of the views of the following ICD members, each of whom has significant director experience and each of whom concurs with this submission:

- Jalynn Bennett
- Robert Prichard
- Sarah Raiss
- John Thompson
- Martine Turcotte

The ICD also surveyed its members as to their views of the Proposal. The ICD members that responded to the survey were, as a whole, generally supportive of the Proposal, subject to the comment below related to the concept of diversity.

Comments on Proposal

Approach in General - The ICD concurs with issuers disclosing their policies regarding representation of women on the board and in senior management and the consideration given to representation of women in the director selection process. In this respect, the ICD concurs with (i) the “comply or explain” approach of the Proposal (as opposed to mandated diversity policies for issuers), (ii) the application of the proposed disclosure regime at this time to only non-venture reporting issuers (other than investment funds) and (iii) addressing this disclosure by augmenting National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

The ICD does not support quotas to increase diversity in the boardroom or in management.

Measurement of Gender Diversity - The ICD believes that measurement is important to ensuring progress in diversity remains a focus for organizations and therefore supports the concept of disclosure about diversity measurements. We believe, however, that issuers have the best sense of what measurements are relevant for the purposes of advancing their own diversity policies. For example, gender diversity statistics at every employee level or for each subsidiary may not be a useful or reflective measurement for how a company is advancing gender diversity initiatives, depending on the nature of the company, the relationship of that company with its subsidiaries and similar factors.

Therefore, the ICD recommends that initially issuers disclose their own measurable goals in meeting their diversity policies and how they are doing in comparison to those goals. The OSC could then review this form of disclosure during its periodic reviews of corporate governance disclosure practices. If after a period of, say, three years the OSC is not satisfied that disclosure practices regarding measurable goals are sufficient or meaningful, it could then reconsider the matter.

Board Evaluation Disclosure - The Proposal suggests that disclosure be provided about whether and how adherence to policies regarding the representation of women on the board and in senior management are assessed in connection with the annual evaluation of the board and nominating committee. The ICD does not support mandating this requirement as director evaluation approaches are matters that each board should determine for itself and information about evaluation results is not, in our view, suitable for public disclosure.

Concept of Diversity - While gender dominates the current dialogue on diversity in Canada and is the only category of diversity specifically addressed in the Proposal, the ICD defines diversity along broader lines and considers diversity of ethnicity, age, business experience, functional expertise, personal skills, stakeholder perspectives and geographic background to also be important. We recognize that the reference from the Government of Ontario pertained at this time only to women but would request that the OSC consider disclosure obligations that will also address diversity more generally.

In our survey, members were asked whether diversity related disclosure obligations should relate exclusively to women or to diversity more generally. The members who responded strongly supported disclosure relating to diversity more generally.



Conclusion

The ICD believes the Proposal is meaningful and worthy of pursuit, though our preference would be that the OSC consider diversity disclosure more generally, as supported by our members.

We would encourage the OSC to work with its counterparts in the CSA so that one disclosure regime will prevail across the country.

Thank you for the opportunity to participate in your consultation process on this important initiative. If you have any questions regarding our comments, please contact the undersigned.

Yours truly,

Stan Magidson, LL.M., ICD.D
President & CEO

Attachment - ICD Report - Diversity in the Boardroom - Findings and Recommendations of the Institute of Corporate Directors (December 5, 2011)

Diversity in the Boardroom

FINDINGS AND RECOMMENDATIONS OF
THE INSTITUTE OF CORPORATE DIRECTORS

December 5, 2011



INSTITUTE OF
CORPORATE DIRECTORS
INSTITUT DES ADMINISTRATEURS
DE SOCIÉTÉS

Better Directors. Better Boards. Better Business.

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Acknowledgements

The ICD would like to acknowledge and thank Longview Communications Inc. for their assistance in the preparation of this report.

Executive Summary

The Institute of Corporate Directors (ICD) firmly believes greater board diversity can contribute to better corporate governance. We reached this conclusion following a multi-faceted, year-long dialogue with our national membership. Specifically, we found a strong consensus on the following points:

- Diversity enables boards to deliberate with greater perspective and insight, which results in better decision making, i.e., helps avoid “group think”
- It significantly expands the available pool of qualified directors
- Board diversity is an important governance issue for Canadian directors and boards; and most importantly,
- Diversity should be taken into account in the criteria used to determine board composition

While gender dominates the current dialogue on diversity, the ICD defines diversity along broader lines. We consider diversity of gender, ethnicity, age, business experience, functional expertise, personal skills, stakeholder perspectives, and geographic background to all be important.

