HANSELL

September 2, 2014

**VIA EMAIL**

Me Anne-Marie Beaudoin
Corporate Secretary
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Attention: The Corporate Secretary

**Re: Multilateral CSA Notice of Publication and Request for Comment Draft Regulation to amend Regulation 58-101 *Disclosure of Corporate Governance Practices* Regarding the Representation of Women on Boards and in Senior Management**

We appreciate the opportunity to comment on the proposed draft regulation by the Participating Jurisdictions to amend Regulation 58-101 *Disclosure of Corporate Governance Practices* regarding the disclosure of representation of women on boards and in senior management (the "Draft Regulation").

Hansell LLP provides expert independent legal and governance advice. A significant portion of our practice is devoted to advising boards of directors in the context of transactions and special situations and on their governance practices generally. Our lawyers serve as directors and we understand the range of considerations that come into play with respect to the appropriate composition of boards.

We previously provided comments to the proposed amendments previously published for comment by the Ontario Securities Commission (OSC) in a letter dated April 16, 2014 (the "OSC Proposal"). We are pleased that the Draft Regulation is consistent in all material respects with the OSC Proposal and encourage staff of the Participating Jurisdictions and the OSC to continue coordinating their efforts in developing proposals relating to the matters described herein. As such, we have substantially repeated our earlier comments in respect of the Draft Regulation.

We also provided comments on OSC Staff Consultation Paper 58-401 (the "Consultation Paper") in a letter dated October 4, 2013. We attach a copy of that comment letter. In addition, we consolidated the comments received by the OSC in connection with the Consultation Paper in order to allow us to have a better understanding of the views of interested parties on the issue of board and management diversity. We were pleased to share this consolidation on our website and attach a copy to this letter.

In our letters on the OSC Proposal and the Consultation Paper, we expressed support for focusing on gender diversity in particular (as distinct from other diversity issues). In our view, the Draft Regulation will produce a catalogue of quantitative and qualitative information about the status and progress of women in senior management and on corporate boards, which will be useful for issuers and other stakeholders. Disclosure will also cause both boards and senior managers to consider whether they are satisfied with their current practices or need to make some change in approach that would be in the best interests of the corporation.

We would like to use this opportunity to focus more particularly on the issue of director term limits. The Draft Regulation suggests term limits as means of facilitating board renewal and creating opportunities for women to join boards. Whether higher rates of turnover on boards would result in more women being asked to serve on boards is the crux of the issue that the Draft Regulation seeks to address. Are board opportunities currently as open to women as they are to men? If there were more board opportunities, would this promote greater participation by women on corporate boards?

Few advocates of greater gender diversity on boards would recommend that action be taken to promote gender diversity at the expense of board effectiveness. Before recommending the adoption of term limits in order to promote gender diversity, we need to consider the effect that term limits established or recommended by securities regulators would have on Canadian public company boards.

## 1. What do we mean by "term limits"

Term limits provide a scheduled basis for directors to retire from a board and new people to join it (unless, of course, a board is using the end of a director's term as an opportunity to reduce the size of the board). They are helpful in preventing the situation in which directors remain on the board over the course of many years or even decades because there is no process or precedent for them to retire (other than by choice). Term limits also help directors to avoid feeling compelled to stay on a board. Expectations are set, both on the part of the board and on the part of the individual director, and each can plan accordingly. Board succession planning is more predictable. Term limits respond to concerns that boards consisting predominantly of long-serving directors may become complacent, unquestioning of management and resistant to change. More particularly, term limits respond to concerns that long service on a board compromises the independence of a director from management. This is discussed in more detail below.

On the other hand, with expectations set about when a director will retire from the board, it may be even more difficult for a board chair or lead director to have a difficult discussion with an underperforming director. It may simply be easier to wait the situation out. Term limits may also be unnecessarily rigid. No one is indispensable, but the contributions of certain individuals are very valuable at particular times, and a set time-limit for service may unduly prevent a particular director from making a significant contribution to the deliberations of the board, purely because he or she is subject to an arbitrary deadline.

A number of studies have been done in the US about the impact of director tenure on board effectiveness. The conclusions drawn from these studies vary. One study of S&P 1500 companies has linked long-serving directors, and directors who serve on many boards, with failures in corporate governance – although another author has concluded from a similar sample that companies with a higher proportion of directors with extended tenures had lower CEO pay, higher CEO turnover-sensitivity following poor performance and a smaller likelihood of intentionally misrepresented earnings.[1] A large statistical study of audit committees suggests that "independent audit committee members with long board tenure have greater expertise and experience to effectively oversee financial reporting."[2] Other research has suggested that firm value tends to rise as the average tenure of directors reaches nine years, but declines after that.[3]

## 2. The Independence Issue

The effect of long board service on the independence of a director has received a great deal of attention internationally in recent years. The concern that is often expressed is that while long service on a corporate board allows a director to become knowledgeable about the particular company and its business, it may also engender what one author has called "increased familiarity between the board and management".[4] Excessive familiarity could have the effect of undermining the director's ability or willingness to review and challenge management decisions with sufficient objectivity.

Under the UK *Corporate Governance Code*, a director who has served more than nine years on a particular board is deemed to be non-independent unless the company can provide an explanation to the contrary.[5] Loss of independent status means that a director is unable to perform board functions that require independence, such as chairing the board's audit committee. In jurisdictions and on boards where independent directors are relatively few in number or in a minority, this may effectively preclude a long-serving director from continuing on the board. The European Commission (the "EC") recommends that directors should not serve more than twelve years.[6] France has implemented the EC recommendation in its corporate governance code of June 2013, which provides that a director ceases to be independent after twelve years.[7]

On the other hand, the third edition of the ASX *Corporate Governance Principles and Recommendations*, issued in March 2014, identifies whether a director "has been a director of the entity for such a period that his or her independence may have been compromised" as a relevant factor, but ultimately concludes:

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1 G Berberich & F Niu, "Director Busyness, Director Tenure and the Likelihood of Encountering Corporate Governance Problems" (January 2011), CCAA Annual Conference, 2011. Compare S Sahgal, "Should Outside Directors Have Term Limits? The Role of Experience in Corporate Governance" (September 2013).

2 G Liu & J Sun, "Director Tenure and Independent Audit Committee Effectiveness", (2010) 51 Intl Res J Fin & Econ 176 at 187.

3 Sterling Huang, "Zombie Boards: Board Tenure and Firm Performance" (July 2013).

4 *Ibid* at 2.

5 See *UK Corporate Governance Code* (September 2012) at B.1.1.

6 See http://ec.europa.eu/internal_market/company/independence/index_en.htm.

7 AFAP-MEDEF, *Code de gouvernement d'entreprise de sociétiés cotées* (June 2013) at para 9.4.

> The mere fact that a director has served on a board for a substantial period does not mean that he or she has become too close to management to be considered independent. However, the board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years.[8]

## 3. Are Term Limits Necessary in Canada?

Term limits are relatively uncommon in Canada, even among our largest issuers.[9] This may be because there has not yet been a strong sense in the corporate community that they are necessary. As noted below, few institutional investors support the imposition of term limits.

A recent study by the Clarkson Centre showed that the rate of turnover on corporate boards of issuers on the S&P/TSX Composite Index was only 7% in 2012. Does this suggest that directors are staying on boards for too long? The same study showed that 84% of directors of companies in the study had served 10 years or less (although one-third of those issuers had at least one board member who has served for 20 years or more).[10]

There has been little call among Canada's largest investors for term limits. The Canadian Coalition for Good Governance is not in favour of term limits, preferring instead that boards undertake an assessment process that will remove underperforming members.[11] Ontario Teachers' Pension Plan takes a similar view; while the Canada Pension Plan Investment Board will review proposals on term limits case by case, leaving the decision to adopt them to individual boards to determine.[12] The Caisse de dépôt et placement du Québec "believes that the decision to impose age limits or set a time limit on appointment terms belongs to the Board and not to shareholders", leaving it up to individual boards to determine the appropriate "balance between maintaining stability on the Board and questioning how things are done."[13] On the other hand, the British Columbia Investment Management Corporation's most recent proxy voting guidelines support term limits, noting that a "fixed director term will contribute to board vitality".[14] Interestingly, Institutional Shareholder Services Inc. ("ISS") found in a 2013 survey

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8 ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 3d ed (March 2014), at 16, 17.

9 As noted in the Proposed Amendments, an OSC staff survey of 1,500 TSX-listed issuers in November 2013 indicated that 82% of respondents do not currently have a policy regarding term limits for their directors. See Proposed OSC Amendments to Form 58-101F1 *Corporate Governance Disclosure* (January 16, 1014), at 3. According to Korn/Ferry, only 8% of the boards of the largest public companies imposed term limits for directors in 2012: Korn/Ferry International, *Corporate Board Governance and Director Compensation in Canada* (January 2013) at 29. Among those that do are the Big 5 banks and BCE.

10 Antonio Spizzirri, *2012 S&P/TSX Composite Index Director Tenure* (Clarkson Centre for Board Effectiveness, December 2013), at 2, 3.

11 Canadian Coalition for Good Governance, *Building High Performance Boards* (September 2013), at 12.

12 Ontario Teachers' Pension Plan, annual letter on governance issues (February 4, 2014), at 2; Canada Pension Plan Investment Board, *Proxy Voting Principles and Guidelines* (January 17, 2014), at 6-7.

13 *Policy on the Principles Governing the Exercise of Voting Rights of Public Companies* (January 2005, revd January 2007, December 2010, February 2012), at 6.

14 British Columbia Investment Management Corporation, *Corporate Governance Principles and Proxy Voting Guidelines* (August 2010), at 10.

of institutional investors and corporate directors in both the US and Canada that institutional investors "generally appeared hesitant" to impose strict term limits, while the directors in the group were more receptive to the idea of measures to promote board diversity and renewal.[15]

ISS and Glass Lewis & Co. ("Glass Lewis") take different views on term limits. In January 2014, ISS released its *Governance QuickScore 2.0* (based on a statistical assessment of the governance risk of companies arising from board structure, compensation, shareholder rights and audit, broken down by region). It stated that "…a tenure of more than nine years is considered to potentially compromise a director's independence and as such QuickScore will consider tenure > 9 years excessive."[16] Glass Lewis is not in favour of term limits (but notes that if a board imposes limits, they should not generally be waived).[17]

## 4. Conclusion

In the absence of a demonstrated need or demand for term limits from the investment community, we do not believe that the Participating Jurisdictions and the OSC should recommend them, whether as a means for promoting gender diversity or as a more general matter of corporate governance. It is important for boards and shareholders to be aware of board tenure as a factor in appropriate board composition – but it is only one factor. We note that retirement policies for directors became very popular a number of years ago – also as a means of refreshing the board on a scheduled basis. Many boards have lost valuable directors as a result. Boards have also been reluctant to recruit talented candidates who are within two or three years of the mandatory retirement age. In our view, this unnecessarily restricts an issuer's access to the best possible talent for its board.

The appropriate composition of a board is driven by a number of factors, including the risks and opportunities facing the corporation at any point in time. In some situations, the corporation may be best served with a reconstituted board that includes new directors who are able to bring fresh eyes to the issues facing the corporation. In other situations, the stability of a group of directors who have a history of working well together may be better. No one is indispensable, but in particular situations, there are individual directors whose skills, experience and personal style make an enormous difference to the quality of a board's decision. It is not helpful for regulators to set out recommendations on issues of term or age limits that would suggest that a decision about board composition which the board believes is in the best interests of the corporation is in some way not "good governance".

What will prompt a change in the composition of a board in the absence of term limits and age limits? Board chairs and directors in general have become more thoughtful about the issues relating to board composition over the last 20 years. A robust evaluation process helps to collect and assess the way individual directors are feeling about the board. Effective governance committee and board chairs (or lead directors) are more willing to discuss with their board

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15 See http://issgovernance.com/files/Directortenure-USandCanada.pdf.

16 *ISS Governance QuickScore 2.0: Overview and Updates* (January 2014).

17 Glass Lewis & Co., *Proxy Paper Guidelines: 2014 Proxy Season. An Overview of the Glass Lewis Approach to Proxy Advice. Canada* (2014), at 15-16.

colleagues the possibility that the corporation would be better served if they stepped aside in favour of new directors with different skills.

Shareholders monitor the composition of the boards of the issuers in which they invest. If the corporation is facing challenges or is underperforming, scrutiny of the board is likely to increase. Shareholders who believe that a change in the board is advisable are not reluctant to express that view – whether in direct conversations with the board or management, by withholding their votes from a particular director or by mounting (or supporting) a dissident action.

It is useful for the Participating Jurisdictions to raise issues such as term limits for discussion by interested stakeholders. We encourage the Participating Jurisdictions and the OSC to continue to review the issue if other stakeholders see merit in the idea, but believe that there must be a clear and demonstrable need for term limits before providing any guidance to issuers on the topic (or using it as a public policy tool). At this point in Canada, we believe that the issue is best left to issuers and their shareholders.

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Please contact any of us to discuss these comments in greater detail.

Yours very truly,

[redacted]

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October 4, 2013

**VIA EMAIL**

Ontario Securities Commission
20 Queen Street West
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Toronto ON M5H 3S8

Attention: The Secretary

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

We appreciate the opportunity to respond to OSC Staff Consultation Paper 58-401 (the "Paper"). The Paper deals with the representation of women on boards of directors and in the ranks of senior management. No one affected by the proposals in the Paper is happy to be in the position of having to deal with the issues discussed in the Paper through the regulatory process – least of all the women who are seeking to progress at the senior management and board level. As the Paper notes, however, it is apparent that women are not progressing at rates that will result in any meaningful change in the number of women in senior positions. Some positive action needs to be taken and we commend the Government of Ontario and the Ontario Securities Commission for proposing concrete steps.

**Why it's not just a matter of time before women progress**

The point is often made that it is simply a matter of time before women who are in university in equal numbers with men will find they are represented in equal numbers in C suites and boardrooms. Women who were in university in the 1970s recall that this point has been made throughout their careers. Still, women who have been "in the pipeline" since that time have not ultimately found opportunities in top positions, at least not in the same proportion as men from their university classes. It is possible that the proportion of men and women in senior management and on boards will find the right balance over time. In the meantime, without some positive action, we will continue to sacrifice the careers and aspirations of women who are ready now and will be ready in the very short term.

**Why there should be exclusive focus on gender diversity**

Gender diversity is certainly not the only diversity issue that requires attention. However, the power of change typically comes from addressing one issue at a time. The focus of the Paper is the advancement of the representation of women on boards and in senior management. Diluting the focus on that issue by including other diversity issues in the same initiative will not move us forward on the gender issue at any meaningful pace.

**Addressing the issue of gender balance versus qualified candidates**

A common response to the need for action to advance the representation of women in senior management and on boards is that we need qualified people in these positions. These two priorities are not mutually exclusive. The assumption that a woman who does not have exactly the same experience as a man is by definition not qualified to move forward, is one of the root causes of the issues addressed in the Paper. It will of course often be the case that the best candidate for a senior management or board position is a man. It may also often be the case that there were no women who were appropriate even for the short list. Where a particular industry has consistent challenges in identifying qualified women, there may be issues that the industry, governments and educators should be considering. Where a particular issuer is unable to advance women into senior positions, even though other issuers in the same industry are doing so, there may be issues that the board and senior management of that issuer should be addressing to allow them to access the best possible candidates.

**Model of disclosure requirements**

In our view, the model of disclosure requirements proposed in the paper will be helpful. It will accomplish at least two things. It will produce a catalogue of quantitative and qualitative information about the status and progress of women in senior management and board positions in public companies in Canada. This will provide comparative information for issuers and for other stakeholders. It will also cause the board and senior management to consider whether they are satisfied with their current practices or whether some change in approach would be in the best interests of the corporation.

