

**OSC STAFF CONSULTATION PAPER 58-401  
DISCLOSURE REQUIREMENTS REGARDING WOMEN ON BOARDS AND IN SENIOR MANAGEMENT**

**July 30, 2013**

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## 1. INTRODUCTION

### 1.1 Consultation paper

#### A. Purpose of consultation

##### **Ontario government initiative**

On May 2, 2013, the Ontario government delivered its budget which included the following statement:

The government strongly supports broader gender diversity on the boards and in senior management of major businesses, not-for-profit firms and other large organizations. In conjunction with others, including the OSC, the government will consider the best way for firms to disclose their approaches to gender diversity, with a view to increasing the participation of women on boards and in senior management.

On June 14, 2013, the Minister of Finance, Charles Sousa, and the then Minister Responsible for Women's Issues, Laurel Broten, requested that the Ontario Securities Commission (the OSC) undertake a public consultation process regarding disclosure requirements for gender diversity. Specifically, they requested that the OSC undertake a review and public consultation process over the summer considering a "comply or explain" disclosure regime for reporting issuers listed on the TSX relating to board and senior management gender diversity policies and practices and provide recommendations regarding specific disclosure requirements for TSX-listed reporting issuers and best practices for this type of approach to gender diversity by fall. Consistent with existing requirements relating to the disclosure of corporate governance practices, the focus is on TSX-listed (and other non-venture) issuers due to concerns about the potential regulatory burden on reporting issuers listed on the TSX Venture Exchange.

##### **Focus of consultation**

Corporate decision-making benefits from a diversity of opinions and viewpoints. This diversity is enhanced when leadership roles are filled with individuals who have different professional experience, education, skill and individual qualities and attributes such as gender, age, ethnicity and cultural background.

The focus of this consultation is on advancing the representation of women on boards and in senior management. We are considering implementing disclosure requirements for reporting issuers (other than venture issuers and investment funds) regarding women on boards and in senior management.

##### **Purpose of consultation**

The purpose of this consultation paper is to seek feedback from investors, issuers, other market participants and advisors on these disclosure requirements to inform our recommendations to the Minister of Finance and Minister Responsible for Women's Issues. The Ministers noted the following in their letter to the OSC:

We expect these OSC recommendations to play a significant role in informing both government policy development and possible OSC rule-making as the government of Ontario moves forward with enhanced gender diversity disclosure to facilitate an increase in the participation of women on the boards and in senior management of major issuers.

The comment period will end on **September 27, 2013**. In addition to any general comments, we are specifically asking the following questions:

### **Specific consultation questions**

As noted in Part 4 of this consultation paper, we are seeking feedback on the following questions:

- What are effective policies for increasing the number of women on boards and in senior management?
- What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?
- 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.
- 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?
- 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?
  - 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)?

## **B. Structure of consultation paper**

This consultation paper is structured as follows:

- Part 1 discusses the status of women on boards and in senior management in Canada.
- Part 2 summarizes the current corporate governance framework under Ontario securities legislation.
- Part 3 summarizes the approach to gender diversity disclosure taken in other jurisdictions.
- Part 4 discusses a model of disclosure requirements regarding women on boards and in senior management of non-venture issuers.
- Part 5 explains how stakeholders can provide feedback.

### **1.2 Status of women on boards and in senior management in Canada**

Understanding the current landscape in Canada is important when considering potential policy approaches to facilitating increased representation of women on boards and in senior management of reporting issuers.

#### **Statistics on representation of women**

There are a number of publicly available reports that discuss gender diversity in Canada. The following provides a high-level snapshot on the current level of representation of women on boards and in senior management.

## **(1) Catalyst data**

### Representation of women on boards

Catalyst has reported that the representation of women on Canadian boards is growing very slowly. On March 8, 2012, Catalyst issued the *2011 Catalyst Census: Financial Post 500 Women Board Directors*<sup>1</sup> which noted that public companies continue to have the lowest representation of women on their boards as compared to private companies, crown corporations and cooperatives. In 2011, 10.3% of directors of public companies were women, which represents a zero increase from 2009.

### Representation of women in senior management

On February 19, 2013, Catalyst issued the *2012 Catalyst Census: Financial Post 500 Women Senior Officers and Top Earners*<sup>2</sup>. It provided statistics to gauge women's advancement into leadership and highlighted:

- In 2012, women held 18.1% of senior officer positions (as compared to 17.7% in 2010) and, specifically, held 15% of those positions in public companies in 2012 (as compared to 14.3% in 2010).
- Although nearly one-third of companies have 25% or more women senior officers, nearly another one-third continue to have no women senior officers. In particular, 35.9% of public companies had no women senior officers in 2012.