Board diversity is a topical and increasingly global issue. Many countries, including France, Iceland, Norway and Spain, have introduced some form of mandatory quotas for gender representation on public company boards. Others, such as Denmark, Ireland, Finland, Iceland, South Africa, Israel and Switzerland, have introduced similar quotas to ensure board seats for women in *government-owned companies*.

Other jurisdictions have taken a less prescriptive approach. The Australian Stock Exchange (ASX) requires companies to disclose a diversity policy that includes measurable objectives for achieving board diversity, and annually report progress toward meeting those objectives. The ASX defines diversity broadly to cover gender, age, ethnicity and cultural background. In the US, the Securities and Exchange Commission (SEC) requires disclosure of whether, and if so how, a nominating committee considers diversity in identifying nominees for director. In addition, if the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, disclosure is required of how this policy is implemented, as well as how the company assesses the effectiveness of this policy.

In the UK, the Financial Reporting Council recently announced amendments to the UK Corporate Governance Code to include diversity as one of the factors to be considered when evaluating a board's effectiveness. Effective October 2012, listed companies in the UK will be required to disclose their diversity policies, as well as how the policy is being implemented and the progress made.

In Canada, Quebec adopted legislation in 2006 requiring 50% of the board seats of state-owned enterprises as a group to be held by women by December 14, 2011.

The ICD does not support mandatory legislation or quotas to increase diversity in the boardroom. We do believe, however, that Canadian boards and directors can and should be doing more to increase board diversity.

Background

In recent years, numerous governance organizations, regulatory agencies, governments, research organizations and thought leaders have put forward findings and recommendations on this important issue. Most of these views have been directed at corporate directors and boards. This paper does not replay those views. *Rather the ICD's position set forth in this paper is from the perspective of the director community and is based on the results of the process described in this "Background" section.*

In spring 2011, the ICD embarked on a multi-faceted board diversity initiative. Our goal was two-fold: (1) to gain the benefit of our members' perspectives and experience to determine the importance of this issue; and (2) to inform the ICD's thinking on what Canadian directors and boards should be doing in relation to board diversity in Canada.

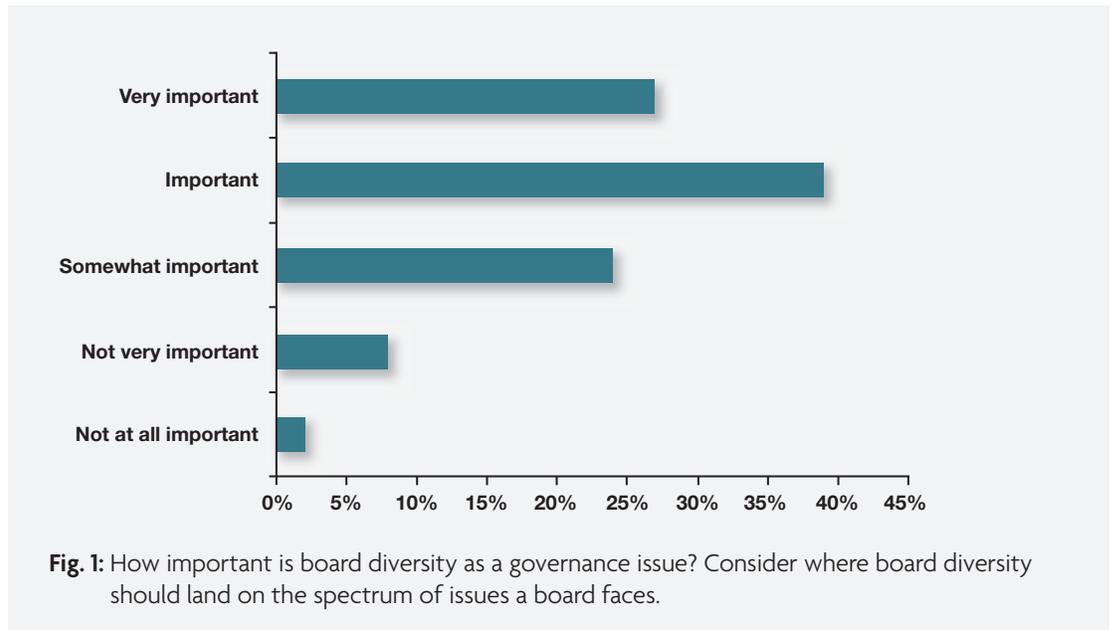
To serve as a catalyst for the dialogue among our members that was to follow, the ICD recorded a panel discussion among five distinguished directors:

- Dr. Gail Cook-Bennett, Chair of the Board, Manulife Financial
- Hon. Paule Gauthier, Director, Royal Bank of Canada
- Stephen Jarislowky, Co-founder of the Canadian Coalition for Good Governance
- Dr. Reatha King, former Director, Exxon Mobil; and
- Brian Levitt, Chair of the Board, TD Bank

This video was posted on a Board Diversity portal in the members' section of the ICD website, along with selected reading material. Beginning in April, we hosted a series of moderated town hall discussions in Vancouver, Calgary, Edmonton, Saskatoon, Winnipeg, Toronto, Ottawa and Halifax. Concurrently, the ICD conducted a survey of its national membership to provide a quantitative foundation to our work. In all, approximately 550 ICD members completed the survey. Survey respondents were members of public, private, not-for-profit and Crown boards.

Findings

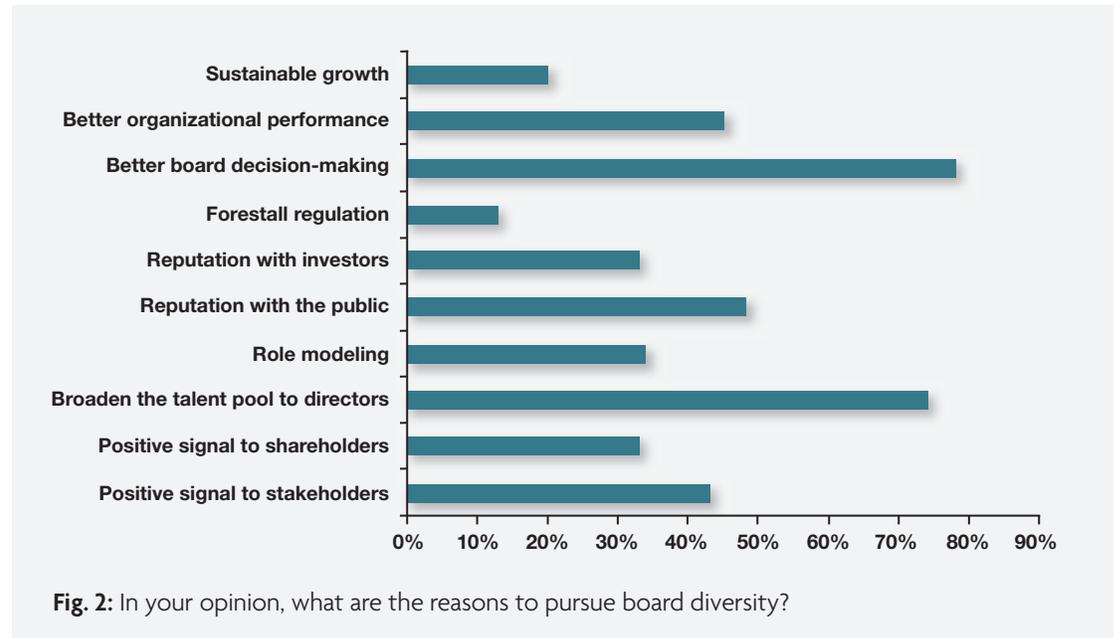
There is a strong consensus among ICD members that board diversity should be considered by Canadian boards. This was a universal theme of the town hall discussions and it was confirmed by our survey results, with 90 percent of respondents expressing the view that board diversity is a governance issue of importance (Fig. 1) and 76 percent believing that ICD should take a position on it.



Our members' rationale was clear. Nearly 80 percent of survey respondents believe that board diversity contributes to better decision-making. One of our members expressed his belief that, "diversity is critical because it brings different perspectives to questions boards deal with, which can prevent group think.... If directors all have the same background and experiences, the board may not get the complete perspective necessary to accomplish the strategic plan."