Yours very truly,

[redacted]

Carol Hansell

HANSELL LLP

Ontario Securities Commission

Staff Consultation Paper 58-401

*Disclosure Requirements Regarding Women on Boards and in Senior Management*

Summary of comments submitted to October 4, 2014

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***Disclosure Requirements Regarding Women on Boards and in Senior Management***

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## CONSULTATION PAPER – ORIGIN AND PURPOSE

On July 30, 2013 the Ontario Securities Commission (the "**OSC**") published for comment OSC Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management* (the "**Consultation Paper**").[1]

This consultation was undertaken at the request of the Ontario Minister of Finance and the Minister Responsible for Women's Issues. This request followed a statement by the Ontario government in its May 2, 2013 budget that it "strongly supports broader gender diversity on the boards and in senior management of major businesses, not-for-profit firms and other large organizations".

The government stated that it would consider, in conjunction with others (including the OSC), "…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".

The Consultation Paper set out certain disclosure requirements which the OSC is considering for TSX-listed (and other non-venture) issuers.[2] These requirements would require issuers to disclose annually:

- the policies the issuer has in place regarding the representation of women on the board and in senior management
- the consideration given to the representation of women through the issuer's director selection process
- the consideration given to the representation of women through the issuer's board evaluation process and
- data about the number of women in the organization and specifically on the board and in senior management.

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1 OSC. "OSC Staff Consultation Paper 58-401 Disclosure Requirements Regarding Women on Boards and in Senior Management." Ontario Securities Commission. July 30, 2013. http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20130730_58-401_disclosure-requirements-women.htm (accessed September 23, 2013).

2 These disclosure requirements would be implemented through amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

The OSC was not proposing to impose requirements on issuers with respect to gender diversity at the board level or in senior management. The Consultation Paper proposed only that issuers provide certain disclosure about their policies and practices relating to the advancement of women. The Consultation Paper noted that "[T]hese 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." This is consistent with the approach used in Canadian securities regulation on a wide range of corporate governance matters.

The OSC received 94 comment letters in response to the Consultation Paper. This memorandum provides a summary of the comments provided in those letters.

## OVERVIEW OF QUESTIONS AND COMMENTS

The Consultation Paper asks for feedback on five questions. Those questions and an overview of the responses are set out below.

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

Many commentators felt that the OSC's proposed "comply or explain" approach is an appropriate model, noting that greater diversity on boards and in senior management leads to better corporate governance. They emphasized that the "comply or explain" approach is flexible and would be an appropriate measure to raise awareness and transparency on the issue of diversity and cause the board and senior management to monitor and assess their practices on an on-going basis. In our view, this is likely to prove an appropriate model because it recognizes the benefits of increased diversity on corporate boards and in management, but without imposing prescriptive requirements.

Other commenters said policies for increasing the number of women on boards and in senior management are neither necessary nor appropriate. They emphasized the importance of appointing people based on merit alone and expressed concern that forcing the issue of increasing the number of women on boards would lead to token candidates

Still other commentators suggested that the proposals set out in the in the Consultation Paper did not go far enough or that the OSC should consider other diversity issues. Some felt that further action is necessary now, while others proposed additional steps if there has been no real change in the pace of advancement of women in the corporate ranks in the next few years. Other measures suggested included:

- policies on board renewal and recruitment (including compulsory term limits to create more opportunities for women)
- compulsory term limits for all board members
- firm or company specific quotas and targets
- mentorship and sponsorship programs
- development of a sustainable pipeline of female candidates
- annual assessments to evaluate the performance of boards and senior management in implementing gender diversity policies and practices.

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

Many of the commenters believe that the disclosure model proposed by the OSC is appropriate. A few felt that the disclosure requirements proposed by the OSC were unnecessary or otherwise excessive.

**3. Is the proposed scope of model disclosure requirements described appropriate? Are there additional or different disclosure requirements that should be considered?**

A large number of commenters believed that the OSC disclosure requirements should be expanded or enhanced by, among other things

- requiring issuers to adopt a diversity policy
- mandating diversity goals or targets, and in some cases requiring public explanations if those goals or targets have not been met
- requiring disclosure of gender diversity throughout the issuer's operations, not just at the level of senior management and the board
- prescribing prominent disclosure of diversity results, such as in press releases and on the issuer's website.

Some commenters suggested that there should be additional disclosure about the use of consultants in enhancing gender diversity. Others recommended disclosure of an issuer's renewal strategies and how they would impact gender diversity.

Some commenters addressed the issuer of whether disclosure requirements should be expanded to cover forms of diversity other than gender diversity, such as ethnic and religious diversity. Some argued that all forms of diversity should be actively encouraged by the OSC, while others suggested that focusing initially on gender diversity while increase the likelihood that positive change can be effected.

**4. What type of statistics and data 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?**

Commenters expressed support for:

- disclosure of the overall number of women employed, as well as the proportion of women occupying senior executive positions or sitting on the board

- industry comparison (although at least one commenter indicated that in order to provide meaningful comparisons, all issuers would likely need to utilize the same comparator sources, something that would need to be mandated in the disclosure rules).

Commenters differed over whether disclosure of statistical data should be required of venture issuers as well as non-venture issuers. Some commenters suggested that no distinction should be made, and that venture issuers should be "part of the solution". Others suggested that this would merely add to the existing regulatory burden already faced by venture issuers.

A number of commenters also noted that statistical data should be provided for an issuer on a consolidated basis, including subsidiaries of the reporting issuer. Others suggested, however, that subsidiaries should not be included, citing potential compliance issues for reporting issuers with foreign subsidiaries.

**5. What practices should the OSC recommend for increased representation of women on boards and in senior management? For example, should the OSC recommend that non-venture issuers have a gender diversity policy? If so, should the OSC 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?**

While some commenters thought that the OSC need not recommend any practice to increase representation of women on boards and in senior management, a larger number of commenters encouraged the OSC to provide guidance in the development of corporate gender diversity policies. Other commenters suggested that the OSC recommend:

- changes to the directors' nomination process, including composition changes for the nomination committee, and the encouragement of search firms to look outside traditional channels to source female candidates
- the adoption of mentoring programs to assist in the promotion of women and
- improved training within issuers, including gender diversity workshops

Some commenters also suggested that the OSC and government could assist gender diversity by making changes to other governmental programs, including the adoption of targets for Crown corporations.

## SUMMARY OF COMMENTS

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

### 1.1 Commenters who believe a policy should not be created

#### 1.1.1 General

- A policy does not need to be created in order to increase the number of women on boards and in senior management positions (Jay Hunt, August 3, 2013).

- Complying with a policy based on the number of women on boards and in senior management makes it discriminatory to other minority groups and impedes the ability of directors to comply with their fiduciary responsibilities (R.E. Lamoureaux, August 6, 2013).

- ATCO and CU believe it would be inappropriate for securities regulators to adopt disclosure requirements along the lines contemplated in the OSC's Consultation Paper. They believe such requirements would be overly prescriptive and could potentially limit an issuer's ability to act in its best interests and those of its shareholders by pressuring an issuer to potentially identify director and senior management candidates based on factors other than their own qualifications and suitability for a particular position (Bennett Jones LLP for ATCO and CU, September 30, 2013).

- Even though the "comply or explain" disclosure regime proposed by the OSC does not introduce mandated quotas or other binding requirements, the peer pressure exerted on reporting issuers would coerce many into adopting board and senior management gender diversity policies and guidelines, in order to be in a position to provide socially acceptable disclosure (Francis R. Legault, October 4, 2014).

- The OSC proposal will entail additional costs to public reporting issuers for outside consultants, legal advisors and internal resources to design, implement, and monitor gender diversity policies and provide disclosure in information circulars in this respect initially and annually thereafter (Francis R. Legault, October 4, 2013.)

- The OSC proposal is not responsive to pre-existing investor concerns. The ISS 2013 Canadian Proxy Voting Guidelines for TSX-Listed Companies do not list gender diversity with respect to board structure and independence. Board accountability, responsiveness to shareholder concerns, independence and capabilities are fundamental criteria against which boards are assessed by Institutional Shareholder Services Inc. (ISS) when determining voting recommendations on director nominees in uncontested elections. It is generally understood that ISS's proxy voting guidelines are reflective of the concerns of its constituency (Francis R. Legault, October 4, 2014).

- The OSC proposal unfairly targets public reporting issuers. Public reporting issuers are currently facing a plethora of disclosure requirements which will result in lengthy and complex disclosure in information circulars; the OSC proposal will add to this burden, with additional compliance costs for public reporting issuers subject to the OSC's jurisdiction (Francis R. Legault, October 4, 2013).

- The OSC should not be moving ahead with its proposed policy, as a response to the Ontario Government's recently stated budget speech objectives, without consultation or participation of the other Canadian securities administrators. This is not consistent with a unified consensus-based national regime of securities regulation (Francis R. Legault, October 4, 2013).

- The OSC should not require issuers to adopt a gender diversity policy for management, and more importantly should not set out recommended content (Monique Mercier, Telus Corporation, October 4, 2013).

- A board should reflect the general population or the client base of its entity (B. White, August 5, 2013).

- Introduction of a "comply or explain" or quota system will not achieve real equality for women in the workplace. The desire to increase the number of women on boards and in senior management positions ignores the underlying reality that women are less likely to be employed in the workforce than men, and even when they do work, on average, they work far fewer hours than men. As a result, there is a smaller pool of qualified female candidates for board and senior management positions (Alar Soever, September 20, 2013).

### 1.1.2 Policy issues not within the mandate of the OSC

- It is not appropriate for the Ontario Government to use the OSC's rule-making capabilities to legislate gender diversity into the governance model and disclosure requirements for public reporting issuers subject to the jurisdiction of the OSC (Francis R. Legault, October 4, 2013).

- Using securities regulation to advance a cause such as gender diversity, notwithstanding its universal appeal, but which falls clearly outside the mandate of the OSC, creates a bad precedent for other societal or political causes to be imposed on public reporting issuers (Francis R. Legault, October 4, 2013).

### 1.1.3 Quotas not appropriate

- NEI Investments has concerns about the formulation of quota approaches. Mandating equal numbers of men and women on the board is inflexible from a board-effectiveness perspective (Robert Walker, NEI Investments, September. 23, 2013).

- A quota approach could be potentially discriminatory for people who do not identify as either male or female, or who are transitioning (Robert Walker, NEI Investments, September 23, 2013).

- Quotas are the antithesis of merit (Norton Rose Fulbright Canada LLP, September 26, 2013).

- Disclosure by issuers related to diversity is appropriate; legislated quotas are not flexible enough and could result in the stigmatization of women in corporations across the country, potentially with an overall detrimental effect on certain organizations (Norton Rose Fulbright Canada LLP, September 26, 2013).

- Bombardier Inc. believes that legislated quotas are not flexible and would be detrimental to their corporation. However, they also feel that the "comply or explain" regime proposed by the OSC is appropriate and would allow them to bring awareness and transparency to diversity issues (Daniel Desjardins, Bombardier Inc., September 27, 2013).

- The Canadian Society of Corporate Secretaries (CSCS) believes it is the responsibility of each corporation to manage its internal processes and that each board of directors is in the best position to determine its policies and targets with respect to realization of effective gender diversity for its business and industry. Quotas as a way of achieving gender diversity are particularly undesirable and may result in under-qualified directors being appointed merely to comply with regulatory requirements, to the detriment of a well-functioning board. Quotas ensure quantity but not quality (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- Hermes Equity Ownership Services does not support a hard quota for Canadian issuers at this time. The situation is best addressed through best-practice initiatives and embraced with vigour rather than feeling like a regulatory imposition to be complied with only grudgingly. In the event that such an approach fails, then the introduction of quotas may be considered (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- Quotas should not be imposed by a regulator (Carol McNamara and Zabeen Hirji, Royal Bank of Canada, October 4, 2013).

- The Institute of Corporate Directors does not support the disclosure of quotas to increase diversity in the boardroom or management (Stan Magidson, Institute of Corporate Directors, September 23, 2013).

#### 1.1.4 People should be appointed on merit alone

- The most qualified person should be appointed and thus no quota or target should be established (B. White, August 5, 2013).

- People should be appointed based on their ability regardless of their gender, race, or ethnicity (Jay Hunt, August 3, 2013).

- Prejudice shouldn't be exercised in appointing people to board positions (R.E. Lamoureaux, August 6, 2013.)

- Directors of companies need to be appointed on the basis of merit (Norton Rose Fulbright Canada LLP, September 26, 2013).

- Precision Drilling does not support overly prescriptive regulation or quotas. Merit of the candidate and the needs of the organization must remain paramount (William Donovan, Precision Drilling Corporation, October 2, 2013).

#### 1.1.5 Forcing the issue of increasing the number of women on boards would lead to token candidates

- Forcing the issue of increasing the number of women on boards would be detrimental because it would lead to the appointment of token candidates (Jean Lésperance, August 2, 2013).

- Such a policy would do a disservice to women because corporations will either be forced to have women on their board or in senior management or disclose why they do not. To appoint a woman just because the board has no female members, or hire a woman because there are no women in senior management, would be condescending and demeaning (Robert L. LeClerc, September 21, 2013).

### 1.2 Regulatory action is necessary

- Canadian Women in Technology (CanWIT) believes that regulatory action is necessary to foster an impactful increase in the level of female representation on boards (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- KPMG supports the need for regulatory action to facilitate improvement in the area of gender diversity. Transparency, measurement, and accountability are essential to successful change and progress in increasing diversity. KPMG is proud to support a commitment to these principles (William B. Thomas, KPMG LLP, September 27, 2013).

- Regulatory action is necessary and appropriate to prompt the cultural shift needed to make progress on gender diversity in corporate Canada (Janet Austin and Sherry Tryssenaar, October 4, 2013).

- Countries which are seeking to increase board diversity through non-legislative means are lagging in comparison to parts of the world where legal mandates have been adopted. Achieving gender balance on boards will remain a challenge to any country until legislative measures are implemented (The Honourable Céline Hervieux-Payette, Senate of Canada, October 4, 2013).

**1.3 The OSC's proposed "comply or explain" approach is an appropriate model**

**1.3.1 General support for "comply or explain" approach**

- Any proposal put forward to increase the number of women on boards should be celebrated (Dr. Barnali Choudhury, Queen Mary University of London, September 13, 2013).

- The Capital Lab Inc. agrees with a "comply or explain" approach for larger companies, and companies with 250 employees or more should be mandated to have female representation at the board level after a certain number of years (Belinda Labatte, The Capital Lab Inc., September 24, 2013)

- Toronto Hydro supports the approach the OSC sets out in its consultation paper. The proposed scope and content of the model disclosure requirements are well formulated and appropriate to the stated intention of enhanced gender diversity disclosure (Ave Lethbridge, Toronto Hydro-Electric System Limited, September 25, 2013).

- Supportive of a "comply or explain" model as outlined in the OSC's consultation paper (Mary Mogford, September 25, 2013).

- CCGG believes that a "comply or explain" approach is an appropriate methodology for Canada for improving gender diversity (Daniel E. Chornous, Canadian Coalition for Good Governance, September 30, 2013).

- The OSC must enact the proper policy framework which will achieve these goals. A "comply or explain" approach is preferable. Canada is a role model for good governance practices. Many very strong board members must be encouraged to focus on tapping the whole pool of talent to get the best people as members of the board and executive teams (Mary Susanne Lamont, September 26, 2013).

- The Pension Investment Association of Canada (PIAC) believes that the "comply or explain" approach proposed by the OSC is reasonable and preferable to mandating a specific quota. The proposal to require issuers to disclose gender diversity at the board and management level will encourage dialogue between issuers and investors and motivate issuers to enhance their efforts to address diversity (Brenda McInnes, Pension Investment Association of Canada, September 30, 2013).

- Catalyst supports the OSC's recommendation that if a company does not have a formal diversity policy in place, it should be required to explain why not, as well as to identify any risks or opportunity costs associated with the decision to forgo such a policy (Deborah Gillis and Alex Johnston, Catalyst, September 26, 2013).

