

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

By email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

3 October 2013

Dear Mr. Stevenson:

**Re: OSC Staff Consultation Paper 58-401: Disclosure Requirements Regarding Women on Boards and In Senior Management**

The Shareholder Association for Research and Education (SHARE) welcomes the decision of the Government of Ontario and the Ontario Securities Commission (OSC) to address the issue of diversity on boards and in senior management. We appreciate the opportunity to comment on this important initiative. As an advisor to Canadian institutional investors with assets under management of over \$12 billion, SHARE provides proxy voting and shareholder engagement services as well as education and practical research on responsible investment issues.

Goal of reforms

Simply put, we want the boardrooms and senior ranks of Canadian corporations to reflect Canada's diversity<sup>1</sup>. Diversity on boards and in senior management is important for the same reason that workplace diversity, and indeed diversity in society as a whole, is important: because diverse organizations benefit from a wide variety of opinions, perspectives and experiences. Traditionally, diversity at the board level has been defined in terms of experience, education, geography and age<sup>2</sup>. A definition that truly reflects Canada's diversity would include gender, racial and ethnic origin, aboriginal status, sexual orientation/identification, and disability. While there is debate in the academic literature on the nature of the correlation between diversity and firm performance<sup>3</sup>, we accept as a general proposition that diverse leadership is more likely to bring varied viewpoints to decision making and provide legitimacy to the corporation both internally and externally, which in turn can increase

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<sup>1</sup>We share this goal with the Canadian Council on Board Diversity, <http://www.boarddiversity.ca/>

<sup>2</sup> See Canadian Council on Board Diversity, *2012 Annual Report Card*, p.2

<sup>3</sup> See for example, Rhode, Deborah and Packel, Amanda, "*Diversity on Corporate Boards: How Much Difference Does Difference Make?*" (2010) Rock Center for Corporate Governance, Working Paper Series No. 89; Carter, Nancy and Wagner, Harvey, "*The Bottom Line: Corporate Performance and Women's Representation on Boards (2004–2008)*" (2011), Catalyst.org; Robertson, Quinetta and Park, Hyeon Jeong, "*Examining the Link Between Diversity and Firm Performance: The Effects of Diversity Reputation and Leader Racial Diversity*" (2007) 32 *Group and Org. Mgmt* 548.

shareholder value. Diversity on the board and in senior management can challenge assumptions, avoid “groupthink” and bring a range of perspectives to address strategic challenges. Corporations that recruit diverse directors and senior executives send a signal that they think creatively about human talent and view diversity as part of their value in the market.

Diversity is also a value in itself. It reflects a commitment to justice and equality, which are Canadian values. While improving diversity in senior positions will improve company performance in many cases, it should not be contingent on that. Businesses are social actors and should reflect the society in which they operate.

Given our view of diversity, we would support an expansion of the scope of the OSC’s approach to diversity beyond a focus on women. While we understand that it is easier to measure gender diversity than other characteristics such as ethnic heritage, sexual orientation and disability (and indeed measuring these characteristics may raise privacy issues at the board level, where numbers can be small), this limitation is difficult to defend in principle. Diversity means all Canadians.

We now turn to the specific questions raised in the consultation paper.

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

Academic literature suggests that a major factor in limiting board diversity is implicit cognitive bias<sup>4</sup>, in which people implicitly trust other people who are “like them”, leading to a narrow pool of candidates considered for board positions. Research also shows that one reason Canada lags behind similarly developed nations in board diversity is that our stock exchanges include a significant number of small companies, which tend to rely on existing networks when recruiting, and resource firms, where women are under-represented across the sector. Large firms tend to have more professionalized recruitment procedures where the pool of candidates is broader and which may include diversity criteria. Non-resource industries such as the financial sector, where 60% of workers are women, have a more ready talent pool of directors with industry experience.<sup>5</sup>

If the root of the problem is unconscious bias, coupled with (in Canada’s case) a significant number of small firms and resource companies which are relying for recruitment on networks that are not diverse, then our view is that the appropriate policy tools would be those that compel companies to examine their approach to diversity and in particular their recruitment policies. This would allow companies the flexibility to create and manage their own procedures but also require them to consider diversity as part of their approach. Requiring disclosure in these areas would assist investors in understanding the approach taken by companies and promote greater transparency in corporate governance.

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<sup>4</sup>See Dhir, Aaron, “Towards a Race and Gender-Conscious Conception of the Firm: Canadian Corporate Governance, Law and Diversity” (2010) 35 Queen’s L.J. 569.

<sup>5</sup>TD Economics, *Special Report: Get on Board Corporate Canada*, 7 March 2013.

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

Companies should be required to disclose their approach to diversity at the board and senior management levels, in particular their recruitment procedures, and how they measure progress in improving diversity. We generally support the disclosure of information as proposed on p.18 of the consultation paper, including: a summary of the diversity policy; information on how the policy is intended to advance the participation of under-represented groups; and measurement of the effectiveness of the policy. However, we would also favour including recommendations in the *Corporate Governance Guidelines* or another appropriate policy instrument, and disclosure of the extent to which companies are following the recommendations.

Are the proposed scope and content of the model disclosure requirements appropriate? Are there additional or different disclosure requirements that should be considered?

As mentioned above, we would favour a disclosure model which requires companies to compare their approach to a recommended approach to diversity policies. See answers to the final two questions, below.

What type of statistics, data and/or accompanying qualitative information regarding the representation of women in their organization should non-venture issuers be required to disclose? Should such disclosure be reported for the non-venture issuer only or for all of its subsidiary entities also?

Tracking diversity is important, although it can be difficult to do. At a minimum, companies should be required to track how many board nominees are from under-represented groups, as long as this did not violate the privacy of the candidates. For senior executives, we support aggregate tracking of diversity. We would also support disclosure of information about the company's measurable objectives and progress in achieving them.

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

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. Amendments should be made to the *Corporate Governance Guidelines*, or another appropriate policy instrument, to include recommendations on diversity policies. The recommendations should suggest that companies: make a clear commitment to diversity; set objectives for achieving diversity; include diversity considerations in their recruitment process, possibly including targets for candidates (such as 30-50% women at the board level, for example) and/or the use of professional recruiters; and measure progress in achieving their objectives.

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

Yes. A comply or explain approach has a number of benefits. It provides guidance to companies that may not have addressed the issue previously, while giving flexibility to industry leaders. It is not prescriptive, but it requires companies to consider their approach. We particularly support the proposal on p.19 of the consultation paper that if the issuer does not have a policy, it should explain why not and *identify any risks or opportunity costs associated with the decision not to have such a policy.* (Our emphasis). The comply or explain model is also consistent with the approach under National Policy 58-201 *Corporate Governance Guidelines* and National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

Additional Suggestions

We would also suggest that the OSC or the Government of Ontario create mechanisms to monitor progress in improving diversity on boards and in senior management. Possible mechanisms could include:

- An annual report from the relevant government agency tracking progress on diversity on boards and in senior management;
- A commission on diversity with participation from across the business community and those involved with capital markets, to maintain a high level of interest and dialogue on this issue; and/or
- A review of the disclosure requirements after 3-5 years.

This would allow investors and others to review the effectiveness of the disclosure regime and recommend changes if needed.

Thank you again for the opportunity to comment. We would be pleased to provide further information on any of our submissions.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter W. Chapman". The signature is fluid and cursive, with a long horizontal flourish extending to the right. There is a small asterisk-like mark below the signature.

Peter Chapman

Executive Director

Shareholder Association for Research and Education