Findings *continued*

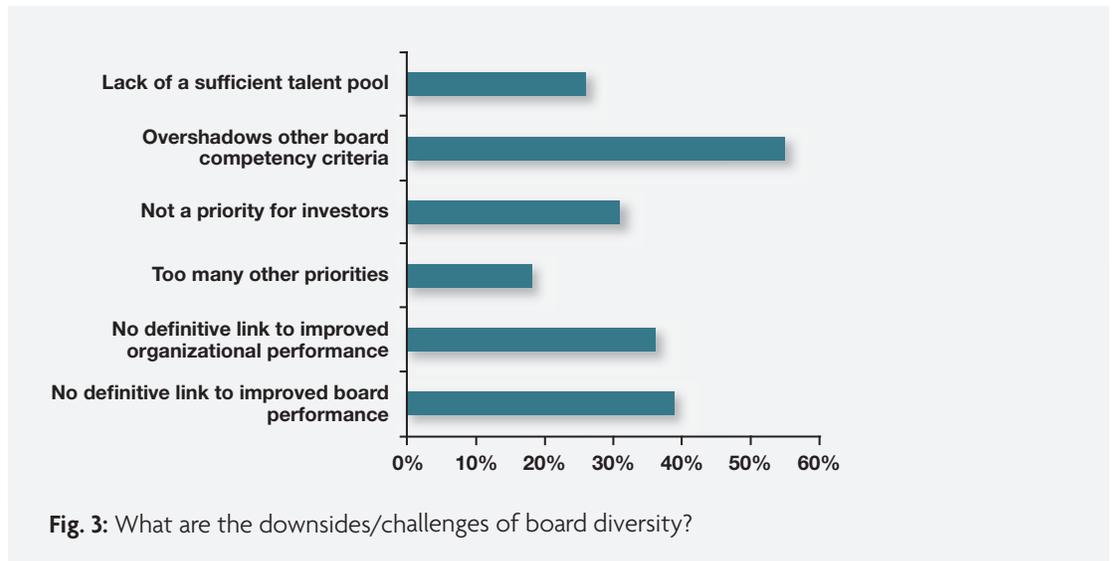
A similar number of survey respondents recognized the value of a broader talent pool from which to draw qualified director candidates (Fig.2). As one member who is a Board Chair said, “We can't afford to have any impediments to attracting and retaining the best people.”



A clear consensus also emerged on how best to achieve board diversity. Nearly all town hall and survey participants were strongly opposed to government imposed quotas or legislated mandates, as have been implemented in the jurisdictions named above. Only 4% were in favour of such measures. But a majority of ICD members believe the ICD should seek to raise awareness of and encourage board diversity *on its merits and within the context of an overall approach to good corporate governance.*

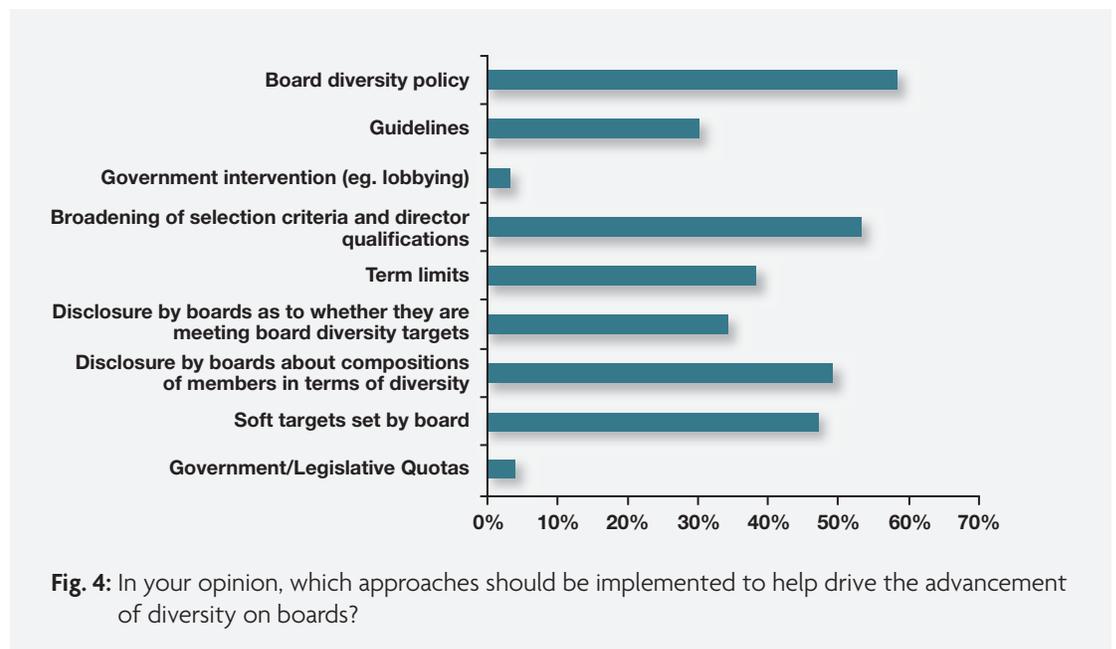
Findings *continued*

This last point reflects an important finding. The concern with board diversity cited most frequently by ICD members is that it could come to overshadow other criteria (Fig. 3). In other words, diversity matters, but a number of ICD members caution that gender and ethnic diversity must not compromise director competencies such as financial literacy, industry knowledge, functional skills, etc.