- The Canadian Council of Chief Executives supports Ontario's call for a "comply or explain" approach to increase the number of women on boards and in senior management positions. At the same time, it wants to ensure that any new requirements imposed on publicly traded companies are sufficiently flexible to account for particular circumstances and will act as an incentive to include gender diversity as part of long-term business plans (John P. Manley, Canadian Council of Chief Executives, October 4, 2013).

- Ernst & Young supports the adoption of a policy framework that will help organizations achieve the goal of accessing Canada's best talent, and that includes women. Ernst & Young believes that a "comply or explain" approach is preferable to a quota system, given the proven, measurable results of a "comply or explain" policy in other jurisdictions. This policy framework should include goals to have the most impact (Trent Henry, Ernst and Young LLP, October 4, 2013).

- The involvement of women in governance and business has increased in past years and this can only help our economy and make us more competitive. While there is still much to do, there are studies and compelling evidence to support the notion that the participation of women on boards and governance is a win-win situation (John Parisella, Campus Montreal, October 4, 2013).

- Policies which require a board or a nominating committee of the board to consider the diversity on the board (gender, race and age) are effective when combined with a disclosure model of reporting on the results of implementing that policy. Diversity in terms of gender, race, age, etc. should be a factor in the decision and we support having the issuer explain how this policy and the search process works (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

- The Institute of Corporate Directors concurs with the "comply or explain" approach of the proposal as opposed to mandated diversity policies for issuers (Stan Magidson, Institute of Corporate Directors, September 23, 2013).

- Companies should disclose whether they have a policy for advancing the representation of women in senior leadership and board roles. If the company does not have such a policy, the company should disclose why not, and what risk or opportunity costs are associated with that decision (Jennifer Reynolds, Women in Capital Markets, October 2, 2013).

- Issuers should be required to comply with the recommended practices or fully describe how they will achieve gender balance among board members and senior management through current practices or alternative methods (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- The Women’s Executive Network supports the OSC in recommending that non-venture issuers create, implement and report on board diversity in a "comply or explain" disclosure model (Women’s Executive Network, October 4, 2013).

- CanWIT, in accordance with the proposed amendments outlined in the OSC Consultation Paper, believes that companies should implement policy regarding the representation of women on the board and in senior management, actively address the issue of how to increase the representation of women in the director selection process, actively address the issue of how to increase the representation of women in the board evaluation process, and implement a metrics tool to measure effectively the representation of women in the organization and specifically on the board and in senior management (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- The United Church of Canada favours best practice guidelines, encouragement with ongoing reporting and transparency. Encouraging companies to set out and explain their targets to which they can be held accountable creates an appropriate dynamic for dialogue. Companies should be expected to articulate individual diversity objectives and their underlying rationale. Diversity goals should be set at each stage of the recruiting process, including identification of candidates, evaluation of select candidates and hiring/nominating (Erik Mathiesen, United Church of Canada, September 27, 2013).

#### 1.3.2 Proposal is appropriate public policy

- At the public policy level, NEI Investments believes the OSC’s proposed approach of expanding the current corporate governance framework of guidelines and disclosure requirements to gender diversity is an appropriate model (Robert Walker, NEI Investments, September 23, 2013).

- Greater board diversity can contribute to better corporate governance (Stan Magidson, Institute of Corporate Directors, September 23, 2013).

- Companies have a responsibility to encourage diversity as a social imperative (Robert Walker, NEI Investments, September 23, 2013).

- Policies aimed at promoting gender diversity within company leadership may provide competitive advantage. A lack of diversity in leadership provides a confusing signal to potential employees, and candidates for management, regarding career advancement. A strong commitment to increasing gender diversity at the highest levels will help businesses compete for and retain the best professional talent (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- Three key elements of a strong business case support the OSC's intent to advance the representation of women on boards and in senior management: improved performance, access to the widest talent pool and better corporate governance (The Group of Senior Corporate Directors, September 27, 2013).

- Leveraging female talent is critical to our future economic growth. Not only do women represent more than half the population but they are now experiencing economic momentum. They form an increasing proportion of the labour force and, increasingly, they are more highly educated than men (The Group of Senior Corporate Directors, September 27, 2013).

- Strong, confident leaders know they need to surround themselves with the best people they can find. In a diverse country like Canada, those people may not be the people with whom our leaders are most familiar or comfortable. As an increasing number of business leaders accept the fact that the status quo is no longer tenable for organizations wishing to compete in the global economy, solving the problem of women's under-representation has become a priority (The Group of Senior Corporate Directors, September 27, 2013).

- The compelling evidence that companies with women on their boards deliver superior performance makes board gender diversity an urgent governance imperative (The Group of Senior Corporate Directors, September 27, 2013).

- Studies demonstrate a positive correlation between board diversity and performance. The Association of Women in Finance is hopeful that the proposed "comply or explain" disclosure regime results in an increase of female representation on boards and in senior management, but feels that the proposed initiative attempts to achieve its goal indirectly relative to the quota measures adopted in certain jurisdictions (Sandra M. Abley, Association of Women in Finance, September 24, 2013).

- From the Pay Equity Commission's perspective, improving gender equality on boards and in senior management will assist in breaking down many of the barriers faced by women at all levels of employment. For businesses, gender diversity is a strategic and economic imperative in today's world (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

### 1.3.3 Proposal is an appropriate first step

- Given the lack of uptake by Canada's corporate leaders, we believe the OSC policy may be a necessary first step in addressing barriers to greater gender diversity on boards and in senior management (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- The Group of Senior Corporate Directors supports the OSC's "comply or explain" approach as an initial step to increase the representation of qualified women on boards and in the senior management ranks of Canadian non-venture issuers (The Group of Senior Corporate Directors, September 27, 2013).

- A "comply or explain" approach is a good first step towards achieving the levels of participation of women at the leadership level that will positively impact not only individual companies but Canada's overall business leadership capacity and competitiveness in the world arena (Stephanie MacKendrick, MacKendrick & Associates International, October 4, 2013).

- Equal Voice supports the proposals developed by the OSC to advance women on corporate boards of directors. Equal Voice sees this as an excellent first step to increasing the involvement of women in governance (Lesley Byrne, Rebecca Scott and Donna Dasko, Equal Voice, October 4, 2013).

- A "comply or explain" model of disclosure is a practical step forward that could win significant stakeholder support. Alternatives to this model could include a straight forward "comply" approach (Robert Walker, NEI Investments, September 23, 2013).

### 1.3.4 Proposal will raise awareness on gender diversity and promote transparency

- The "comply or explain" regime proposed by the OSC is much more flexible and would be the appropriate tool to bring awareness and transparency to diversity issues, while allowing non-venture issuers to fix goals in line with the realities of their businesses. As opposed to quotas and their "one size fits all" approach, a "comply or explain" model would require non-venture issuers to develop their own strategies and objectives and decide how and to what extent gender should be taken into account as a criterion for board nomination (Norton Rose Fulbright Canada LLP, September 26, 2013).

- The Association of Women in Finance commends the OSC for raising awareness of the issue and suggests that, to optimize the efficacy of its goal, the initiative should be implemented nationally (Sandra M. Abley, Association of Women in Finance, September 24, 2013).

- Gildan Activewear Inc. supports the OSC's initiative and believes that decision-making benefits from a diversity of viewpoints that reflect different professional experiences, expertise, education and skills, as well as individual qualities and attributes such as gender, age, ethnicity, and cultural background (Lindsay Mathews, Gildan Activewear Inc., September 30, 2013).

- A "comply or explain" model of disclosure would be an appropriate measure to raise awareness and transparency on the issue of diversity and could be an effective yet flexible approach for increasing the number of women on boards and in senior management in Canada (Lindsay Mathews, Gildan Activewear Inc., September 30, 2013).

- The model disclosure requirements proposed by the OSC provide for meaningful information in so far as an issuer will provide information on its policy intentions, processes and results. The requirement to "comply or explain" is useful and consistent with current practice related to corporate governance. It will enable readers to discern how and whether issuers are addressing gender diversity. It will allow for recognition and understanding of best practices and key indicators of achievement. Most importantly, it will allow boards and government to monitor and assess on an ongoing basis the extent to which gender diversity exists, or not, on the boards and in senior management of Canada's largest corporations (Glenna Carr, Janet Ecker, Angela Ferrante, Carol Hansell, Maureen Kempston Darkes, Alison Knight, Sue Lee, Mary Mogford, Kathleen O'Neill, Michelle Samson-Doel, Guylaine Saucier, and Beverley Topping, September 26, 2013).

- Precision Drilling encourages the "comply or explain" approach to increase transparency, allowing the responsibility for metrics and accountability to lie with the issuer (William Donovan, Precision Drilling Corporation, October 2, 2013).

- Requiring companies to disclose their performance annually will help to increase transparency and accountability. It will also allow shareholders and investors to assess whether individual firms have taken appropriate action (John P. Manley, Canadian Council of Chief Executives, October 4, 2013).

- Best practice guidelines together with mandated disclosure are the ideal combination for achieving gender diversity. This allows a corporation to determine the appropriate path for it to reach gender diversity and ensure transparency to stakeholders (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- The model disclosure requirements addressed in the Consultation Paper will be helpful since they will accomplish at least two things: 1) they will produce a catalogue of quantitative and qualitative information about the status and progress of women in senior management and board positions in public companies in Canada; and 2) they will cause boards and senior management to consider whether they are satisfied with their current practices or whether some change in approach would be in the best interests of their corporation (Carol Hansell, Hansell LLP, October 4, 2013).

- BMO supports the OSC's efforts to encourage issuers to establish diversity policies at the board and senior management level. These policies would compel the issuer to articulate its commitment to diversity and give substance to how the board of directors or management intend to meet their objectives (Simon Fish, BMO Financial Group, October 4, 2013).

- BMO supports the OSC's "comply or explain" approach, which will require issuers which do not have formal board or management policies to explain why they do not. This will provide issuers with an opportunity to explain what efforts they are making on the issue or explain any steps they are taking toward having a policy (Simon Fish, BMO Financial Group, October 4, 2013).

- RBC believes that transparency will motivate change in the area of gender diversity and that the introduction of a flexible disclosure model at the issuer level requiring companies to explain how they approach diversity is timely and appropriate (Carol McNamara and Zabeen Hirji, Royal Bank of Canada, October 4, 2013).

- Recognizing efforts already underway raises awareness and shines a spotlight on best practices. The OSC should also work with its provincial counterparts and the federal government to share best practices and establish a common, consistent framework for Canada, as many businesses operate across provincial borders (John P. Manley, Canadian Council of Chief Executives, October 4, 2013).

### 1.3.5 "Comply or explain" approach should be imposed for all non-venture issuers

- Catalyst supports amending the current Corporate Governance Disclosure Rule to require that non-venture issuers provide disclosure on an annual basis in the following areas: their policies regarding the representation of women on the board and in senior management, consideration of the representation of women in their director selection processes, consideration of the representation of women in their board evaluation processes, measurement of the representation of women in the organization, specifically on the board and in senior management (Deborah Gillis and Alex Johnston, Catalyst, September 26, 2013).

- The OSC should amend the Corporate Governance rule to require that non-venture issuers provide disclosure on an annual basis in the following four areas: 1) policies regarding the representation of women on the board and in senior management; 2) consideration of the representation of women in the director selection process; 3) consideration of the representation of women in the board evaluation process; and 4) measurement regarding the representation of women in the organization and specifically on the board and in senior management (Women's Executive Network, October 4, 2013).

- A "comply or explain" model of disclosure for diversity policies would most likely contribute to delivering tangible results by allowing non-venture issuers to reflect on the effectiveness of their respective policy and the progress made each year. The OSC should not recommend optional content for such policy, as there is no "one size fits all" model that would fill the needs of all non-venture issuers (Norton Rose Fulbright Canada LLP, September 26, 2013).

- "Comply or explain" requirements for non-venture issuers are effective ways to engage organizations to think through their current practices, and to understand the benefits of having greater gender diversity on their boards and in senior management while taking into account their size and potential resource constraints (Frank Vettese and Glenn Ives, Deloitte LLP, October 1, 2013).

- Non-venture issuers should be required to comply with the recommended practices set out by the OSC or explain why they have not complied (Peter Chapman, Shareholder Association for Research and Education, October 3, 2013).

- A "comply or explain" model of disclosure for diversity policies with respect to boards of directors would most likely contribute to delivering tangible results by allowing non-venture issuers to reflect on the effectiveness of their respective policy, the progress made each year, and to improve their own records. However, targets/quotas should also be adopted and disclosed with respect to senior management so that significant change can occur (Ian A. Bourne and Robert G. Card, SNC-Lavalin Group Inc., October 4, 2013).

- Non-venture issuers should be required to comply with the recommended practices set out by the OSC or explain why they have not complied (Michael Bach, Canadian Institute of Diversity and Inclusion, October 4, 2013).

- The "comply or explain" model can be used, but to truly change the representation of women on boards and in senior management, a non-venture issuer should set and disclose goals and its progress to achieving them on an annual basis (William B. Thomas, KPMG LLP, September 27, 2013).

- Non-venture issuers should be required to comply with the recommended practices or explain why they have not complied (Emily Boucher, Canadian Women in Technology, September 27, 2013).

## 1.4 The need to go beyond OSC proposal

### 1.4.1 Compulsory term limit for all board members

- There should be a compulsory term limit for all board members (Pat Dunwoody, September 6, 2013).

- To avoid creating entrenched board situations, it would be desirable if directors operated under the expectation that they will be leaving the board after a certain period, unless they are specifically asked to remain because there is no obvious candidate to fill the skills gap (Robert Walker, NEI Investments, September 23, 2013).

- Reasonable term limits that will require increasingly older and/or long-serving directors to step down would make room for new blood and fresh perspectives from incoming directors. If there are no reasonable term limits and no other interventions such as rigorous individual performance evaluations, it will take decades to shift the percentage of women on boards in a significant way (The Group of Senior Corporate Directors, September 27, 2013).

- Introduce standards for length of board service (Patrice E. Merrin, October 4, 2013).

- The OSC should suggest that issuers consider term limits that are appropriate to their businesses to increase the turnover on boards. This will help facilitate the appointment of qualified new directors and allow board chairs to address the sensitive issue of dealing with underperforming board members by removing them at the end of their term (Canadian Board Diversity Council, October 4, 2013).

### 1.4.2 Board governance should include a nomination committee

- Board governance should include a nomination committee that monitors who is on the board and the competency it requires (Pat Dunwoody, September 6, 2013).

### 1.4.3 Targets and quotas: general support

- The Capital Lab Inc. agrees with target increases in board representation across Canada, with a focus on industry sectors that are under-represented (Belinda Labatte, The Capital Lab Inc., September 24. 2013).

- Reluctantly favour a quota approach (Mary Mogford, September 25, 2013).

- The consultation paper provides a useful step forward in increasing the awareness of the value of greater gender diversity on boards and in senior management and the need for boards to focus on this as an important business objective. However "comply or explain" alone without meaningful target setting and reporting against those targets is unlikely to produce improved results from the current average of ten percent representation (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Jordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- There are no shortages of policies or strategies for helping women achieve leadership roles. Two categories of strategies are: 1) voluntary institutional initiatives (targeted diversity recruitment, retention and promotion targets, diversity training, commitment from business leaders, measures of leadership diversity as indicator of corporate responsibility); 2) legal/legislative options (disclosure requirements, enforcement of anti-discrimination laws, quota laws as in Norway, Quebec's gender parity law for boards of Crown corporations (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- CanWIT supports an action to set overall targets (opposed to quotas) for publicly listed companies with 2014 as the base year. To set an example for non-venture issuers, the introduction of targets for federal and provincial crown corporations' board of directors would be welcomed and applauded by CanWIT (Emily Boucher, Canadian Women in Technology, September 27, 2013).

### 1.4.4 Support for firm targets and/or quotas

- The best way to change the current dilemma is to put in place the kind of stretch targets sought in Norway and other European nations. The OSC should require all Canadian public companies to have 35 percent female membership on boards and a similar proportion in senior management within five years of proclamation and 50 percent within ten years of proclamation (Rod McQueen, September 27, 2013).