## **(2) GMI Ratings**

*GMI Ratings' 2013 Women on Boards Survey*<sup>3</sup> noted that progress on most measures of representation of women in Canada continues to be slow by international standards. The survey includes data as of March 1, 2013 on 5,977 companies in 45 different countries. The survey states:

The percentage of female directors on Canadian boards in our universe has remained flat since our last survey, at 13.1%. Moreover, a look back to the inception of our data collection on this topic shows an increase in female directors of less than 1 percentage point since 2009, when the percentage stood at 12.4%. Currently, while two-thirds of Canadian companies in our sample have at least one woman on the board, less than 20% (18.6%) have at least three women, and these percentages have been fairly stable over the last three years.

## **(3) TD Economics report**

A report issued by TD Economics on March 7, 2013, *Get On Board Corporate Canada*<sup>4</sup> (the TD Economics report), indicated that in 2011:

- Women represented only 10.9% of board members of companies on the S&P/TSX Composite index.
- 43% of companies on the S&P/TSX Composite index did not have a single female board member and 28% had only one female board member.

The TD Economics report noted that research by Catalyst comparing 2009 to 2011 showed that women filled only 15% of entrant board seats for 273 publicly traded companies in the FP500.

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<sup>1</sup> Catalyst, *2011 Catalyst Census: Financial Post 500 Women Board Directors* (March 8, 2012), online: <<http://www.catalyst.org/knowledge/2011-catalyst-census-financial-post-500-women-board-directors>>.

<sup>2</sup> Catalyst, *2012 Catalyst Census: Financial Post 500 Women Senior Officers and Top Earners* (February 19, 2013), online: <<http://www.catalyst.org/knowledge/2012-catalyst-census-financial-post-500-women-senior-officers-and-top-earners>>.

<sup>3</sup> GMI Ratings, *GMI Ratings' 2013 Women on Boards Survey* (May 1, 2013), online: <<http://www3.gmiratings.com/home/2013/05/gmi-ratings-2013-women-on-boards-survey/>>.

<sup>4</sup> TD Economics, *Get On Board Corporate Canada* (March 7, 2013), online: <<http://www.td.com/document/PDF/economics/special/GetOnBoardCorporateCanada.pdf>>.

### **Voluntary initiatives**

Catalyst issued a call to action for Canadian corporations to increase the overall proportion of FP500 board seats held by women to 25% by 2017.

Companies that accept the call to action made in the Catalyst Accord pledge to:

- increase the percentage of women on their boards by 2017, and
- provide interim representation goals to Catalyst on a confidential basis.

### **Public sector legislated quotas in Quebec**

Currently, there are no mandated quotas for female board representation in Canada outside of Quebec. As of December 2011, provincial crown corporations in Quebec were required to have 50% female representation on their boards.

### **Federal Government's advisory council**

The Federal Government has recognized the issue of gender diversity on boards. On April 5, 2013, the Minister of Public Works and Government Services and Minister for Status of Women, Rona Ambrose, introduced an advisory council comprised of leaders from the private and public sectors to advance the participation of women on corporate boards.

The Minister noted that "board diversity is not about quotas or tokenism. Board diversity is about better corporate decisions, better responses to market demographics, and better financial performance. It is also about the future, and having more women in key leadership positions to serve as role models for young women and girls."<sup>5</sup>

The role of the advisory council is to:

- provide advice on how industry can increase women's representation on corporate boards,
- suggest how industry and government can track and measure progress in this initiative and what tools, if any, government should employ to achieve this goal, and
- make recommendations by the fall of 2013 on how the government could recognize leaders in industry and applaud companies that have succeeded in reaching their targets.

