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October 4, 2013

Via Email – comments@osc.gov.on.ca

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

Dear Sirs/Mesdames:

Re: Ontario Securities Commission Request for Comment on OSC Staff Consultation Paper 58-401 – *Disclosure Requirements Regarding Women on Boards and in Senior Management* (“OSCP 58-401”)

Thank you for the opportunity to provide comments on OSCP 58-401. YWCA Metro Vancouver is a non-profit organization dedicated to the advancement of women. We believe that the proposals put forth by the Ontario Securities Commission (the “OSC”) in OSCP 58-401 are an important step in advancing the representation of women in senior leadership positions in Canada and we commend the OSC and the Ontario Provincial government for taking steps to address gender diversity.

In order to arrive at informed recommendations, YWCA Metro Vancouver solicited input from several local business leaders who have extensive corporate management and board experience and particular insight into how to address gender diversity issues in Canadian workplaces. This submission is endorsed by the YWCA organizations and each of the individuals named below.

Key Recommendations:

In brief, our key recommendations are as follows:

- Regulatory action is necessary and appropriate to prompt the cultural shift needed to make progress on gender diversity in corporate Canada.
- The Proposed Regulation should include a best practices recommendation of the OSC that all Canadian issuers achieve 30% representation of women at the senior management and board levels by 2020

- Each reporting issuer should be required to adopt and disclose on an annual basis their own self-determined targets for the representation of women on their board and in their senior management, with an interim target for 2017 and a further target for 2020.
- Each reporting issuer should be required to disclose the policies and procedures that it has implemented and its planned steps in order to achieve its targets.
- The proposed targets and disclosure requirements must be applicable to both senior management and board representation. Gender diversity at the senior management level is necessary to give rise to the organizational cultural shift required to make meaningful progress on gender diversity, and will encourage the development, retention and advancement of women leaders in corporate Canada.

These recommendations and the rationale supporting them are set out in further detail below.

Background

Diversity in Canadian business and gender diversity in particular is a key economic issue for Canada. Diversity of thought, skills, experience, and perspectives fosters innovation, and brings balance and credibility to the decision making process for Canadian companies.

The economic benefits of gender diversity are well documented. Numerous studies have shown that companies that have higher representation of women in senior management and on boards have demonstrated noticeably better financial results than their peers with lower representation of women, in particular during times of economic difficulty, as noted in the 2012 Credit Suisse report cited in OSC 58-401. See also, for example, the 2007 Catalyst study which found that companies with more women directors outperformed those with the least women directors on three financial measures: return on equity (53 percent higher), return on sales (42 percent higher), and return on invested capital (66 percent higher).¹ Another example is the McKinsey study which found that the 89 European-listed companies with the highest proportions of women in senior leadership positions and at least two women on their boards outperformed industry averages for the Stoxx Europe 600, with 10 percent higher return on equity, 48 percent higher EBIT (operating result), and 1.7 times the stock price growth.² Another compelling example is the recent *Forbes* study of the 26 publicly traded companies headed by women on its “2010 Power Women 100” list, which found that, on average, companies in that group outperformed their industries by 15 percent and the overall market by 28 percent.³

Increased representation of women in business is clearly an economic issue for Canada and given the demonstrated impact on business performance, we believe it will become an important metric driving investment decisions once investors are provided with the necessary information to evaluate and compare issuers on this basis.

The Need for Regulatory Action

Canada is falling behind other countries in terms of making meaningful progress towards achieving gender diversity in senior management and on the boards of Canadian companies. Continuing with the status quo in Canada is unlikely to result in meaningful progress. Without concrete action, Canada will be outpaced by other jurisdictions and the performance of

¹ *The Bottom Line: Corporate Performance and Women's Representation on Boards* (Catalyst, 2007).

² McKinsey & Company, *Women Matter: A Corporate Performance Driver* (2007).

³ “*Girls Rule*,” *Forbes* (October 25, 2010).

Canadian companies and the strength of our capital markets will suffer. For this reason, we believe that regulation on gender diversity is squarely within the OSC's statutory mandate to protect investors and foster confidence in Canadian capital markets. In addition, gender diversity falls within the same purview of the OSC's regulation of other corporate governance matters, such as director independence and financial literacy requirements and executive compensation disclosure, all of which have been considered necessary to change corporate behaviour and provide transparent disclosure for investor protection.