- The most effective approach to increasing the number of women on boards and in senior management is the imposition of strict quotas (Amandeep Sandhu, McMillan LLP, October 1, 2013).

- Catalyst advises companies to appoint three or more women directors to their boards – their research supports the idea that this number creates a tipping point that leads to lasting culture change (Deborah Gillis and Alex Johnston, Catalyst, September 26, 2013).

- CanWIT recommends that the OSC create an advisory committee of stakeholders to actively review and monitor policy guidelines and develop measurable targets that are sector-specific (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- Board directors must make some vigorous and public commitments to raising the participation of women on their boards. They should set a policy to achieve a reasonable turnover of their board membership and adopt a policy of naming one woman for every two positions on the board until women represent 40% of their board members (Yvan Allaire, Institute for Governance of Private and Public Organizations, October 3, 2013).

- 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 (Janet Austin and Sherry Tryssenaar, October 4, 2013).

- The OSC should mandate a best-practice guideline for Canadian corporations to achieve a target female board percentage of 25% with a five-year implementation period ending December 31, 2018 (Jo-Anne Archibald, DSA Corporate Services Inc., October 4, 2013).

- bcIMC recognizes that although a mandatory quota to improve female representation on boards of directors would be most effective, it would not be acceptable in Canada today. bcIMC nevertheless encourages the OSC to augment the proposed disclosure requirement to include a 30% target for the representation of women on boards of directors within a three-year period (five for venture issuers) (Doug Pearce, British Columbia Investment Management Corporation, October 4, 2013).

- bcIMC recommends that the OSC make having their policy mandatory and have a "comply or explain" disclosure focus on corporate implementation of the policy, in line with the recommended reporting set out in section 4.2 of the model disclosure requirements, as well as progress in reaching the target (Doug Pearce, British Columbia Investment Management Corporation, October 4, 2013).

- Introduce a target that women must comprise a minimum of 33% of a board’s directors by June 30, 2018 and state, at the outset, that if the targets are not met, quotas will be imposed (Patrice E. Merrin, October 4, 2013).

- Introduce and legislate a threshold requirement (quota) that induces situations, which result in the introduction (by way of interview) of qualified females to various non-venture and venture corporation, specifically as it relates to the potential recruitment of women as board nominee candidates (Jennifer L. Boyle, Satori Resources Inc., October 4, 2013).

- While the Ontario Teachers' Pension Plan supports the overall objectives outlined in the Consultation Paper, it proposes an alternative approach that would require all TSX issuers to appoint a minimum of three female directors to the board. The selection of a minimum of three women on a board is rooted in the belief that board diversity yields more effective boards and better results for shareholders than meeting an arbitrary target simply for the sake of meeting that number. The threshold of three women directors is a means to achieve an end (more diverse boards) and without such a push it is not evident that sufficient progress in improving diversity would be made (Wayne Kozun, Ontario Teachers' Pension Plan, October 4, 2013).

- In order to achieve the target of a minimum of three women on every board there must be sanctions for non-compliance (Wayne Kozun, Ontario Teachers' Pension Plan, October 4, 2013).

- The Ontario Teachers' Pension Plan is not convinced that a "comply or explain" regime provides enough incentive for companies to act. While the TSX has instituted a comply or explain model for companies adopting majority voting yet since the policy's adoption in December 2012, a number of issuers have failed to adopt a majority voting policy for director elections, citing a lack of legal requirement. This response raises concerns that unless required by law or other means, companies may continue to cite the absence of legal obligation as the rationale for not adopting a recommended practice (Wayne Kozun, Ontario Teachers' Pension Plan, October 4, 2013).

- The Ontario Teachers' Pension Plan believes that its proposal, combined with a robust and transparent director recruitment process, will result in more diverse and effective boards while avoiding the pitfalls of tokenism, and provides the best opportunity to achieve the OSC's goal of increasing the participation of women on boards (Wayne Kozun, Ontario Teachers' Pension Plan, October 4, 2013).

- Effective policies for increasing women on boards will have no traction or urgency unless there are clear targets and measurement. The reality is that one is too low and 25 is a good start. An easy way to initiate this is to require fixed board terms and stage the rollover by a minimum of two per year to effect change in a timely fashion (Helen Kearns, Bell Kearns and Associates Ltd, October 7, 2013).

- Rather than proposing a "comply or explain" approach, Bill S-203, An Act to Modernize the Composition of the Board of Directors of Certain Corporations, Financial Institutions and Parent Crown Corporations, and in Particular to Ensure the Balanced Representation of Women and Men on Those Boards, requires a minimum of 40% for each gender, offering a better balance of opportunities for both men and women (The Honourable Céline Hervieux-Payette, Senate of Canada, October 4, 2013).

- Quotas have been described as the "antithesis of merit" and likely to stigmatize qualified women on boards as "tokens" which can undermine the cause being championed. However, as research shows, countries operating on a "comply or explain" disclosure regime are simply not producing significant progress. Thus, the approach taken by Bill S-203, is a meaningful compromise and will achieve concrete results (The Honourable Céline Hervieux-Payette, Senate of Canada, October 4, 2013).

### 1.4.5 Support for flexible targets and/or quotas

- The most effective policy for increasing board diversity appears to be a quota system. To increase board diversity in Canada we should adopt a principles based approach which would encourage issuers to establish a voluntary target of 25-40% over the next five years, with an evaluation for effectiveness, and progress during that period. Should this approach fail to alter the gender balance then the appropriateness of a quota for issuers should be considered (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- Companies should be required to establish targets to increase gender diversity on Canadian boards. These targets must be quantifiable to ensure that efforts are commensurate with change (Alexis Klein, Global Women's Equity Fund, October 1, 2013).

- CanWIT suggests target-based guidelines. The size of a company should be taken into consideration with target percentages (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- bcIMC does not recommend quotas as a means to increase the number of women in senior management. Instead, companies should be required to establish ambitious targets and timeframes and to provide comprehensive disclosure (Doug Pearce, British Columbia Investment Management Corporation, October 4, 2013).

- With respect to the participation of women in senior management, bcIMC recommends that the OSC require that companies have a diversity policy, including targets, and apply a "comply or explain" disclosure to the implementation of the policy and progress towards achieving the targets (Doug Pearce, British Columbia Investment Management Corporation, October 4, 2013).

- CSCS believes that corporations should be able to determine the target and timeline; benchmark the target as information becomes available; disclose the reasoning behind the selected target; disclose the details of the plan to be implemented in order to reach the target through board renewal process, proactive management or inclusion of new policies or practices; annually report on progress (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- bcIMC (British Columbia Investment Management Corporation) recommends that the OSC establish a target of 30% female representation on boards and set an aggressive but achievable time limit of three years to achieve the target. Venture issuers should not be exempt though they may need more time to comply. A time limit of five years would be reasonable for venture issuers (Doug Pearce, British Columbia Investment Management Corporation, October 4, 2013).

- The Pay Equity Commission supports the "comply or explain" model of disclosure. To strengthen this model, they suggest that the OSC require companies to set targets, accountabilities and consequences for achieving gender representation goals, within specified time frames, and to report on their progress. Such disclosure should help companies succeed in increasing the number and proportion of diverse women in leadership roles throughout Ontario workplaces (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- We agree with the OSC in not imposing any mandatory quotas at this time. However, issuers should be encouraged to evaluate their current gender breakdown in senior management and board roles and set internal measurable objectives and targets for their own organization, which are disclosed (Alfred Page, Lynn M. McGrade, Rebecca Cowdery, Sonia Molodecky and Francesca Smirnakis, Borden Ladner Gervais LLP, October 16, 2013).

- The OSC should consider requiring listed companies, within their diversity policies, to include a self-chosen diversity percentage target and timeline. Each organization can make its case to stakeholders as to what the percentage of female board members will be, within a three or five year period (Sylvia L. Groves, Governance Studio Inc., and Paul Gryglewicz, Global Governance Advisors, October 4, 2013).

- The OSC should consider including in its disclosure requirements the organization’s plan and progress toward increasing diversity in their senior management levels (Sylvia L. Groves, Governance Studio Inc., and Paul Gryglewicz, Global Governance Advisors, October 4, 2013).

- Regulators and exchanges should establish a reporting policy on the number of women on boards (Michelle Edkins, Rita Benoy Bushon, and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Organizations should set targets for women representation on their boards and in senior management (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- An effective policy will allow a corporation’s board and executives to determine the diversity objectives that are appropriate for their individual company. A company should set diversity goals at each stage: 1) identification of possible candidates; 2) evaluation of select candidates; 3) hiring or nominating. There should be guidelines but not hard quotas (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

### 1.4.6 The model proposed by the OSC is appropriate but if the OSC finds that the representation of women on boards and in senior management does not increase in a set amount of time, quotas and targets should be implemented

- Establishing requirements for diversity disclosure, and providing guidance on recommended diversity policies and practices, will be an effective means to achieve the objective of increased diversity, as it would push more companies to put the issue on their agenda. However, if diversity statistics did not improve significantly over a reasonable period of time, it would then be appropriate to consider other options such as binding quotas (Robert Walker, NEI Investments, September 23, 2013)

- The OSC should consider revisiting this issue within three years to determine whether these enhanced disclosure requirements have had a positive impact on the gender diversity of Canadian boards. At that point, if no positive change is realized, it may be appropriate to consider other measures such as quotas for the number of female candidates that nominating committees must consider as part of the recruitment process or requiring disclosure of the number of female directors considered for each board position (Brenda McInnes, Pension Investment Association of Canada, September 30, 2013).

- The "comply or explain" approach is the most appropriate model for increasing gender diversity on boards and in senior management in Canada at this time. Expanding corporate governance disclosure requirements to include gender diversity specifically is a logical first step. However, progress on increasing the number of women on boards and in senior management needs to be monitored by the OSC on an annual basis and if we do not see a significant improvement in statistics within three years time other options should be considered (Jennifer Reynolds, Women in Capital Markets, October 2, 2013).

- The OSC should evaluate the effectiveness of a "comply or explain" approach after three years, assessing whether gender statistics improve and whether further action should be considered (Kevin Dancey and R.N. Barr, Chartered Professional Accountants of Canada, October 2, 2013).

- Regulators need to determine a set period to review whether the proposed disclosure model has had the desired impact and if not, whether further steps may be required, such as more specific disclosure or an imposed targeted quota system, assuming that ongoing research demonstrates the benefits of leadership diversity within public companies (Alfred Page, Lynn M. McGrade, Rebecca Cowdery, Sonia Molodecky and Francesca Smirnakis, Borden Ladner Gervais LLP, October 16, 2013).

- The Women's Legal Education and Action Fund (LEAF) is concerned that the problem of women's serious underrepresentation has been identified for some time now, with little progress. While LEAF does not recommend mandatory targets at this time, it does recommend follow-up review within a short period of time, with consideration given to stronger enforcement provisions (The Women's Legal Education and Action Fund, October 4, 2013).

### 1.4.7 Expansion of diversity beyond gender

- The Working Group generally supports the proposals described in the OSC consultation paper but believes that disclosure on diversity should have broader scope (Norton Rose Fulbright Canada LLP, September 26, 2013).

- In theory, the Chartered Professional Accountants of Canada (CPA) support a "comply or explain" approach to disclosure about gender diversity in Canada. However, they also feel that the OSC should consider other diversity issues (Kevin Dancey and R.N. Barr, Chartered Professional Accountants of Canada, October 2, 2013).

- BMO encourages the OSC to expand the scope of the OSC proposal from gender diversity to diversity more broadly. While BMO recognizes the importance of advancing women on boards and in senior management, they believe that other aspects of diversity are also important to advance (Simon Fish, BMO Financial Group, October 4, 2013).

- The Canadian Investor Relations Institute (CIRI) believes that there should be disclosure to enhance diversity more broadly, not just gender diversity specifically, and that such policies be focused on the director candidate identification level only. CIRI proposes the following for non-venture issuers: 1) refocus the requirement for disclosure on diversity considerations at the candidate identification process rather than at the stage of nomination and selection of a director for the board; 2) issuers should be required to disclose the policy for advancing diversity in director roles or its key provisions; 3) issuers should be required to disclose the proportion of women on the board in percentage terms; 4) issuers should not be required to disclose the policy for advancing diversity in management nor should they be required to disclose the proportion of women in management in percentage terms; 5) disclosure requirements regarding diversity should go beyond simple gender diversity and increased participation by women on boards and should include a broader consideration of diversity; 6) quotas or specific targets to increase gender diversity on boards should not be mandated (Yvette Lokker, Canadian Investor Relations Institute, October 2, 2013).

- Telus Corporation supports a "comply or explain" approach to the disclosure requirements outlined in the OSC's Consultation Paper. Telus would go further by stating that diversity on boards should be expanded to include broader diversity considerations (Monique Mercier, Telus Corporation, October 4, 2013).

- Gender disclosure by itself is not all-inclusive and in that sense is discriminatory- particularly if the focus is only at the C suite and board level (Tricia Veness, Artis REIT, September 27, 2013).

- Gender diversity is not the only diversity issue that requires attention but the power of change typically comes from addressing one issue at a time. The focus of the OSC's Consultation Paper is the advancement of the representation of women on boards and in senior management. Diluting the focus on that issue by including other diversity issues in the same initiative will not move us forward on the gender issue at any meaningful pace (Carol Hansell, Hansell LLP, October 4, 2013).

- Although other diversity issues are important, SNC-Lavalin strongly urges the OSC to deal in priority with issues in gender diversity (Ian A. Bourne and Robert G. Card, SNC-Lavalin Group Inc., October 4, 2013).

### 1.4.8 Establishment of mentorship and sponsorship programs

- In advance of a director selection, CanWIT believes that a company should consider mentorship or sponsorship programs to champion potential female candidates for board positions and the importance of those with technology skills (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- Listed companies should implement a program that would encourage and mentor women to "take the next step" to further themselves. Officers or directors should lead this effort (Alexis Klein, Global Women's Equity Fund, October 1, 2013).

- Increasing the number of women on boards and in senior management will require attention to training and mentoring women for these positions, including attention to fair compensation policies such as equal pay and creating a safe and healthy work environment in which to thrive (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

- Should promote approaches that increase individual's leadership capacity (mentoring, leadership workshops, internal advisors, or sponsors) (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

### 1.4.9 Development of a pipeline of female candidates

- A concern that is frequently expressed is that the pool of appropriate female candidates for board positions is too small. This is, at least in part, a mere excuse to avoid the issue of achieving gender diversity. Corporations should examine and identify the means by which they intend to identify female candidates for board appointment (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- We must also ensure that we are filling the pipeline with board and management ready women. Women must be properly recognized and prepared to take on responsibilities of board and senior management positions. Governments and enterprises should also encourage mentorship and sponsorship opportunities (John P. Manley, Canadian Council of Chief Executives, October 4, 2013).

- There needs to be development of a sustainable pipeline of female candidates for executive positions, as the chain of professional development for board members generally includes experience in senior management (Michelle Edkins, BlackRock Inc., October 3, 2013).

- Companies should adopt policies that will help facilitate a gradual and sustainable gender-rebalance at senior management levels. Achieving a critical mass of female leadership within an organization allows more women to have opportunities to maximize their contributions to the company, ultimately generating a pipeline of talent well prepared for future boardroom appointments that reflect the gender diversity of the organization (Michelle Edkins, BlackRock Inc., October 3, 2013).

- In order to increase the number of women in the pipeline for board and senior management positions, the OSC should consider requiring all non-venture issuers to implement a minimum for the number of qualified women who are interviewed for board or senior management roles, without setting any quota or target requirements for the ultimate appointees of these positions (The Women's Legal Education and Action Fund, October 4, 2013).

- The OSC could share research with companies on a regular basis regarding the considerable benefits of having women on boards. The OSC could also offer free training for women to prepare them for board positions and keep a roster of women who want to be considered for such positions (The Women's Legal Education and Action Fund, October 4, 2013).