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<sup>5</sup> Status of Women Canada, News Release "Harper Government Increasing Participation of Women on Boards" (April 5, 2013), online: <[http://news.gc.ca/web/article-eng.do?crtr\\_sj1D=&crtr\\_mnthndVI=4&mthd=advSrch&crtr\\_dpt1D=&nid=730519&crtr\\_lc1D=&crtr\\_tp1D=&crtr\\_yrStrtVI=2013&crtr\\_kw=&crtr\\_dyStrtVI=5&crtr\\_aud1D=&crtr\\_mnthStrtVI=4&crtr\\_page=1&crtr\\_yrndVI=2013&crtr\\_dyndVI=5](http://news.gc.ca/web/article-eng.do?crtr_sj1D=&crtr_mnthndVI=4&mthd=advSrch&crtr_dpt1D=&nid=730519&crtr_lc1D=&crtr_tp1D=&crtr_yrStrtVI=2013&crtr_kw=&crtr_dyStrtVI=5&crtr_aud1D=&crtr_mnthStrtVI=4&crtr_page=1&crtr_yrndVI=2013&crtr_dyndVI=5)>.

## 2. CURRENT CANADIAN APPROACH

### 2.1 Corporate governance framework under securities legislation

The OSC's corporate governance framework is comprised of two main components:

- guidelines regarding corporate governance practices, and
- disclosure requirements regarding corporate governance practices.

#### A. Corporate governance guidelines

National Policy 58-201 *Corporate Governance Guidelines* (the Corporate Governance Policy) contains guidelines for corporate governance practices of reporting issuers (other than investment funds). The guidelines are not intended to be prescriptive, but rather reporting issuers are encouraged to consider the guidelines in developing their own corporate governance practices.

The guidelines largely focus on certain attributes of an issuer's board of directors:

- director independence,
- the board mandate and responsibilities, and
- the composition and responsibilities of board committees, such as the nominating committee.

#### B. Corporate governance disclosure requirements

Reporting issuers are required to disclose their corporate governance practices under National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the Corporate Governance Disclosure Rule). The disclosure is generally set out in an annual proxy circular.

##### Distinction based on listing of securities

The Corporate Governance Disclosure Rule contains two sets of disclosure requirements which depend on the listing status of the reporting issuer.

A venture issuer is defined as a reporting issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a US marketplace, or a marketplace outside of Canada and the US other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

All other issuers are referred to as non-venture issuers.

##### Non-venture issuers

Non-venture issuers are required to comply with the disclosure requirements regarding their corporate governance practices set out in Form 58-101F1 *Corporate Governance Disclosure*. Generally speaking, it is a "comply or explain" model. These issuers must either comply with the guidelines set out in the Corporate Governance Policy or explain how they otherwise achieve the objective of the guideline.

##### Venture issuers

Venture issuers are required to comply with the disclosure requirements regarding their corporate governance practices set out in Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)*. The disclosure

requirements are generally less extensive than those for non-venture issuers. Venture issuers must disclose their corporate governance practices in areas addressed by the guidelines set out in the Corporate Governance Policy, but they are not required to compare their practices against the guidelines.

### **C. Guidelines and disclosure requirement relevant to diversity**

#### **Guidelines**

Currently, there is no guideline in the Corporate Governance Policy that explicitly addresses the representation of women on boards and in senior management. However, there are guidelines that may have some relevance for board diversity.

In particular, the Corporate Governance Policy states:

- The board should appoint a nominating committee composed entirely of independent directors.
- Prior to nominating or appointing individuals as directors, the board should adopt a process involving the following steps:
  - Consider what competencies and skills the board, as a whole, should possess, and
  - Assess what competencies and skills each existing director possesses.

#### **Disclosure requirement**

Currently, reporting issuers are not required to explicitly disclose the percentage of women on their boards or in senior management or their policies on gender diversity.

Reporting issuers are, however, required to describe the process by which the board identifies new candidates for board nominations under the Corporate Governance Disclosure Rule. Refer to item 6(a) of Form 58-101F1 and item 5(ii) of Form 58-101F2.

On December 2, 2010, the CSA published CSA Staff Notice 58-306 *2010 Corporate Governance Disclosure Compliance Review*, in which it provided guidance on this disclosure requirement. CSA staff indicated that, when preparing this disclosure, issuers should consider whether the board considers diversity of experience, background and views when considering a candidate for appointment or election to the board.



### 3. APPROACHES TO DIVERSITY RELATED DISCLOSURE TAKEN IN OTHER JURISDICTIONS

Other jurisdictions have adopted or are considering adopting guidelines and/or disclosure requirements regarding diversity. We refer to the approaches in other jurisdictions as they are relevant to the policy issues raised in this consultation paper.

Information included in this paper about the regulatory regimes in those jurisdictions is general in nature and is not intended to present a comprehensive review of the law in those jurisdictions.