We believe that what is holding Canadian companies back from making progress is not a failure to accept the principal of gender diversity, but rather a failure to implement the processes and policies needed to achieve gender diversity at senior levels. To that end, we believe the regulations that result from OSCP 58-401 (the "Proposed Regulations") present a unique and important opportunity to assist Canadian reporting issuers by providing a clear and objective roadmap to achieving true gender diversity at the senior management and board levels. As is set out below, we believe more concrete steps are needed to supplement the proposals in OSCP 58-401 in order to motivate the shift in corporate culture necessary to achieve meaningful progress.

1. *What are the effective policies for increasing the number of women on boards and in senior management?*

Evidence from other jurisdictions that have adopted various gender diversity regulations indicates that disclosure alone is not sufficient to effect meaningful change in practice. Jurisdictions that have observed noticeable progress are generally those that have adopted either mandatory quotas or recommended targets for gender diversity.⁴ As can be seen from the Canadian example, the existing corporate governance requirements and disclosure obligations which, as the OSC notes, include a consideration of diversity, have not been sufficient to motivate companies to adopt policies or practices focused on gender diversity.

We recognize that there may not be an appetite within corporate Canada for mandated quotas, nor will a "one size fits all" approach be the most beneficial model for Canada. Furthermore, we support the view that the circumstances of each Canadian company will vary and individual boards of directors are best placed to determine the most appropriate policies and targets on gender diversity for their companies. For that reason, we recommend that the OSC adopt the following approach:

1. Require each Canadian reporting issuer to adopt and disclose on an annual basis in their AGM information circular:
 - a. A diversity policy as part of their corporate governance process that specifically addresses the issuer's policies and practices related to gender diversity.
 - b. Targets (expressed as a percentage) for the number of women represented in senior management and on the board of the issuer, in each case to be achieved by 2017 and a further target to be achieved by 2020 (the "Issuer Target").
2. The Proposed Regulation should include a best practices recommendation of the OSC that all Canadian issuers achieve 30% representation of women at the senior management and board levels by 2020 (the "Recommended Target").

⁴ Credit Suisse Research Institute, Gender Diversity and Corporate Performance (August 2012).

We note that we have suggested 30% as the Recommended Target because there is evidence that 30% representation of women is the threshold at which boards begin to outperform their less diverse competitors.⁵

2. *What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?*

We believe that the disclosure requirements proposed in OSC 58-401 are useful and should be retained in the Proposed Regulation; however they will only provide tangible, measurable information to investors if they are supplemented by the following additional disclosure requirements:

1. Modify the Proposed Regulation to require that issuers disclose on an annual basis in their AGM information circular (the “Target Disclosure”):
 - a. Their actual current percentage of women in senior management and on the board as against the Recommended Target;
 - b. Their actual current percentage of women in senior management and on the board as against the Issuer Target; and
 - c. The issuer’s rationale for selecting the “Issuer Target”, including for example a discussion of industry factors and peer benchmarks, if used.

The Target Disclosure is key to providing investors with insight into the appropriateness of the Issuer Target adopted by an issuer and actual comparable information regarding the issuer’s diversity practices and commitment to gender diversity, which will, in turn, provide motivation to issuers to be accountable to meet the targets they have set and to adhere to the policies they have adopted.

3. *Are the proposed scope and content of the model disclosure requirements described in Part 4 of this consultation paper appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.*

The adoption by the OSC of the Recommended Target and the requirements for each issuer to adopt an Issuer Target and gender diversity policy are paramount to effecting real change, while still affording deference to an issuer’s board of directors to adopt targets and policies that the board believes are appropriate and in the best interests of that company.

The existing disclosure proposed in OSC 58-401 will only be meaningful if there are measurable criteria against which to judge an issuer’s performance. A disclosure-only model without measureable standards and recommended best practices will allow issuers to fall back on boilerplate general disclosure regarding gender diversity that is not useful to investors and will allow the unsubstantiated justification that there is a lack of qualified women candidates to continue unchecked. See for example the success of the target requirements adopted by Norway, France, the UK and Australia as compared to the relative lack of success of the United States’ general corporate governance disclosure regime.

4. *What type of statistics, data and/or accompanying qualitative information regarding the representation of women in their organization should non-venture issuers be*

⁵ “General Diversity in the Boardroom and Firm Performance: What Exactly Constitutes a ‘Critical Mass?’” *Social Sciences Network, Working Paper Series* (February 22, 2012).

required to disclose? Should such disclosure be reported for the non-venture issuer only or for all of its subsidiary entities also?