- The Women's Executive Network encourages the OSC to move forward with a "comply or explain" disclosure regime. The business case is clear: companies can benefit from well-educated women who bring a wide range of skills, credentials, experiences, and leadership styles to their roles as managers, executives, professionals, and corporate directors. At the same time, companies need to focus on identifying, retaining and promoting women through the pipeline so there continues to be a large pool of women with the requisite skills (Women's Executive Network, October 4, 2013).

- Programs at various levels of each organization need to be developed and implemented. An effective approach would start with recruitment. Candidate pools must include diverse candidates; the pipeline of diverse employees must increase at all levels through various recruitment programs. Then best practices regarding promotions need to be developed. A focus on recognition is equally important, we need to celebrate diverse teams and recognize the individuals who lead and inspire them. We also need to celebrate women's achievements and men championing women. Mentorship, sponsorship, and networking should be encouraged and educating both men and women on value is essential (Iain J.S. Black, The Vancouver Board of Trade, October 4, 2013).

- The point is often made that it is simply a matter of time before women who are in university in equal numbers with men will find they are represented in equal numbers in C Suites and boardrooms. This point has been made since the 1970s and women who have been in the pipeline since that time have not ultimately found opportunities in top positions, at least not in the same proportion as men from their university classes. Although it is possible that the proportion of men and women in senior management and on boards will find the right balance over time, in the meantime, without some positive action, we will continue to sacrifice the careers and aspirations of women who are ready now or will be ready in the short term (Carol Hansell, Hansell LLP, October 4, 2013).

- A common response to the need for action to advance the representation of women in senior management and on boards is that we need qualified people in these positions. These two priorities are not mutually exclusive. Where a particular industry is having consistent challenges in identifying qualified women, there may be issues that the industry, governments, and educators should be considering. Where a particular issuer is unable to advance women into senior positions, even though other issuers in the same industry are doing so, there may be issues that the board and senior management of that issuer should be addressing to allow them the best possible candidates (Carol Hansell, Hansell LLP, October 4, 2013).

- Disclosure requirements should be expanded to support mentoring and training programs that support gender diversity (Sanford, Eprile & Company, September 4, 2013).

**1.4.10 Formal policies should be developed in areas of board renewal and recruitment**

- Formal policies should be developed in the areas of board renewal, board recruitment, and in defining gender diversity (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- Boards need to create more opportunities for women through a renewal process and the OSC should require companies to provide them with disclosure of their renewal policy (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- Companies should have a desired board skills matrix and clearly demonstrate how they plan to address any skills gap through renewal policies (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- Creating opportunities for women to sit on boards also requires an examination of the use of term and/or age limits as part of the board renewal policy, as well as the adoption of a formal process for the recruitment of female directors (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- Attention to introducing specific policies and practices relating to diversity, formalizing processes for director recruitment, diversifying the candidate pool, making room for diversity through board renewal policies would enhance not only diversity but also board independence and effectiveness (Robert Walker, NEI Investments, September 23, 2013).

- Gender diversification of boards should not be seen in isolation because augmenting women on boards of a relatively fixed size has less chance of occurring without addressing the lack of board renewal, independence standards for directors, and shareholder ability to propose and remove directors (Richard LeBlanc, York University, October 4, 2013).

- When considering possible candidates for membership, boards should take account of diversity in its widest sense and as this applies to the individual company. Attracting a suitably broad set of candidates may require looking beyond the mainstream recruitment agencies. Hermes Equity Ownership Services Limited welcomes and encourages the trend towards advertising board vacancies in national and international media. When recruitment agencies are used boards should ensure that they are given a specific mandate to seek out candidates from non-traditional backgrounds (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- The nominating committee (or the board) must have a policy outlining how it will consider gender diversity in identifying director nominees, how it will implement its policy, and how the nominating committee (or the board) will assess the effectiveness of its policy. The details of the policy and its implementation should be disclosed in any proxy circular for the election of directors (Alfred Page, Lynn M. McGrade, Rebecca Cowdery, Sonia Molodecky, and Francesca Smirnakis, Borden Ladner Gervais LLP, October 16, 2013).

- To increase the number of women on boards, boards should have explicit policies that declare that the board seeks gender diversity, require that the candidate pool for open positions have at least one third women, take additional recruiting steps if required to identify female candidates and monitor success at recruiting and retaining female board members (Frank Vettese and Glenn Ives, October 1, 2013).

- Policies should incorporate an annual process where it is required consideration at the board level for both director selection and board evaluation (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

- Nominating committees of the board should focus on increasing transparency in the process of their director succession planning and recruitment by identifying the skills, experience, expertise, and diversity on the board; identifying strategic competency gaps; developing a diversity policy with company specific gender goals within a specific time frame; measuring and reporting results towards these goals annually in the proxy circular (The Group of Senior Corporate Directors, September 27, 2013).

- BlackRock is a strong proponent of a formal and transparent nominating process for boards and senior management. A formal appointment process is key to achieving more diverse boards. One straightforward approach is the creation of an objective job description prior to the identification of a preferred candidate. The job description should be drawn up for each board or senior management appointment and should identify the expectations of the appointee in terms of skills, experience, and contribution to the success of the company (Michelle Edkins, BlackRock Inc., October 3, 2013).

- Companies should maintain and disclose an up-to-date skills matrix used to assess the current board, recruitment needs and director candidates (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Companies should disclose the process for board succession planning and the time frame over which this is considered (Michelle Edkins, Rita Benoy Bushon, and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Companies should provide disclosure of their board renewal policies (or at least principal provisions) (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- Companies should be required to provide detailed disclosure of individual director competency, skill and origination, as well as details of the process for nominating, assessing and selecting prospective directors (Richard LeBlanc, York University, October 4, 2013).

- The nomination committee should develop and report to the board on a succession plan for the board, recognizing that new director recruitment should be conducted strategically to help replace the skill sets of retiring directors with gender-diverse candidates (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Governance Guidelines should be amended to require that board mandates acknowledge a consideration of gender diversity as part of succession planning and that nominating committees consider the gender diversity of the board as a whole (Daniel E. Chornous, Canadian Coalition for Good Governance, September 30, 2013).

**1.4.11 Formal policies should be developed in areas of annual board assessments to evaluate the performance of boards and senior management in implementing gender diversity policies and practices**

- Boards should undertake regular and thorough analysis of their composition to ensure that the interests of all relevant stakeholders are effectively represented. This should be part of the annual board evaluation process, which is required or promoted by the corporate governance codes in many countries. Hermes Equity Ownership Services Limited expects that boards will set their own targets regarding diversity and seek to implement necessary changes as part of the process of board renewal. Where boards appear to lack sufficient diversity, Hermes Equity Ownership Services Limited will question the extent to which such analyses and evaluations are being properly carried out (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- In addition to a diversity policy the board must make other procedural changes in order to achieve greater diversity. In particular, the nominating committee must gain a deeper understanding of the skills and experience of the board. The committee should implement an annual review process of directors' skills through use of a skills matrix, including adding an extra layer of diversity to the assessment (Sylvia L. Groves, Governance Studio Inc., and Paul Gryglewicz, Global Governance Advisors, October 4, 2013).

- The board must have and disclose in the issuer's annual information form a policy with regard to the consideration of gender diversity in recruiting and appointing senior management, how its policy is implemented and how the board assesses the effectiveness of its policy (Alfred Page, Lynn M. McGrade, Rebecca Cowdery, Sonia

Molodecky, and Francesca Smirnakis, Borden Ladner Gervais LLP, October 16, 2013).

- The board should include an annual assessment of its own performance in achieving greater female representation within its own ranks as well as within senior management and should assess the performance of individual directors annually. The board should also assess the performance of management in implementing gender diversity policies not just within senior management but across the company's entire operations (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

### 1.4.12 Diversity programs must be tied to a company's strategy

- Achieving gender diversity in senior management roles is much more complex than at the board level. In order for diversity to reach all levels of a company and be sustainable, diversity programs must be tied to a company's strategy to drive observable results and shareholder returns, and must form part of its culture. It takes a wide range of measures to promote a culture of inclusiveness and acceptance throughout an organization. Candidate pools for all roles must include diverse candidates. To capitalize on a diversified pool of talent, best practices regarding promotions need to be developed (Monique Mercier, Telus Corporation, October 4, 2013).

- Leaders must prioritize diversity in the director recruitment process, and invest meaningfully in the processes and monitoring of talent management and succession planning at all levels of the organization (Trent Henry, Ernst and Young LLP, October 4, 2013).

- Senior leadership must demonstrate a clear understanding of the economic impact of gender balance on boards and in senior management, and promote this through supportive actions from the top level and across the organization (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

- Finding ways to encourage incorporation of gender diversity as part of the way companies do business will make gender considerations part of everyday business practices, and over time, a part of the company culture (John P. Manley, Canadian Council of Chief Executives, October 4, 2013).

- Leadership is the key to success of any policy. Strategic leadership on women's advancement to senior management and on boards must come from government and corporate leaders, working collaboratively to set priorities and make commitments (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

### 1.4.13 Practical challenges to increasing gender diversity

- Academic literature suggests that a major factor in limiting board diversity is implicit cognitive bias, in which people implicitly trust other people who are "like them", leading to a narrow pool of candidates considered for board positions. If the root problem is unconscious bias, coupled with 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 (Peter Chapman, Shareholder Association for Research and Education, October 3, 2013).

- Greater boardroom diversity needs to be understood as a challenge associated with changing corporate culture. The importance of greater diversity must be acknowledged and accepted before it can yield tangible and sustainable results. BlackRock, Inc. strongly supports the use of voluntary initiatives to address the issue of gender imbalance in the composition of corporate boards. The voluntary approach could be strengthened by including principles on boardroom diversity in corporate governance codes, requiring disclosure of the board's policy on diversity in the context of its composition objectives, encouraging higher board turnover by considering director term limits and/or age limits, widening the candidate pool by encouraging the board of directors and executive recruitment firms to expand their search for candidates without previous board experience, and by encouraging investor engagement on the progress of diversity initiatives (Michelle Edkins, BlackRock Inc., October 3, 2013).

- Companies are likely to be most successful where they are overseen by effective, dynamic, and challenging boards that avoid slipping into the comfort of "group think". Diversity of perspectives is an important driver in this respect, and we believe that company boards will be most effective if they reflect the diversity of their businesses and their stakeholders. Such diversity should include not only gender but other attributes that are important for a company's particular situation (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- The biggest obstacle to achieving progress on this issue is simply the lack of collective will that has characterized our efforts to date. An environment in which all individuals can reach their full potential is an element critical to business success. The OSC is strongly encouraged to consider looking beyond the excellent measures that have been proposed in their Consultation Paper, to measures that look beyond a "comply or explain" approach. These would be to consider 1) establishing acceptable standards so that there can be no confusion as to what success in gender diversity looks like; 2) the imposition of timelines to reach benchmarks of performance in achieving gender diversity on boards; 3) term limits to create vacancies with which to achieve change, and 4) determine what further measures will be created and be ready to enact if progress is not made (Stephanie MacKendrick, MacKendrick and Associates International, October 4, 2013).

## 1.5 Other specific recommendations

### 1.5.1 Recommended best practices

- In order to realize the goal of increasing the representation of women on Canadian boards and in senior management, KPMG recommends that each non-venture issuer be required to adopt: 1) a performance model whereby diversity is a strategic priority where accountability for advancing diversity boards and in senior management and for driving inclusion as a part of workplace practices must rest with the board chair and CEO, respectively (with the CEO to report on progress annually and to be evaluated and compensated accordingly); 2) a diversity policy which aims to increase the diversity of the board and senior management; 3) a measurable goal for increasing board and senior management gender diversity, consistent with the representation of women in their organization as a whole; 4) an annual progress report detailing specific actions taken to comply with policies (William B. Thomas, KPMG LLP, September 27, 2013).

- The most effective policies for increasing the number of women on boards are: 1) the creation of a skills/experience matrix which clearly and objectively sets out the various skills that are needed on the board to provide enough diversity of thought and perspective to produce good decision-making, and an assessment of existing board members against it; 2) the appointment of a search consultant or professional to help the board search for candidates who have the skills that the board is lacking; 3) an enlightened chair, who knows that too much homogeneity will produce sub-par decisions, actively looks for diversity to solve that problem, and feels accountable for results (Eileen A. Mercier, Ontario Teachers' Pension Plan Board, September 26, 2013).

- The Association of Certified Chartered Accountants (ACCA) proposes 6 recommendations to address the achievement of greater gender diversity in boards and senior leadership positions across the Commonwealth. The recommendations are: 1) the creation of a database of board-ready and board-potential women; 2) supporting sponsoring initiatives; 3) building a research monitor across the Commonwealth; 4) raising career aspirations; 5) creating a media strategy that clearly and objectively demonstrates the impact of women in senior leadership positions, to enable stakeholders to make informed choices; 6) sharing best practices across the Commonwealth (Suzanne K. Godbehere, ACCA, September 27, 2013).

- Recommended best practices may also include: 1) review of work place policies, practices, and decision-making processes including systemic discrimination; 2) providing research and resources to avoid systemic barriers; 3) in industries where women historically have not participated, actively cultivating in women the skills and technical knowledge required to create a qualified pool of candidates; 4) term limits for directorship positions; 5) discussing at the annual general meeting the issue of what the corporation is doing regarding gender diversity; 6) publicly posting notices of all board vacancies and encouraging women to apply (The Women's Legal Education and Action Fund, October 4, 2013).

- The Institute of Chartered Accountants of BC supports the following: 1) companies should set measurable objectives for their diversity policies in order to gauge success, as well as targets for senior management to ensure companies adequately mentor the next generation of women leaders; 2) working with search firms to enhance gender diversity, and researching international best practices can create a practical framework that builds on success; 3) disclosure requirements regarding women in senior management positions to foster corporate accountability; and 4) caution in contemplating the requirement of "comply or explain" disclosure, as this should create de facto quotas for gender diversity, which could be ill timed at this stage (Richard Rees, Institute of Chartered Accountants of BC, October 4, 2013).

- A policy alone is simply not enough. Nor is representation. In order to create long-lasting systemic change as it relates to diversity on boards and senior leadership, a holistic approach must be taken. Some effective and successful promising practices include: 1) a publicly available diversity policy clearly explaining the organization's diversity policy – both as it relates to board positions as well as organizational leadership, and the organization as a whole; 2) establishing clear goals; 3) a well thought out, clearly articulated strategy to address the organizations identified diversity goals; 4) targets but not quotas, and only once the company has a robust diversity strategy in place; 5) a recruiting policy specific to board positions which takes diversity into account when making decisions for board candidates; 6) education and awareness about why an organization has a diversity focus (Michael Bach, Canadian Institute of Diversity and Inclusion, October 4, 2013).

- Policies that other regulators and/or effective boards have considered, that may increase the likelihood of greater women on boards, and that the OSC should consider include: 1) limiting director tenure to 9 years, beyond which independence needs to be re-established; 2) limiting the number of directorships for executive directors and non-executive directors; 3) limiting director interlocks; 4) augmenting director independence standards to include a reasonable person test, and have boards assess director independence with the assistance of a third party; 5) requiring an independent third party every 2-3 years to facilitate the assessment of the board and individual directors; 6) requiring clean majority voting policies; 7) making it easier for shareholders to propose, communicate with and remove directors (Richard LeBlanc, York University, October 4, 2013).

- The three significant changes the Governance Studio and Global Governance Advisors are proposing to the OSC's model are: 1) the requirement to adopt a company-developed diversity policy; 2) a requirement to develop measurable diversity objectives; 3) the requirement to include specific senior management diversity action plans and progress toward their achievement in a company's disclosure (Sylvia L.Groves, Governance Studio Inc., and Paul Gryglewicz, Global Governance Advisors, October 4, 2013).

- Beyond a "comply or explain" approach there are a number of additional measures that need to be put into place to ensure that progress is made. These measures are: 1) establishing standards that articulate what the goal should be for the minimum proportion of either gender on boards for non-venture issuers; 2) There should be a time limit for achievement of those standards or at a minimum a measurable degree of improvement. If sufficient progress is not made within that time, quotas should be implemented as a next step (Stephanie MacKendrick, MacKendrick and Associates International, October 4, 2013).