#### 3.1 US approach

In 2009, the SEC amended Regulation S-K to require disclosure of additional factors that are considered by a nominating committee when identifying nominees for director, such as board diversity. The final rule became effective as of February 28, 2010.

Item 407(c)(2)(vi) of Regulation S-K requires registrants to describe:

- the nominating committee's process for identifying and evaluating nominees for director,
- whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director, and
- if the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, how this policy is implemented and how the nominating committee (or the board) assesses the effectiveness of its policy.

As noted in the final release 33-9089, *Proxy Disclosure Enhancements*, the SEC did not define diversity for the following reason:

We recognize that companies may define diversity in various ways, reflecting different perspectives. For instance, some companies may conceptualize diversity expansively to include differences of viewpoint, professional experience, education, skill and other individual qualities and attributes that contribute to board heterogeneity, while others may focus on diversity concepts such as race, gender and national origin. We believe that for purposes of this disclosure requirement, companies should be allowed to define diversity in ways that they consider appropriate. As a result we have not defined diversity in the amendments.<sup>6</sup>

On May 22, 2013, Commissioner Luis A. Aguilar delivered a speech, *Merely Cracking the Glass Ceiling is Not Enough: Corporate America Needs More than Just A Few Women in Leadership*, in which he commented on this disclosure requirement:

As some of you may know, in response to the demands of shareholders and others seeking greater information about diversity on corporate boards, in 2009, the SEC adopted a new rule that requires U.S. publicly-traded companies to disclose in their annual proxy statements whether, and if so how, a corporate board or nominating committee considers diversity in identifying nominees for director. If the company has a policy regarding the consideration of

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<sup>6</sup> US Securities and Exchange Commission, Release No. 33-9089, *Proxy Disclosure Enhancements* (December 16, 2009), online: <<http://www.sec.gov/rules/final/2009/33-9089.pdf>>.

diversity in identifying director nominees, the proxy statement must disclose how this policy is implemented, as well as how the company assesses the effectiveness of its policy. This requirement is not limited to companies with a written policy; and companies with *de facto* policies regarding board diversity must disclose such policies as well.

This disclosure requirement is an important first step in providing investors with the diversity disclosures that they have been requesting. However, it is really only a first step. Because the rules do not define diversity, and companies may define diversity in various ways – companies are not always providing the disclosures investors have wanted. Numerous investors have made it clear that they are particularly interested in board policies regarding gender, racial, and ethnic diversity. And, for our capital markets to work, it is that information that they want to have in making voting and investment decisions. It is important that investors receive the specificity of disclosure that they seek...

I commend the companies that are bringing greater transparency to their diversity, including their board diversity – and I look forward to 100% of the companies doing so. Given the evidence of the impact diversity on boards has on the bottom line and the boardroom changes taking place with our counter-parts across the globe, gender diversity – and diversity in general – should be a priority for U.S. companies and their boards.<sup>7</sup>

### 3.2 Australian approach

#### A. ASX Corporate Governance Council Principles and Recommendations

The ASX made amendments to the *ASX Corporate Governance Council Principles and Recommendations* for listed companies in 2010. This document sets out eight core principles. Each principle is explained in detail, with commentary about implementation in the form of recommendations. These recommendations are not mandatory. They are intended to provide a reference point for companies about their corporate governance structures and practices.

Principle 2 (Structure the board to add value) and Principle 3 (Promote ethical and responsible decision-making) focus on diversity.

##### Principle 2 – structure the board to add value

Principle 2 states that companies should have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties. There are two recommendations that are relevant to diversity.

Recommendation	Description
Recommendation 2.4 Nomination committee	The board should establish a nomination committee. The commentary to this recommendation states that the nomination committee should consider whether succession plans are in place to maintain an appropriate mix of skills, experience, expertise and diversity on the board. It also states that the board should be large enough to incorporate a variety of perspectives and skills.

<sup>7</sup> Aguilar, Luis A., *Merely Cracking the Glass Ceiling is Not Enough: Corporate America Needs More than Just A Few Women in Leadership* (May 22, 2013), online: <<http://www.sec.gov/News/Speech/Detail/Speech/1365171515760>>.

Recommendation	Description
Recommendation 2.6 Reporting	Among other recommendations, a statement as to the mix of skills and diversity for which the board of directors is looking to achieve in membership of the board should be included in the corporate governance statement in the annual report.