Canadian issuers should be required to disclose the Target Disclosure, as well as the percentage of female employees in their organization on a consolidated basis for their entire corporate group. Disclosure should be made as to the actual and proposed steps taken by the issuer to reach the Issuer Target and to adhere to the issuer's diversity policy. We support the existing definition of "executive officer" being applied to the gender diversity disclosure.

5. *What practices should we recommend for facilitating increased representation of women on boards and in senior management?*

i. *For example, should we recommend that non-venture issuers have a gender diversity policy? If so, should we set out recommended content for the policy?*

Yes, as stated above, issuers should be required to adopt a diversity policy that addresses gender diversity issues and provides a proper governance framework to implement and achieve gender diversity as noted above. This should include processes related to: (i) guidelines for recruiting practices, including advertising of positions, engagement of search firms and a commitment to move to a short list of candidates only once satisfied that a diverse pool of candidates has been identified; (ii) inclusion of gender diversity as a consideration of the skills and competencies needed in senior management and the board; (iii) inclusion of gender diversity as a factor in evaluating board effectiveness; and (iv) policies on board succession including, for example, term limits, to provide opportunities for the recruitment of new candidates. This framework is the key to an organization overcoming the traditional corporate mindset that gender diversity is not possible because there are not enough qualified women candidates or that diversity should not be considered in determining the "best" candidate. These outdated beliefs have been disproven by numerous studies on the impact of gender diversity on financial performance, but the cultural change necessary to give rise to changes in hiring, development and retention of women has not yet occurred on a widespread basis.

We would strongly recommend that the OSC proposes a model policy that addresses the practices and processes noted in the preceding paragraph. We also suggest that the OSC consider incorporating gender diversity as part of its investor education program and encouraging other stakeholder groups (corporate governance organizations, institutional shareholder services firms and proxy advisory firms) to adopt best practices and model policies and support such initiatives through proxy voting guidelines. We note that the Canadian Coalition for Good Governance has recently included gender diversity and board renewal policies as part of their recommendations in their 2013 *Building High Performance Boards* report.

As discussed above, we believe it is the practical implementation of gender diversity that is the real hurdle facing Canadian companies, and the better the roadmap that can be provided, the increased likelihood of success.

ii. **Should non-venture issuers be required to comply with the recommended practices or explain why they have not complied (i.e. a “comply or explain” model of disclosure)?**

Yes, but it should go further to include a Recommended Target and Issuer Target against which each issuer must disclose progress through the Target Disclosure. This is the only way that investors will have measureable criteria against which to hold companies accountable. Each board would retain the discretion to adopt and explain to investors the policies and targets that they believe are most appropriate for their own company.

We also note that although OSCP 58-401 only proposes to apply these targets to non-venture issuers, we recommend that they be applied to all Canadian reporting issuers. As these recommendations do not require any mandatory action in terms of hiring or recruiting practices on the part of a company, we do not believe they impose a significantly higher compliance burden on venture issuers. Furthermore, we believe it would be highly beneficial for junior stage companies to start incorporating gender diversity into their corporate governance practices. The Canadian venture issuer market is significant portion of our Canadian capital markets. These junior companies, in particular, would benefit from expanding the scope of candidates for their senior management and boards as they often face challenges (whether real or perceived) due to a lack of experienced, independent leadership, and investors can suffer as a result. Recruitment of candidates from outside the usual channels of friends or close associates that have a greater diversity of experience and viewpoint, and often independence, will increase the competencies, balance and breadth of skills available to these companies, thereby increasing their credibility and performance in the marketplace. These junior issuers would be free to adopt targets, policies and benchmark groups that are appropriate for their size, stage and industry. However, the Proposed Regulation would begin to promote an expansion of the talent pool for junior issuers and a deepening of executive and leadership experience, which will benefit Canadian capital markets.

In summary, there is no question that Canadian companies should have the freedom to recruit and hire the best, most qualified candidates for their senior management and board positions. The current problem is that the standard practices and criteria for identifying the best candidates have historically failed to identify women who may in fact be among the best candidates and thus have failed to recognize or value the benefits to corporate performance brought by diverse experience and viewpoint.

We believe that OSC 58-5401 and any Proposed Regulation is an important step in the right direction and we thank you for considering our recommendations.

Yours Truly,



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