Findings *continued*

Having established that board diversity is important and beneficial, the question becomes, how best to move forward on board diversity? As discussed above, and as indicated in Fig.4, the ICD and its members believe government intervention and quotas should be off the table. Instead, our members believe the solution lies in a range of voluntary measures that include the adoption of board diversity policies, soft targets or guidelines, expanded definitions of selection criteria and board qualifications, and enhanced disclosure by boards of board diversity and/or how diversity factors into decisions of board composition.



Recommendations

Directors and boards have a fiduciary duty to act in the best interests of the corporation. In determining an optimal approach to good governance, one size does not fit all. As a principle, however, we believe diversity should be embraced by all boards – if not necessarily as an outcome, then as a key input for consideration.

Further, a diverse board is a board comprised of skilled individuals whose backgrounds reflect the diverse nature of the business environment in which the organization operates. The ICD believes that to advance board diversity, boards must be allowed to determine for themselves the criteria that best reflect their needs within the context of their own skills matrix. In this spirit, we offer the following recommendations:

1. Nominating and governance committees should continuously evaluate the needs of the board in the context of the company's future direction. They should consider diversity as an important part of the criteria that are used to determine board composition. Diversity for these purposes should be broadly defined to include gender, ethnicity, age, business experience, functional expertise, personal skills, stakeholder perspectives and geographic background.
2. Boards should adopt formal diversity policies. Diversity policies should outline the essential criteria and experiential attributes that fulfill the needs of the board. While these considerations will vary from company to company, a formal process should require discussion of the relative importance and mix of key composition requirements. Boards should disclose annually whether they have adopted a policy, what the policy provides for, and how the board is performing against the policy. Boards choosing not to adopt such a policy are encouraged to explain their reasons for not doing so.
3. Nominating and governance committees should, as part of their selection process, have access to deep and diverse talent pools, and should direct their search firm, where used, to include diverse candidates in searches whenever possible (and subject to satisfying the qualifications of the position). Services such as the ICD Directors Register can provide boards and search firms with an efficient and effective way to identify a diverse pool of board ready candidates. These can also provide assistance for directors in expanding their board opportunities.
4. As part of a director search process, search firms should be encouraged to include qualified candidates who are unknown to current board members.
5. Canadian corporations and organizations should continue to develop all of their top talent, including their diverse talent. An effective diversity agenda needs to be 'owned' by all communities, including the business community. Diversity agendas should permeate all levels of an organization, up to and including the board of directors. High performers must be encouraged and permitted to reach their full potential. In their oversight of talent management and succession planning, boards should be mindful of diversity; and,
6. In order to enhance board opportunities and openings, boards should consider the tenure of the current board members and may want to weigh the merits of policies that encourage fresh additions to the board, being mindful of the need for a healthy degree of board continuity and experience.

Recommendations *continued*

The ICD will continue to advance the cause of board diversity through the training and promotion of diverse director candidates and by continuing to engage our membership and the community at large on this important topic. The ICD strongly encourages its members and all Canadian directors to discuss these recommendations within their own companies and organizations and the boards on which they sit, and do their part to move this issue forward.

Conclusions

The ICD believes greater board diversity makes for better corporate governance. Accordingly, we believe diversity such as gender, ethnicity, age, business experience, functional expertise, personal skills, stakeholder perspectives, and geographic background should be considered in the construction and composition of Canadian boards.

Each and all of these factors – and the manner in which they align with the nature of the organization's business and corporate strategy, board composition, board dynamics and succession planning – are important. It takes real wisdom and insight to balance and calibrate them on any given board.

We believe a general push in the direction of greater diversity will be positive for corporate governance in Canada.

About the ICD

The Institute of Corporate Directors (ICD) is a not-for-profit, member-based association representing Canadian directors and boards across the for-profit, not-for-profit, and government sectors. With more than 5,500 members and a network of nine chapters, the ICD promotes the effectiveness of directors by providing quality director education and professional certification; opportunities for continuous learning and networking through local chapter events; board matching and referral service; and access to timely information on current and emerging governance issues and best practices. For more information, please visit: www.icd.ca



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