**Principle 3 – promote ethical and responsible decision-making**

Principle 3 states that companies should actively promote ethical and responsible decision-making. There are four recommendations that are relevant to diversity.

Recommendation	Description
Recommendation 3.2 Diversity policy	<p>Companies should establish a policy concerning diversity and disclose the policy or a summary of that policy. The policy should include requirements for the board to establish measurable objectives for achieving gender diversity for the board to assess annually both the objectives and progress in achieving them.</p> <p><u>Commentary</u> The commentary on this recommendation states that diversity includes, but is not limited to, gender, age, ethnicity and cultural background. The measurable objectives should identify ways in which the achievement of gender diversity is measured, for example, the proportion of women employed by (or consultants to) the company, in senior executive positions and on the board. Where companies establish a diversity policy, they should also introduce appropriate procedures to ensure that the policy is implemented properly, which may include additional measurable objectives in relation to other aspects of diversity as identified in the policy. There also should be an internal review mechanism to assess the effectiveness of the policy.</p> <p><u>Suggested content for diversity policy</u> This recommendation is accompanied by suggestions for the content of a diversity policy. They include:</p> <ul style="list-style-type: none"> <li>• Commitment to diversity and articulation of the corporate benefits arising from employee and board diversity and the importance of benefiting from all available talent.</li> <li>• Commitment to and identification of ways to promote a corporate culture which embraces diversity when determining the composition of employees, senior management and the board, including recruitment of employees and directors from a diverse pool of qualified candidates.</li> <li>• Identification of factors that should be taken into account in the selection processes and whether professional intermediaries should be used to identify or assess candidates.</li> <li>• Identification of programs that assist in the development of a broader pool of skilled and experienced board candidates including initiatives focused on skills development such as executive mentoring programs or more targeted practices relating to career advancement such as those that develop skills and experience that prepare employees for senior</li> </ul>

Recommendation	Description
	<p>management and board positions.</p> <ul style="list-style-type: none"> <li>• Articulation of a corporate culture which not only supports workplace diversity but also recognizes that employees at all levels of the company may have domestic responsibilities.</li> <li>• Transparency of board processes, review and appointments.</li> <li>• The extent to which the achievement of measurable objectives should be tied to key performance indicators for the board, the CEO and senior executives.</li> </ul>
Recommendation 3.3 Measurable objectives for gender diversity	Companies should disclose in each annual report the measurable objectives for achieving gender diversity set by the board in accordance with the diversity policy and progress towards achieving them.
Recommendation 3.4 Representation of women	Companies should disclose in each annual report the proportion of women employees in the whole organization, women in senior executive positions and women on the board.
Recommendation 3.5 Reporting on diversity	An explanation of any departure from these recommendations should be included in the corporate governance statement in the annual report. In addition, the diversity policy or a summary of its main provisions should be made publicly available, ideally by posting it to the company's website in a clearly marked corporate governance section.

## B. ASX listing rules

Under listing rule 4.10.3, companies must include in their annual report a statement disclosing the extent to which they have followed the recommendations. It is a “comply or explain” model of disclosure. Companies must identify the recommendations not followed and give reasons for not following them.

## 3.3 UK approach

### A. Report – Women on Boards

As part of a larger policy initiative to make companies more accountable to shareholders and the public, the 2010 UK government commissioned Lord Davies of Abersoch to determine what was preventing women becoming board members and to develop a strategy to increase the number of women on the boards of listed companies.

The report *Women on Boards* was published on February 24, 2011. The report examines the obstacles that prevent more women from reaching senior positions in business, considers the business case for having gender-diverse boards and sets out recommendations for achieving urgent change. *Women on Boards 2013* was published in April 2013 and provides an update of the progress on this policy initiative.

The initial report set out 10 recommendations to increase the number of women on boards:

- (1) Targets. All Chairs of FTSE 350 companies should set out the percentage of women they aim to have on their boards in 2013 and 2015. FTSE 100 boards should aim for a minimum of 25% female representation by 2015 and there is an expectation that many will achieve a higher figure. Chairs should announce their aspirational goals within the next six months (by September 2011). Also the report expects all Chief Executives to review the percentage of women they aim to have on their Executive Committees in 2013 and 2015.
- (2) Measurement. Quoted companies should be required to disclose each year the proportion of women on the board, women in senior executive positions and female employees in the whole organization.
- (3) Diversity policy. The Financial Reporting Council should amend the UK Corporate Governance Code to require listed companies to establish a policy concerning boardroom diversity, including measurable objectives for implementing the policy, and disclose annually a summary of the policy and the progress made in achieving the objectives.
- (4) Corporate governance statement. Companies should report on the matters in recommendations 1, 2 and 3 in their 2012 Corporate Governance Statement whether or not the underlying regulatory changes are in place. In addition, Chairs will be encouraged to sign a charter supporting the recommendations.
- (5) Nomination committee. In line with the UK Corporate Governance Code provision B.2.4 "A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments", Chairs should disclose meaningful information about the company's appointment process and how it addresses diversity in the company's Annual Report including a description of the search and nominations process.
- (6) Role of investors. Investors play a critical role in engaging with company boards. Therefore investors should pay close attention to recommendations 1 to 5 when considering company reporting and appointments to the board.
- (7) Recruitment. Companies are encouraged periodically to advertise non-executive board positions to encourage greater diversity in applications.
- (8) Executive search firms. Executive search firms should draw up a Voluntary Code of Conduct addressing gender diversity and best practice which covers the relevant search criteria and processes relating to FTSE 350 board level appointments.
- (9) Pools of board candidates. In order to achieve these recommendations, recognition and development of two different populations of women who are well-qualified to be appointed to UK boards needs to be considered:
  - Executives from within the corporate sector, for whom there are many different training and mentoring opportunities, and
  - Women from outside the corporate mainstream, including entrepreneurs, academics, civil servants and senior women with professional service backgrounds, for whom there are many fewer opportunities to take up corporate board positions.
- (10) Steering board. The steering board will meet every six months to consider progress against these measures and will report annually with an assessment of whether sufficient progress is being made.

## B. UK Corporate Governance Code

In response to the Lord Davies' report, the Financial Reporting Council amended *The UK Corporate Governance Code* in September 2012. The code is not a rigid set of rules, but rather a guide to a number of key components of effective board practice. It consists of principles and provisions. It applies to all companies with a Premium listing of equity shares regardless of whether they are incorporated in the UK or elsewhere.

Principles B.2 (Appointments to the Board) and B.6 (Evaluation) are relevant to diversity.

### Principle B. 2 – Appointments to the Board

The main principle is that there should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. The two key supporting principles are:

- The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender.
- The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board.

In the provisions relating to these principles, the code indicates that a separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. This section should include a description of the board's policy on diversity, including gender, any measurable objectives that it has set for implementing the policy and progress on achieving the objectives. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chair or a non-executive director. Where an external search consultancy has been used, it should be identified in the annual report and a statement made as to whether it has any other connection with the company.

### Principle B.6 – Evaluation

The main principle is that the board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. One of the supporting principles is that the evaluation of the board should consider:

- the balance of skills, experience, independence and knowledge of the company on the board,
- its diversity, including gender,
- how the board works together as a unit, and
- other factors relevant to its effectiveness.

## C. Listing rules

Listing Rules 9.8.6 R (for UK incorporated companies) and 9.8.7 R (for overseas incorporated companies) require that in the case of a company that has a Premium listing of equity shares, the following items be included in its annual report and accounts:

- a statement of how the listed company has applied the main principles set out in the code, in a manner that would enable shareholders to evaluate how the principles have been applied, and
- a statement as to whether the listed company has:
  - complied throughout the accounting period with all relevant provisions set out in the code, or
  - not complied throughout the accounting period with all relevant provisions set out in code and, if so, setting out (1) those provisions, if any, it has not complied with, (2) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions and (3) the company's reasons for non-compliance.

### 3.4 Approaches in Europe generally

#### A. European Commission proposal for diversity disclosure

On April 16, 2013, the European Commission issued a proposal for a *Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC (the Fourth Council Directive) and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups*. Article 46A of the Fourth Council Directive sets rules for the content of the corporate governance statement to be prepared by listed companies.

One of the key objectives of the proposal is to increase diversity on the boards of companies through enhanced transparency in order to facilitate effective oversight of management and robust governance of the company.

The proposal would introduce a new paragraph 1(g) to Article 46A which will require large listed companies to provide information about their diversity policy, including:

- a description of the company's diversity policy for its administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity and educational and professional background,
- the objectives of the policy,
- the implementation of the policy, and
- the results obtained.

The information will be included in the corporate governance statement. Companies not having a diversity policy will be obliged to explain why this is the case. This approach is in line with the general EU corporate governance framework.