- To contribute further to the advancement of gender diversity in senior management, the OSC could also: 1) provide guidance on appropriate targets and timelines for implementation; 2) encourage companies to adapt some of the recommended board practices for senior management recruitment; 3) encourage companies to identify and address common workplace barriers; 4) monitor compliance and publish the results; 5) make some reporting requirements mandatory; 6) ensure there are common reporting metrics for mandatory disclosure for all companies to enable consistency and comparability; 7) consider guidance for voluntary disclosure; 8) ensure the requirements apply to all public companies and their operating subsidiaries and not distinguish between venture and non-venture issuers (Doug Pearce, British Columbia Investment Management Corporation, October 4, 2013).

- Beyond the proposed model disclosure requirements in the Consultation Paper, avenues for increasing the number of women on boards of directors include: 1) enabling shareholders with proxy access to facilitate shareholder contributions promoting gender diversity; 2) encouraging boards and the nominating committees to establish policies with respect to term limits, "over-boarding" or accepting too many board appointments, minimizing or prohibiting interlocking directorships with the goal of increasing board refreshment; 3) encouraging boards to develop pools of qualified or potentially qualified female candidates who have any of the skills the board has identified as necessary in its directors; 4) encouraging boards to consider professional recruitment services and ensure any providers are required to search for qualified female candidates; 5) encouraging boards to establish policies to consider a minimum number of female candidates for each board vacancy; 6) encouraging boards to develop mentoring programs for women directors; 7) ensuring that companies report on the foregoing policies and practices while avoiding reporting the results in boilerplate or compliance-focused responses (Doug Pearce, British Columbia Investment Management Corporation, October 4, 2013).

- To increase the number of women in senior management, executive committees should have policies that include all of the elements listed for boards and that also: 1) consider a definition of senior management to ensure an appropriate measurement; 2) state explicitly that special measures will be taken to close gaps between the representation of men and women in senior management, including identifying internal candidates early in their careers and ensuring they are given equivalent developmental opportunities to men in the form of assignments, training and sponsors; 3) having clear, objective requirements for promotion, and for measuring performance; and 4) recognizing the importance of flexibility of working hours and location (Frank Vettese and Glenn Ives, October 1, 2013).

### 1.5.2 Disclosure requirements

- Issuers should have a diversity policy in place that includes measurable objectives for implementing the policy, and annual disclosure requirements on progress made in achieving the objectives. Issuers should also be required to set targets with respect to board and senior management gender diversity levels so that they have a clear goal to aim for and report against (Kevin Dancey and R.N. Barr, Chartered Professional Accountants of Canada, October 2, 2013).

- Each reporting issuer should be required to develop and disclose the policies and procedures appropriate to its organization and market and its planned steps in order to achieve greater representation of women at the board level and in senior leadership roles (Iain J.S. Black, The Vancouver Board of Trade, October 4, 2013).

- We must provide suggested policies and content to support Canadian businesses as they strive for greater gender diversity in their ranks, and support them to track their progress and performance; however, we must not be too prescriptive given that each organization will be different depending on the nature of its business, its industry sector, the diversity of the pool of talent, and the diversity of its customer base and the communities in which it operates (Iain J.S. Black, The Vancouver Board of Trade, October 4, 2013).

- Governance Studio and Global Governance Advisors support public issuers disclosing their diversity policy, including the representation of women on the board and in senior management ranks. However, they disagree with the "comply or explain" model as it will not move organizations far enough in a reasonable amount of time. Governance Studio and Global Governance Advisors believe a more effective approach is to require that listed organizations develop, adopt, disclose and report against a diversity policy of their choosing. Public issuers should be free to create their own diversity policy. They should not be forced to adopt a predetermined policy (Sylvia L. Groves, Governance Studio Inc., and Paul Gryglewicz, Global Governance Advisors, October 4, 2013).

- Board diversity and specifically, representation of women should be included in required board disclosure (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

- Requiring corporations to explain their self-governing approach to implementing gender diversity practices in their senior management and on their boards will result in clear and useful disclosure and provide stakeholders with good information on each corporation's views and commitments to creating gender diversity (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- The OSC should require disclosure in annual reports and on websites in addition to annual proxy circulars based on a strengthened definition of disclosure to increase transparency and accountability (Canadian Board Diversity Council, October 4, 2013).

- The OSC should require that an explanation be given if an external search consultancy has not been used in the appointment of a director and an explanation of the terms of the mandate in respect of the identification of female candidates and the percentage of women to be on the short list of candidates (Canadian Board Diversity Council, October 4, 2013).

- A push to expand gender diversity through enhanced and standardized disclosure specifically targeted to gender diversity will allow corporations to determine their own appropriate gender balance targets. The requirement for disclosure of comparative data on gender representation will cause corporations to look more closely at their practices and provide the basis for stakeholder engagement with laggard companies. Availability of standardized data on gender representation will enable market-wide studies to be published which will document progress (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

### 1.5.3 Senior management targets and quotas

- SNC-Lavalin Group Inc. agrees that a "comply or explain" regime is an appropriate solution. However, it believes that a distinction needs to be made between its applications with respect to boards versus senior management. Given the 'critical mass' issue relating to board membership, the "comply or explain" model is appropriate for disclosure with respect to them. However, with respect to senior management, where "critical mass" is not an issue, clear targets/quotas should be adopted. Although selecting the best senior management candidates should remain each company's prerogative, when it comes to women being promoted into these positions, without clear targets/quotas against which organizations are held accountable, the status quo will likely prevail (Ian A. Bourne and Robert G. Card, SNC-Lavalin Group Inc., October 4, 2013).

- Boards should seek to better understand gender representation at each level of their organizations, and also to understand the initiatives taken by management to address any gender imbalances. In doing so, an organization may better identify varying levels of gender diversity across different working groups or tiers of management, which can help it to tailor its gender diversity policies in order to redress any diagnosed imbalances (Michelle Edkins, BlackRock Inc., October 3, 2013).

### 1.5.4 Lead diversity director

- The OSC should consider requiring non-venture issuers to have a lead diversity director to spearhead the issuer's diversity efforts, with specified duties and reporting requirements. The role of the lead diversity director would be to ensure that the issuer's diversity policy gets carried out effectively and that is complied with on a practical level (Amandeep Sandhu, McMillan LLP, October 1, 2013).

### 1.5.5 Proxy voting requirements

- Regulators such as the OSC should ensure that nominating and voting processes remain fair and do not put up barriers to nominees recommended by shareholders (Tom Smith, August 29, 2013).

### 1.5.6 Recruitment policies and practices

- Organizations that promote women should recruit qualified female candidates and get the support of institutional investors and financial institutions for their slate of candidates (Tom Smith, August 29, 2013).

- The OSC should implement a rule similar to the Rooney Rule (which requires National Football League teams to interview minority candidates for coaching positions) and require that for every opening on the board of directors and in senior executive positions for non-venture issuers, at least one female candidate be required to be interviewed for the position. McMillan proposes to call this rule the "Fair Representation Rule". The Fair Representation Rule should not be enforced through the imposition of fines, but instead through a "comply or explain" objective standard for issuers to meet (Amandeep Sandhu, McMillan LLP, October 1, 2013).

### 1.5.7 Regulatory guidelines and continuous disclosure review

- Instead of only requiring that a diversity policy be implemented, the OSC could also set firm guidelines on what that policy would entail (Amandeep Sandhu, McMillan LLP, October 1, 2013).

- An annual review should be conducted each year beginning in 2015 for the OSC. This annual review would determine the extent to which companies have embraced the disclosure requirements and provided meaningful information to shareholders (Canadian Board Diversity Council, October 4, 2013).

### 1.5.8 Investment funds

- Gender diversity should extend to investment fund governance. Disclosure regarding voluntary targets for women representation on boards of managers and independent review committees of reporting issuer investment funds would be a meaningful step in the investment funds industry (Alfred Page, Lynn M. McGrade, Rebecca Cowdery, Sonia Molodecky, and Francesca Smirnakis, Borden Ladner Gervais LLP, October 16, 2013).

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

### 2.1 Additional disclosure would not be useful or may be excessive

- Additional disclosure requirements would not be useful since shareholders already have access to all the facts (Tom Smith, August 29, 2013).

- The proposed scope and content of the model disclosure requirements is excessive (B. White, August 5, 2013).

- The issuer should not have to disclose whether and how adherence to the policy for diversity or achieving any objectives set out in the policy has been measured as part of the annual evaluation of the board and its nominating committee (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

- Canadian Oil Sands Limited does not support the proposed disclosure requirements dealing with an issuer's consideration of the representation of women in the board evaluation process. The evaluation process itself is for all the directors to feel that they are being assessed individually and collectively as board members, regardless of gender, age or race. The focus is on performance itself not particular gender aspects of the person (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

- In the context of a "comply or explain" model, the model proposed by the OSC seems adequate. However, Hermes Equity Ownership Services Limited is concerned that the OSC model asks for a lot of explanation. The rule should emphasize setting gender diversity goals and progress against those goals over time. Diversity goals should be somewhat flexible (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- CBA proposes to remove the disclosure requirement on the board evaluation process from any resulting requirements (Nathalie Clark, Canadian Bankers Association, October 3, 2013).

- SNC-Lavalin believes that the content of model disclosure requirements outlined in the OSC Consultation Paper is appropriate. However, it does not agree that annual evaluations of the board should be disclosed publicly (Ian A. Bourne and Robert G. Card, SNC-Lavalin Group Inc., October 4, 2013).

**2.2 The proposed OSC disclosure requirements are appropriate**

- While 74% of respondents to a CIRI member survey felt that a diversity policy or its key provisions should be disclosed, two thirds of respondents believed such disclosure should also include: 1) how the policy is intended to advance the participation of women; 2) how the policy has been implemented; 3) any strategic goals that have been established; 4) the effectiveness of the policy, including regular updates regarding progress against those goals. In addition, 75% of respondents were supportive of disclosing (in percentage terms) the proportion of women on the board. (Yvette Lokker, Canadian Investor Relations Institute, October 2, 2013).

- The Shareholder Association for Research and Education favours including recommendations in the Corporate Governance Guidelines or another appropriate policy instrument, and disclosure of the extent to which companies are following the recommendations (Peter Chapman, Shareholder Association for Research and Education, October 3, 2013).

- BlackRock supports the OSC’s proposal to require companies to publicly disclose their gender diversity policies, the consideration of the representation of women in the director selection and the board evaluation processes, and the representation of women in the company both at the senior management and board levels (Michelle Edkins, BlackRock Inc., October 3, 2013).

- The OSC should amend the Corporate Governance Disclosure Rule to require that non-venture issuers provide disclosure on an annual basis in the following four areas: 1) policies regarding the representation of women on the board and in senior management; 2) consideration of the representation of women in the director selection process; 3) consideration of the representation of women in the board evaluation process and 4) measurement regarding the representation of women in the organization and specifically on the board and in senior management (Canadian Board Diversity Council, October 4, 2013).

- Companies should explain how their gender diversity policies have been implemented, describe any measurable objectives that have been established and disclose annual and cumulative progress on achieving the objectives of the policy. Where the objectives are measurable, a company should disclose progress in quantitative terms, and describe how the board or its nominating committee measures the effectiveness of the policy (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- Companies should share their policy on gender diversity for the board and senior management, the actions that they undertook and the progress as they measure the changes in the number of appointments. Additionally, an issuer should disclose how it is trying to foster and create the ongoing development of females for senior management and board positions. Companies should also disclose the number of women on their boards and in senior management, but the size of the corporation needs to be taken into account in such disclosure (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

- There should be disclosure whether or not diversity is on the company agenda. Where it is on the company agenda, the issuer should disclose strategy, policies and key initiatives, as well as on targets for diversity performance at the board, senior management and company level, and progress against those targets (Robert Walker, NEI Investments, September 23, 2013).

- Companies should set out how their policies are intended to advance the participation of women on the board and in senior management (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- 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 (Janet Austin and Sherry Tryssenaar, October 4, 2013).

- Reporting should include gender composition on the board, gender diversity policies in effect and how gender diversity is taken into account during the board selection process (The Women's Legal Education and Action Fund, October 4, 2013).

- Disclosure of policies should come in the form of a corporate governance statement that supports increased representation by women and a policy on how the corporation intends to implement that goal (Helen Kearns, Bell Kearns and Associates Ltd., October 7, 2013).

- The OSC should amend the corporate governance disclosure rule to require non-venture issuers to disclose whether they have policies regarding the representation of women on the board and to disclose their actual policies or summaries of them in the annual proxy circular, annual report, and on the company website (Women's Executive Network, October 4, 2013).

- The "comply or explain" approach is a reasonable method of establishing a focus on female representation and has the benefit of being consistent with the Canadian approach to corporate governance (Sanford Eprile and Company Inc., September 4, 2013).

- CanWIT is in agreement that the proposed scope and content of the model disclosure requirements are appropriate and reasonable (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- The three measurements proposed by the OSC (total female employees, women on the board, women in senior management) are appropriate. These should be expressed as percentages with trend reporting for each (Erik Mathiesen, The United Church of Canada, September 27, 2013).

- The OSC's proposed model discloses all notable requirements that should be included (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

- The model disclosure requirements are appropriate (Frank Vettese and Glenn Ives, October 1, 2013).

- The proposed regulation is a sensible approach to improving women's participation on boards and in senior management ranks (Christiane Bergevin, Tracy Redies, Carol Chapman, Johanne Lépine, Elise Rees, Aldéa Landry, Anne-Marie Hubert, Michelle Savoy, Madeleine Chenette and Annie Blouin, October 1, 2013).

- The OSC's model disclosure requirement is appropriate and should be required of non-venture issuers, but should not be required of venture issuers (Michelle Edkins, BlackRock Inc., October 3, 2013).

- The CBA supports inclusion of measures noted in the Consultation Paper, such as requiring disclosure of the proportion of women employees in the whole organization, women in senior executive positions and women on the board. (Nathalie Clark, Canadian Bankers Association, October 3, 2013).

- The proposed scope and content of model disclosure requirements is appropriate but must include the gender makeup of the board. This disclosure should include whether the issuer has a policy for advancing the participation of women in senior management, how long the policy has been in place, and how its success is measured (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

**3. Is the proposed scope of model disclosure requirements appropriate? Are there additional or different disclosure requirements that should be considered?**

**3.1 The proposed OSC disclosure requirements should be expanded**

- The OSC's model of disclosure does not go far enough. Simply reporting on the representation of women at various levels will not effect change. A more robust strategy is required (Michael Bach, Canadian Institute of Diversity and Inclusion, October 4, 2013).

- There is a paucity of evidence that requiring companies on a discretionary basis to proffer a policy on gender diversity with (or without) measurable objectives will, in and of itself, have an unexpected or unintended effect of developing or augmenting women on boards or in senior management (Richard LeBlanc, York University, October 4, 2013).

- The proposed scope and content should be expanded to include more information on overall performance regarding gender diversity (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- Disclosure should include whether an independent employee engagement and satisfaction survey has been last undertaken, and if so, whether the results of this survey were reported to the Board of Directors (Richard LeBlanc, York University, October 4, 2013).

- Disclosure should include whether, and if so, how, the nominating committee and Board of Directors oversee and receive reporting on the foregoing and provide direction to reporting Management to cure defects or deficiencies (Richard LeBlanc, York University, October 4, 2013).

- The ICD proposes 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 (Stan Magidson, Institute of Corporate Directors, September 23, 2013).

- A requirement to disclose where responsibility has been assigned for the implementation of the policy or policies should also be added (Robert Walker, NEI Investments, September 23, 2013).

- Require that businesses disclose whether they have been the subject of any orders or findings of employment discrimination, human rights, or pay equity violations under relevant legislation (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- Each organization, at a minimum, should be required to complete a "diversity score card" which measures diversity at several points, hiring, promotion, performance rating, voluntary and involuntary turnover. That score card should be publicly available as part of annual reporting, including year-over-year comparisons, to show how the organization is progressing against its commitment. The issuer should also be required to report on all subsidiary entities (Michael Bach, Canadian Institute of Diversity and Inclusion, October 4, 2013).

- Disclosure should include whether the efficacy of the gender diversity policy is reported to the full board by the nominating committee, and to shareholders annually. Disclosure should also include whether an independent board chair should report to shareholders on company culture (Richard LeBlanc, York University, October 4, 2013).

#### 3.1.1 Issuers should be required to a have a diversity policy

- 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. The Shareholder Association for Research and Education supports disclosure 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 (Peter Chapman, Shareholder Association for Research and Education, October 3, 2013).

- The OSC must go beyond simple disclosure to require issuers to meet certain criteria as part of an overarching diversity strategy (Michael Bach, Canadian Institute of Diversity and Inclusion, October 4, 2013).

- Every public company should be required to develop and disclose its policy concerning diversity and its strategy for implementing its policy (Peter J. Dey, Paradigm Capital, October 3, 2013).

#### 3.1.2 Issuers should be required to establish diversity goals

- Issuers should disclose policies and practices for addressing gender diversity on the board through board succession planning and recruitment (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- Catalyst urges the OSC to require companies to set clear and reasonable goals for increasing women’s representation in business leadership, both in the boardroom and in executive offices, press companies to make a public commitment to these goals and push for measurable progress within a clearly defined time frame (Deborah Gillis and Alex Johnston, Catalyst, September 26, 2013).

- Every company should disclose specific and measurable targets for achieving greater female representation within its senior management and board, and appropriately measure and report on progress in achieving such targets (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Specific diversity targets within a skills matrix and succession plan (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

- To encourage more women in senior management positions and on boards, issuers should be required to disclose a formal process that sets gender diversity targets against which they will measure themselves (Kevin Dancey and R.N. Barr, Chartered Professional Accountants of Canada, October 2, 2013).

- Each reporting issuer should be required to adopt and disclose on an annual basis its own self-determined targets for the representation of women on its board and in senior management, with an interim target for 2017 and a further target for 2020 (Janet Austin and Sherry Tryssenaar, October 4, 2013).

- Corporations should have to report on their progress annually in the management information circular (MIC), indicating gender diversity practices in their senior management team and on their boards, and provide stakeholders with information on their views and commitments to creating gender diversity. Disclosure in the MIC should include a table showing the number and percentage of female board members versus the five-year 25% target (Jo-Anne Archibald, DSA Corporate Services Inc., October 4, 2013).

- Disclose diversity goals and explain why the disclosed balance is considered appropriate. Disclose whether a company has diversity objectives when identifying candidates. Disclose whether gender diversity has been increasing, decreasing, or remaining flat (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- Each reporting issuer should be required to disclose on an annual basis its own performance regarding representation of women on its board and its senior management team. An appropriate phase-in period should be applied for all TSX non-venture issuers. Companies should annually report on their progress towards meeting the Ontario Teachers' Pension Plan’s proposed requirement of three or more women on the board, as well as the policies and actions they have taken towards increasing female representation at both the board and senior management levels (Iain J.S. Black, The Vancouver Board of Trade, October 4, 2013).

- More effective policies include goals and outcomes for women and organizations that go beyond disclosure of well-intended but vague policy statements. There should be a "targets with teeth" approach that asks businesses to set voluntary targets that are specific, challenging, tied to accountability and rewards systems and aligned with corporate diversity strategies (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- Companies should disclose relevant diversity objectives. To the extent that a company has been unable to meet the diversity objectives, the company should discuss any obstacles encountered (Michelle Edkins, BlackRock Inc., October 3, 2013).

- The model disclosure requirements are very thoughtful and comprehensive yet never use the term "targets." The model disclosure requirements use phrases such as "measurable objectives" and "measuring the effectiveness" which are arguably similar to targets but if we are in search of urgent change, urgent targets are required (Helen Kearns, Bell Kearns and Associates Ltd, October 7, 2013).

- Issuers should disclose their own measurable goals in meeting their diversity policies and how they are doing in comparison to these goals (Stan Magidson, Institute of Corporate Directors, September 23, 2013).

- Companies should also be required to set internal targets on gender diversity (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- Require businesses to specify the gender goals they expect to achieve. Companies should set short and long-term goals and provide measurement of their progress toward their specific goals, at regular intervals (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- Companies should disclose measurable targets for gender diversity on the board and in senior management. Furthermore those targets should be associated with specific timeframes. Boards and management should be held accountable for the achievement of specific objectives with respect to gender diversity. The inclusion of measurable targets for boards and senior management will be a critical factor in the successful achievement of a critical mass of women in leadership positions who can influence their organization and allow it to reap the economic benefits of greater gender diversity (Jennifer Reynolds, Women in Capital Markets, October 2, 2013).

### 3.1.3 Issuers should be required to disclose why goals are not met or no policy in place

- Companies with no policy should be expected to explain and discuss the risks and opportunities arising from that decision (Robert Walker, NEI Investments, September 23, 2013).

- Require businesses to provide an explanation of and a plan of action including assigned accountabilities for achieving their goals in the short and long term, when initial targets are not met (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- In the absence of a gender diversity policy, a company should explain why it does not have one and identify the risks or opportunity costs associated with not having a policy (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- The Global Women's Equity Fund recommends requiring companies to disclose their specific practices of gender diversity on boards and senior management. If the company chooses not to comply, they should be required to explain why such a policy is lacking, in addition to undertaking a review of potential losses in not initiating one. The disclosure should be an integral part of the annual report for all corporations and should be contained in a new and specific section of the annual report (Alexis Klein, Global Women's Equity Fund, October 1, 2013).

- Include the role of the investor by including a requirement to add an item of business to the proxy, namely, "Do you believe the corporation is complying with diversity criteria imposed by the Corporate Governance Disclosure Rule?" (Jennifer L. Boyle, Satori Resources Inc., October 4, 2013)>

### 3.1.4 Issuers should disclose diversity efforts applicable to entire organization

- Companies should be required to reveal the number of women at different levels of the company, existing policies and practices in place to help advance women in companies, and proposed policies and targets to help advance women to senior level positions (Dr. Barnali Choudhury, Queen Mary University of London, September 13, 2013).

- Non-venture issuers should disclose: 1) details of their diversity policy both for board and senior management gender diversity; 2) measurable goals against board and senior management gender diversity; 3) annual report on progress against the goals and execution of the diversity policy; 4) if goals have not been met, an explanation as to the reasons and plans to comply in future; 5) non-venture issuers should disclose the percentage representation of women in their organization as a whole, in senior executive positions and on the board for the last three years (William B. Thomas, KPMG LLP, September 27, 2013).

- Companies should disclose their gender diversity policies for the board, senior management and across all operations, which should include policies on flexible talent management and encouragement of female inclusion in hiring and promotion. This should be overseen by the board and reported internally and to shareholders (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Disclosure should explain how the corporation promotes gender diversity throughout the organization and what program it plans to incorporate to develop its female workforce (Jo-Anne Archibald, DSA Corporate Services Inc., October 4, 2013).

### 3.1.5 Location and prominence of disclosure

- In addition to the model disclosure requirements, disclosure should be more widely read in a news release (summary), in addition to being cited in the middle of an information circular. By introducing regulation that requires disclosure in a convenient and very public forum, it is much more convenient and readily available to the reader, and would force corporations to be more accountable in their compliance efforts (Jennifer L. Boyle, Satori Resources Inc., October 4, 2013).

- In addition to incorporating diversity content in the corporate governance framework, the OSC should explore the diversity issue within the context of continuous disclosure obligations under National Instrument 51-102 (Robert Walker, NEI Investments, September 23, 2013).

- On an annual basis, an update report should be mailed to shareholders, detailing efforts made by the organization to include more women on its board, current statistics showing the number of women that are directors or officers within the organization, and why an organization does not have any women directors or officers on the board (Alexis Klein, Global Women's Equity Fund, October 1, 2013).

- Stand-alone news release disclosure in every 6-month period. This would require that companies disclose the number of women on the board in senior management positions and interviewed in the prior 6-month period for positions as nominee directors, and a summary of a few key points of the corporation's corporate governance policy as it relates to the representation of women in the director selection and evaluation process (Jennifer L. Boyle, Satori Resources Inc., October 4, 2013).

- The OSC should require disclosure in annual reports and on websites in addition to annual proxy circulars based on a strengthened definition of disclosure, to increase transparency and accountability (Women's Executive Network, October 4, 2013).

### 3.1.6 Use of consultants

- Disclosure should include whether an independent third party has been consulted on the gender diversity policy and its efficacy and results (Richard LeBlanc, York University, October 4, 2013).

- The OSC should require an explanation if an external search consultancy has not been used in the appointment of a director, as well as disclosure of the terms of the mandate in respect of the identification of female candidates and the percentage of women to be on the short list of candidates (Women's Executive Network, October 4, 2013).

- Disclosure should include diversity goals and why the disclosed balance is considered appropriate; whether a company has diversity objectives when identifying candidates; whether gender diversity has been increasing, decreasing or remaining flat; the process used to identify candidates for directorships or senior executive positions, including the names of consultants used (Erik Mathiesen, The United Church of Canada, September 27, 2013).

- Non-venture issuers should be required to disclose whether 1) the issuer has reviewed all internal policies to determine whether they inadvertently exclude or marginalize women; 2) the issuer has hired an outside consultant to advise on policies and procedures from a gender diversity perspective; 3) employees have received training on issues related to gender diversity; 4) the issuer filled any board or senior management positions during the last fiscal year; and 5) the issuer complied with any applicable rule on gender diversity rule and if not, provide an explanation of why not (Amandeep Sandhu, McMillan LLP, October 1, 2013).

### 3.1.7 Board renewal and evaluation

- Disclosure is required on renewal policy, recruitment policy and gender diversity policy (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- In order to allow for greater gender diversity on boards, companies will also have to address the low turnover rates on boards in order to make room for new directors. Disclosure of policies and practices with respect to tenure limits and board renewal are essential to increasing the representation of women on boards in a reasonable time frame (Jennifer Reynolds, Women in Capital Markets, October 2, 2013).

- The proposed scope and content of the model disclosure requirements are appropriate subject to the following additional disclosure requirement: issuers should explicitly indicate whether, and if so how, the board considers the representation of women in senior management positions when meeting their succession planning responsibilities (Daniel E. Chornous, Canadian Coalition for Good Governance, September 30, 2013).

- Companies should disclose whether diversity and female representation are a formal part of the annual board agenda and of the board self-evaluation process (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

- Companies should disclose whether gender diversity representation and ratios are measured within the hiring, incentive and retirement pipeline within the company, including initiatives and measurable objectives. There should also be disclosure of how gender diversity performance metrics are included in executive compensation, promotion and tenure (Richard LeBlanc, York University, October 4, 2013).

- Disclosure should include diversity of the board nominating committee, specific talents and experience required, time and travel commitment required, education and work experience, community service work considered, ratio of males to females and the average wage of each group (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

- The OSC should encourage consideration of a broader pool of candidates. The OSC should recommend, as a best practice, that companies have a critical mass of women on their nominating committees (Erik Mathiesen, The United Church of Canada, September 27, 2013).

- The HR committee of the board can and should play an integral role in the process by taking on the same governance responsibilities as for board positions (The Group of Senior Corporate Directors, September 27, 2013).

#### 3.1.8 Beyond gender diversity

- There should be disclosure on identity diversity that extends beyond gender (Robert Walker, NEI Investments, September 23, 2013).

- The scope of the disclosure requirements regarding diversity should be broader than solely gender diversity. With respect to gender diversity, the type of disclosure described in the consultation paper seems appropriate (Norton Rose Fulbright Canada LLP, September 26, 2013).

- If disclosure of gender diversity is deemed relevant, then full diversity should be disclosed. The focus should not just be on gender but should include all diversity categories such as gender, visible minorities, disabled, Aboriginal – and by age brackets and professions. This form of disclosure would provide information that is much more complete and relevant to the corporate investor and stakeholder communities (Tricia Veness, Artis REIT, September 27, 2013).

- Diversity policies and their disclosure should relate more broadly than just to gender (Yvette Lokker, Canadian Investor Relations Institute, October 2, 2013).

- The proposed scope and content are appropriate but the proposed measurement requirement needs to be more specific and expanded to include more than just gender diversity but representation of all minority groups (Dr.Barnali Choudhury, Queen Mary University of London, September 13, 2013).

- Efforts to encourage and increase the number of qualified women on boards and in senior management are welcomed and needed but not enough. Gender diversity must also include minorities and other under-represented groups (Alan Broadbent and Ratna Omidvar, Maytree, September 20, 2013)

- The ICD believes the proposal is meaningful and worthy of pursuit, but would prefer that the OCD consider diversity disclosure more generally (Stan Magidson, Institute of Corporate Directors, September 23, 2013).

- The OSC should broaden the definition of diversity as it relates to board and senior management to include gender, ethnicity, age, and cultural background. KPMG believes that boards and senior management stand to benefit from a diversity of perspectives that goes beyond gender (William B. Thomas, KPMG LLP, September 27, 2013).

- The CSCS encourages the OSC to consider further diversity initiatives that will encourage corporations to work towards including under-represented groups in senior management and on boards of directors (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- The CBA supports enhancing disclosure to explain how an issuer approaches gender diversity and the advancement of women and to provide related measures. While gender balance is an important aspect of diversity, other aspects such as race, national origin, sexual orientation, physical disability, education, professional experience, management capabilities and expertise also merit recognition as important aspects of diversity. We recommend that the OSC disclosure model recognize the breadth of diversity and foster disclosure of an issuer’s overall diversity commitment (Nathalie Clark, Canadian Bankers Association, October 3, 2013).

- To launch a strategy with a focus solely on women would represent a missed opportunity to advance the diversity conversation and therefore perceptions of diversity within the province, demonstrate the province’s leadership in this area, and build on the good work that has already been done in the Ontario Public Service and within agencies of the Ministry of the Attorney General (Noelle Richardson, September 27, 2013).

#### 3.1.9 Specific comments on certain definitions

- The Women's Executive Network agrees with the Senior Corporate Director's submission in respect of the wording of the current disclosure model. They are concerned that the Consultation Paper policy currently reads that an issuer should provide disclosure of its policy regarding the representation of women on the board (Women's Executive Network, October 4, 2013).

- Further consideration should be given to the disclosure for "senior management", which under the proposed model will be limited to executive officers as currently defined by the OSC. Extending the scope of the disclosure for "senior management" to include those who have the title of vice-president and to those with managerial responsibilities who report to the vice-president, would provide richer and more insightful disclosure (Glenna Carr, Janet Ecker, Angela Ferrante, Carol Hansell, Maureen Kempston Darkes, Alison Knight, Sue Lee, Mary Mogford, Kathleen O'Neill, Michelle Samson-Doel, Guylaine Saucier and Beverly Topping, September 26, 2013).

- Specific usage of the "named executive officer" definition may be overly narrow and may not provide a true picture of women in senior management in organizations. Corporations should be required to choose and disclose a definition of "senior executive" and report the percentage of women at that level of management (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- BlackRock supports the OSC's proposal to leverage the existing definition of the term "executive officer" (Michelle Edkins, BlackRock Inc., October 3, 2013).

- The definition of "executive officer" should be changed to clarify that the role of chair of the board is that of director, not an executive officer (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- The CBA recommends that the OSC allow issuers to define the groups for whom disclosure is made, rather than define the term "senior executives" (Nathalie Clark, Canadian Bankers Association, October 3, 2013).

### 3.2 Need for periodic review of system's efficacy

- A 5-year review requirement should be established to ensure sufficient progress on these issues (Sanford Eprile and Company Inc., September 4, 2013).

- Introduce and include a specific target to be achieved within a certain time period (e.g. 25-33%). If a measured improvement is not seen over the next few years using the "comply or explain" approach then a legislated quota approach should be implemented (Mary Mogford, September 25, 2013).