The proposed disclosure requirement has been designed with a non-prescriptive mind-set and leaves significant flexibility for companies to disclose relevant information in the manner that they consider to be most useful. The requirement would apply to large listed companies as the costs for requiring small and medium-sized enterprises to apply the new rules could outweigh the benefits.

Complementary to these provisions, on November 14, 2012, the European Commission issued a proposal for a *Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*. The proposal sets out a 40% objective by 2020 of women in non-executive board-member positions in publicly listed companies, with the exception of small and medium-sized enterprises.

#### B. Other European countries

In August 2012, Credit Suisse Research Institute published a paper, *Gender diversity and corporate performance*.<sup>8</sup> It summarized the policies on gender diversity in various countries. The following is an excerpt from that summary:

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<sup>8</sup> Credit Suisse Research Institute, *Gender diversity and corporate performance* (August 2012), online: <[https://www.credit-suisse.com/newsletter/doc/gender\\_diversity.pdf](https://www.credit-suisse.com/newsletter/doc/gender_diversity.pdf)>.

Country	Policy
<b>Austria</b>	In mid March 2011, the Austrian government agreed to the implementation of female quotas for supervisory boards of state-owned companies. A quota of 25% is to be brought in by 2013 with an increase to 35% by 2018. No sanctions for non-compliance have been set. The hope is that private companies will follow the example set by the state-owned enterprises.
<b>Belgium</b>	Belgium's parliament adopted a plan in June 2011 to force public enterprises, and companies that are listed on the stock exchange, to give women 30% of the seats on management boards. Under the new rules, each time a board member leaves he or she is to be replaced by a woman until the quota is fulfilled. Companies will have six years to reach the target, with small and medium-sized enterprises (SMEs) given eight years. Members of boards that do not reach the quota will lose the benefits that come with their jobs.
<b>Denmark</b>	From 2008 the "comply or explain" code has required that diversity must be taken into account in all appointments.
<b>Finland</b>	As of 1 January 2010, all listed companies have been required to have at least one man and one woman on the board. There are no penalties for non-compliance beyond the need to explain why the target has not been met.
<b>France</b>	Parliament passed a bill in mid January 2011 applying a 40% quota for female directors of listed companies by 2017. The quota also includes a target of 20% by 2014. The sanctions for noncompliance are that nominations would be void and fees suspended for all board members.
<b>Germany</b>	The German Corporate Governance Code was amended in May 2010 to include a statement recommending boards of directors consider diversity when recruiting to fill board positions. The government has discussed setting an aim of 30% representation by 2018.
<b>Iceland</b>	Passed a quota law in 2010 (40% from each sex by September 2013) applicable to publicly owned and publicly limited companies with more than 50 employees.
<b>Italy</b>	A third of a company's board must be women by 2015 or the business will face fines of up to EUR 1 m, or USD 1.3 m, and the nullification of board election.
<b>Netherlands</b>	Government guidelines suggest that a minimum 30% of the board members of all companies with more than 250 employees should be women. If this goal is not reached by January 2016, companies must prepare a plan on how they intend to achieve it.
<b>Norway</b>	In February 2002, the government gave a deadline of July 2005 for private listed companies to raise the proportion of women on their boards to 40%. By July 2005, the proportion was only at 24%, and so in January 2006 legislation was introduced giving companies a final deadline of January 2008, after which they would face fines or even closure. Full compliance was achieved by 2009.
<b>Poland</b>	The corporate governance code recommends balanced gender representation on boards.



<b>Country</b>	<b>Policy</b>
<b>Spain</b>	Passed a gender equality law in 2007 obliging public companies and IBEX 35-quoted firms with more than 250 employees to attain a minimum 40% share of each sex on their boards by 2015. Companies reaching this quota will be given priority status in the allocation of government contracts but there are no formal sanctions.
<b>Sweden</b>	The “comply or explain” code requires companies to strive for gender parity on boards. Quotas have been discussed but not set.

## 4. MODEL OF DISCLOSURE REQUIREMENTS REGARDING WOMEN ON BOARDS AND IN SENIOR MANAGEMENT

We are putting forward for consultation purposes a model of disclosure requirements regarding women on boards and in senior management. The model has three key elements:

- the application of the disclosure requirements,
- the disclosure requirements, and
- a related definition.

### 4.1 Application of disclosure requirements

We have been asked to consider requiring non-venture issuers to provide disclosure regarding the representation of women on boards and in senior management as part of their annual summary of their corporate governance practices. At this time, we are not considering similar requirements for venture issuers.

### 4.2 Model of disclosure requirements

We are considering amending the Corporate Governance Disclosure Rule to require that non-venture issuers (other than investment funds)<sup>9</sup> provide disclosure on an annual basis in the following four areas:

- policies regarding the representation of women on the board and in senior management,
- consideration of the representation of women in the director selection process,
- consideration of the representation of women in the board evaluation process, and
- measurement regarding the representation of women in the organization and specifically on the board and in senior management.

These types of disclosures are intended to provide investors and other stakeholders with information on the issuer's approach to advancing the representation of women on boards and in senior management, which in turn may impact investment and voting decisions.

#### **Policy regarding the representation of women on the board and in senior management**

An issuer should disclose whether it has a policy for advancing the participation of women in senior management roles and/or for the identification and nomination of female directors.

If a policy has been adopted, the issuer should:

- provide a summary of its key provisions or disclose the policy,
- set out how the policy is intended to advance the participation of women on the board and in senior management of the issuer,
- explain how the policy has been implemented,
- describe any measurable objectives that have been established under the policy,
- disclose annual and cumulative progress by the issuer on achieving the objectives of the policy and where the objectives are measurable, disclose progress in quantitative terms, and
- describe how the board or its nominating committee measures the effectiveness of the policy.

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<sup>9</sup> The Corporate Governance Disclosure Rule does not apply to investment funds. See section 1.3(a) of the rule.

If the issuer does not have such a policy, it should explain why not and identify any risks or opportunity costs associated with the decision not to have such a policy.

### **Consideration of the representation of women in the director selection process**

#### Current requirement regarding director selection process

An issuer is already required to describe the process by which the board identifies new candidates for board nominations.

#### Model for an additional related requirement

An issuer should explicitly indicate whether, and if so how, the board or its nomination 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 take the representation of women into account in this process, it should explain why not and identify any risks or opportunity costs associated with the decision not to do so.

### **Consideration of the representation of women in board evaluation**

#### Current requirement regarding board evaluation

An issuer is already required to disclose whether or not the board, its committees and individual directors are regularly assessed with respect to their effectiveness and contribution. If assessments are regularly conducted, the issuer must describe the process used for the assessments. If assessments are not regularly conducted, the issuer must describe how the board satisfies itself that the board, its committees and its individual directors are performing effectively.

#### Model for an additional related requirement

If an issuer has a policy regarding the representation of women on the board and/or in senior management, it should disclose whether and how adherence to the policy or achieving any objectives set out in the policy are assessed in connection with the annual evaluation of the effectiveness of the board and the nominating committee.

### **Measurement**

Issuers should disclose the proportion (in percentage terms) of:

- female employees in the whole organization,
- women in senior executive positions, and
- women on the board.

Issuers may also provide any other information or explanation that is relevant in order to properly understand the quantitative information disclosed.

## **4.3 Related definition**

### **Definition of senior executive positions**

As noted above, the model for disclosure requirements contemplates reporting on the number of women in “senior executive positions”, among others. “Senior executive positions” is not a defined term and can be interpreted in a number of different ways.

The term “executive officer” is currently used in the Corporate Governance Disclosure Rule and means:

- a chair, vice-chair or president,
- a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- an individual performing a policy-making function in respect of the issuer.

Rather than introducing another concept, we are proposing that, for the purposes of measurement, issuers should disclose the proportion of women that are executive officers of an issuer.

**Specific consultation questions**

- What are effective policies for increasing the number of women on boards and in senior management?
- What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?
- Are the proposed scope and content of the model disclosure requirements appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.
- 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?
- 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?
  - 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)?

## 5. HOW TO PROVIDE FEEDBACK

We are publishing this consultation paper for public comment. In addition to the written consultation process, we plan to engage with stakeholders on this matter by convening a roundtable (or similar forum) in fall 2013. The details of any public consultation sessions will follow.

### 5.1 Written comments

You must submit your comments in writing by **September 27, 2013**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please address and send your comments to the address below.

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Please note that all comments received during the comment period will be made publicly available. We will post all comments to the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) to improve the transparency of the policy-making process.

### 5.2 Questions

Please refer your questions to:

**Monica Kowal, General Counsel**  
Tel: 416-593-3653  
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