- The OSC should evaluate the "comply or explain" model's success in generating an increase in women's participation on boards and in senior management within a reasonable time frame. The Group of Senior Corporate Directors proposes that the OSC hold a public review of the success of this approach three years after implementation (The Group of Senior Corporate Directors, September 27, 2013).

**4. What type of statistics and data regarding the representation of women in their organization should non-venture issuers be required to disclose? Should such disclosure be made by the non-venture issuer only or for all of its subsidiary entities also?**

## 4.1 Current representation of diversity within the issuer

### 4.1.1 Data regarding diversity of board and senior management

- Corporations should also be required to disclose their definition of "senior executive" and report the number and percentage of women at this level of management, such as those at and above the vice-president level (Jo-Anne Archibald, DSA Corporate Services Inc., October 4, 2013).

- Percentage of women holding executive positions, percentage of women in the workforce, percentage of women taking part in continuing education and professional development courses (for companies with higher than 250 employees) (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

- Actual numbers and percentage representation of women on the board and in senior management should be reported against internal objectives (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers, and Janet Woodruff, September 30, 2013).

- Issuers should also be expected to disclose the percentage of new female board entrants over the past three years and the number of female candidates considered for each board opening (Daniel E. Chornous, Canadian Coalition for Good Governance, September 30, 2013).

- Diversity indicators that should be disclosed: number and percentage of women on the board and in senior management; number and percentage of women candidates considered for board positions, compared to the number and percentage selected;

description of efforts made to identify women board candidates; and description of succession planning process for senior management, and of efforts being made to expand the pool of women candidates (Frank Vettese and Glenn Ives, October 1, 2013).

- At a minimum, companies should be required to track how many board nominees are from under-represented groups, as long as this does not violate the privacy of the candidates. For senior executives there should be aggregate tracking of diversity and disclosure about the company's measurable objectives and progress in achieving them (Peter Chapman, Shareholder Association for Research and Education, October 3, 2013).

- Disclosure of statistics such as the number of women on the board; the number of women in senior management positions; the number of qualified women interviewed for positions as nominee directors (Jennifer L. Boyle, Satori Resources Inc., October 4, 2013).

- Issuers should disclose the number of women on the board, in senior management and in managerial roles. However, it should be up to the issuer to determine what additional information supports this position (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

- Current proportion (in percentages) of gender diversity among board nominees (Robert Walker, NEI Investments, September 23. 2013).

- Indicate the number as well as the percentage of women on boards and whether women serve on more than one board (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- Issuers should also disclose current gender balance and trends in recruitment of board and senior management over the most recent five-year period (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

### 4.1.2 Data regarding diversity within the larger organization

- BMO supports the OSC's proposal to require reporting of the proportion of diversity segments in relation to the whole organization, in senior positions and on the board. However, BMO would recommend that the OSC permit the issuer to define the categories for which the disclosure is made to ensure consistency with any other diversity reporting requirements that the issuer may have (Simon Fish, BMO Financial Group, October 4, 2013.)

- Recommend that further consideration be given to requiring the disclosure of the proportion of female employees in the whole organization. Whilst this measure may be of some interest, it is not clear that its inclusion will give rise to useful insights or result in data that is comparable depending upon the business and geographic scope of an issuer (Glenna Carr, Janet Ecker, Angela Ferrante, Carol Hansell, Maureen Kempston Darkes, Alison Knight, Sue Lee, Mary Mogford, Kathleen O'Neill, Michelle Samson-Doel, Guylaine Saucier and Beverly Topping, September 26, 2013).

- Current proportion (in percentages) of diversity among senior executives and among employees in the whole organization (Robert Walker, NEI Investments, September 23, 2013).

- Issuers should be required to disclose statistics on gender split on a company-wide basis including all subsidiaries, as well as policies and practices for encouraging greater gender diversity on the board and in senior management (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- A company should be required to disclose the proportion of the overall number of women employed, the percentage of senior level executives who are women according to the OSC's definition of a senior-level executive, and the number of women on boards. To ensure consistent messaging regarding the importance of diversity on boards, CanWIT also feels that such disclosure should be reported for the non-venture issuer as well as its subsidiary entities (Emily Boucher, Canadian Women in Technology, September 27, 2013).

- The statistics proposed by the model disclosures, including the proportion of female employees within the organization, women in senior executive positions, and women on the board, are appropriate (Michelle Edkins, BlackRock Inc., October 3, 2013).

- A measurement strategy where all entities must disclose the number of male and female positions as well as the average wage of each group is simple, does not invade privacy and can red-flag any organization with gender equality issues (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

- The disclosure of certain statistics regarding the representation of women in management could be useful, namely the proportion of women in the organization and in senior management roles (Monique Mercier, Telus Corporation, October 4, 2013).

- We believe the statistics and other information that Canadian issuers should be required to disclose are the following: percentage of female employees in their organization on a consolidated basis for their entire corporate group; percentage of female employees in senior leadership roles; percentage of female members on the corporate board; whether or not the organization has a formal gender diversity policy and framework in place (Iain J.S. Black, The Vancouver Board of Trade, October 4, 2013).

- It would be useful for the issuer to disclose the proportion (in percentages) of female employees in the whole organization; women in senior executive positions; and women on the board (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

- Company targets for diversity on the board and at other levels of the organization, and progress against these targets, including trend information on whether diversity is increasing or decreasing (in percentages) (Robert Walker, NEI Investments, September 23, 2013).

- Non-venture issuers should be required to disclose the proportion of 1) female employees in the whole organization; 2) women in senior executive positions; 3) women on the board. In addition, non-venture issuers should also disclose: 1) details of their diversity policies; 2) goals for the increase in gender diversity on the board and at the senior management level; 3) annual report on progress against goals outlined in the diversity policy and goals; 4) if goals have not been met, an explanation of the reasons and plans to comply in future; 5) statistical gender representation data for a three-year period (William B. Thomas, KPMG LLP, September 27, 2013).

#### 4.1.3 Comparisons to peer groups

- We support the OSC's recommendation to require an issuer to disclose the proportion of women employees in the whole organization, women in senior executive positions and women on the board. To supplement this disclosure we recommend mandating the use of simple and readily available comparators to show how the issuer compares to averages specific to the particular industry, sector and geographic location of the issuer. In order to provide meaningful comparisons, we suggest that all issuers use the same comparator sources, which, would need to be mandated in the disclosure rules and stated as such in the disclosure (Alfred Page, Lynn M. McGrade, Rebecca Cowdery, Sonia Molodecky, and Francesca Smirnakis, Borden Ladner Gervais LLP, October 16, 2013).

- A comparison of gender diversity ratios and performance vis-à-vis industry peers (Richard LeBlanc, York University, October 4, 2013).

- Ask corporations to disclose benchmarking practices (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- Analysis of data by industry, company, size, etc. would be useful to understand any trends occurring across the province (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

#### 4.1.4 Disclosure for venture issuers

- The proposed disclosure regime should only be applied to non-venture reporting issuers and address the disclosure by augmenting National Instrument 58-101 *Disclosure of Corporate Governance Practices* (Stan Magidson, Institute of Corporate Directors, September 23 ,2013).

- Focus should be kept on the non-venture issuer only (Jennifer L. Boyle, Satori Resources Inc., October 4, 2013).

- There should not be a separate set of rules and requirements for non-venture issuers and venture issuers. The requirements should be standard for both (Michael Bach, Canadian Institute of Diversity and Inclusion, October 4, 2013).

- Venture companies should be a part of the solution and statistics on their gender diversity should be disclosed (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

- Diversity requirements should not be extended to venture issuers as the number of regulations that impact smaller issuers is already very onerous (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

- The OSC should not limit its policies on gender diversity to non-venture issuers. Unlike many regulations that have a significant financial burden associated with compliance, the issue of gender diversity presents no more of a hardship for venture issuers than it does for non-venture issuers (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- Engaging women in senior management and on boards of venture issuers will result in an increased pool of candidates, who will gain their experience as venture issuers grow into mid-size and larger cap non-venture issuers (Lynn Beauregard, Canadian Society of Corporate Secretaries, October 3, 2013).

- The OSC should not limit its policies on gender diversity to TSX-listed issuers (Jo-Anne Archibald, DSA Corporate Services Inc., October 4, 2013).

- BMO agrees that the disclosure requirements proposed by the OSC should be limited to non-venture issuers. (Simon Fish, BMO Financial Group, October 4, 2013).

#### 4.1.5 Disclosure for subsidiaries

- Requirements for providing statistics and accompanying qualitative information should be flexible enough to allow issuers to provide the information in a way that makes sense for their respective organizations. Statistics and accompanying qualitative information should generally be provided on a consolidated basis (Norton Rose Fulbright Canada LLP, September 26, 2013).

- The requirements with respect to the type of statistics and accompanying qualitative information should be flexible enough to allow issuers to provide the information in a way that makes sense for their respective organizations. Disclosure should generally include all subsidiary entities; those statistics should be provided on a consolidated basis (Ian A. Bourne and Robert G. Card, SNC-Lavalin Group Inc., October 4, 2013).

- Non-venture issuers should disclose the total number and percentage of women on boards and senior management on an annual basis including within subsidiary entities (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Although not specifically addressed in the OSC proposal, the disclosure requirements should not apply to their subsidiaries. Issuers with multiple subsidiaries of varying size and in different jurisdictions would not be able to comply consistently with these requirements (Simon Fish, BMO Financial Group, October 4, 2013).

- With regard to subsidiaries of non-venture issuers, we note that corporate structures are complex and varied. Companies should be afforded the flexibility to determine whether it is more appropriate for data regarding subsidiaries to be collapsed into information of the parent company, or if it would be more informative for data from subsidiaries to be disclosed separately (Michelle Edkins, BlackRock Inc., October 3, 2013).

- In order for a non-venture issuer to be fully engaged and committed to gender equity, the disclosure reported must include all subsidiary entities (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

- Requiring disclosure from non-venture issuers and their subsidiaries would be a good start (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- The OSC should widen the coverage of reporting companies extending OSC requirements to subsidiary companies (Jennifer Clarke, Brenda Eaton, Pat Jacobsen, Mary Hordan, Alice Laberge, Nancy McKinstry, Joanne McLeod, Loreen Paananen, Bev Park, Jane Peverett, Elise Rees, Gerri Sinclair, Marcella Szel, Victoria Withers and Janet Woodruff, September 30, 2013).

- Disclosure should include all subsidiary entities and any statistical or qualitative information should be provided on a consolidated basis (Daniel Desjardins, Bombardier Inc., September 27, 2013).

- Any quantitative or qualitative information regarding the representation of women in an organization should be reported for non-venture issuers but not for its subsidiary entities (Nathalie Clark, Canadian Bankers Association, October 3, 2013).

- For subsidiaries that exist for tax or geographical presence purposes, or in emerging markets where gender roles and the rights of women may be diminished, subsidiary gender diversity should be reported (Richard LeBlanc, York University, October 4, 2013).

### 4.2 Other

- Disclosure should be provided on other aspects of identity diversity such as ethnicity, aboriginal status, or sexual orientation and whether diversity is increasing or decreasing (in percentages) (Robert Walker, NEI Investments, September 23, 2013).

- Require disclosure of executive compensation by gender (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- Consider measurements that indicate diversity among women in leadership roles (Emanuela Hayninck, Pay Equity Commission, October 2, 2013).

- KPMG recommends that the measurement data proposed in the OSC Consultation Paper be provided for a three-year period to allow investors to make a meaningful assessment on the progress an organization has made (William B. Thomas, KPMG LLP, September 27, 2013).

- Disclosure of the number of women in senior leadership positions and on boards would provide meaningful transparency where it is most needed (William Donovan, Precision Drilling Corporation, October 2, 2013).

- Data should be accessible, extractable and available for trend analysis (B. White, August 5, 2013).

- Documents and data supporting disclosure could include copies of search criteria, finalized by executive search firms (Helen Kearns, Bell Kearns and Associates Ltd, October 7, 2013).

**5. What practices should the OSC recommend for increased representation of women on boards and in senior management? For example, should the OSC recommend that non-venture issuers have a gender diversity policy? If so, should there be recommended content for the policy? Should non-venture issuers be required to comply with the recommended practices or explain why they have not complied?**

**5.1 No practices needed**

- No practices needed (B. White, August 5, 2013).

- The OSC should not recommend optional content for such policy, as there is no "one-size fits all" model that would fill the needs of all non-venture issuers (Ian A. Bourne and Robert G. Card, SNC-Lavalin Group Inc., October 4, 2013).

- The OSC should recommend that non-venture issuers have a gender diversity policy but it should take care not to dictate all the contents of the policy (The Women's Legal Education and Action Fund, October 4, 2013).

- The OSC is ideally placed to make recommendations on investor-facing disclosure and on corporate governance principles and board responsibilities. However, NEI Investments questions whether the OSC is best placed to recommend operational practices for increasing representation of women throughout the company. At the operational level it is more appropriate for companies to seek guidance from specialist agencies (Robert Walker, NEI Investments, September 23, 2013).

**5.2 Practices the OSC should recommend**

**5.2.1 Gender diversity policy**

- Responsibility for the implementation of diversity policy should be assigned clearly at the board level (Robert Walker, NEI Investments, September 23, 2013).

- The OSC should focus on the content of a model gender diversity policy and measurable objectives that would give effect to a policy and be useful to shareholders and other stakeholders rather than making it discretionary (Richard LeBlanc, York University, October 4, 2013).

- Boards should provide oversight on diversity strategy throughout the company, ensure that the company reports on diversity at all levels, and include discussion of diversity on their meeting agendas. Boards should set diversity targets leading to a board comprised of a minimum of 30-40% each of both men and women, and report on progress to investors and other company stakeholders. Reporting should extend beyond statistical reporting on the representation of women on the board, in senior management and throughout the workforce, to include issues such as retention of female employees, pay equity and the success of diversity development programs (Robert Walker, NEI Investments, September 23, 2013).

- The OSC should set out recommended content for the policy in general rather than specific terms (Daniel E. Chornous, Canadian Coalition for Good Governance, September 30, 2013).

- The Corporate Governance Policy might adopt a process which requires board members to be vetted for inclusive leadership skills and cultural competence as part of a board's merit based competencies (Noelle Richardson, September 27, 2013).

- The OSC should recommend that issuers adopt a gender diversity policy for boards and that this should be a best practice added to the Governance Guidelines (Daniel E. Chornous, Canadian Coalition for Good Governance, September 30, 2013).

- Issuers should have an explicit diversity policy and a gender diversity policy could include a statement demonstrating the value of gender diversity, non-discrimination, and equal opportunity to the issuer. The policy could also include specific commitments to advancing diversity, with measurable goals and objectives regarding board, management, or employees (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- Amendments should be made to the Corporate Governance Guidelines or another 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; and measure progress in achieving their objectives (Peter Chapman, Shareholder Association for Research and Education, October 3, 2013).

- The OSC can encourage companies to embrace gender diversity by recommending that non-venture issuers have a gender diversity policy. The provisions of a model gender diversity policy described in Part 4 of the Consultation Paper are appropriate and should be adopted by the OSC (Michelle Edkins, BlackRock Inc., October 3, 2013).

- A gender diversity policy should include a statement of the governance and values of the organization both in management and in the workplace. It would be beneficial to include a list of criteria for their supply chain (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

- Issuers should be required to adopt a diversity policy that addresses gender diversity issues and provides a proper governance framework to implement and achieve it. The OSC can and should set out recommended content for the policy; however, we believe the individual organization should have to adopt only the content and policies that are appropriate for it (Iain J.S. Black, The Vancouver Board of Trade, October 4, 2013).

- Non-venture issuers should have a gender diversity policy and the OSC should set out recommended content for that policy (Michael Bach, Canadian Institute of Diversity and Inclusion, October 4, 2013).

- A gender diversity policy should provide the framework for an organization's practices. Developing a gender diversity policy should be the first step that boards and organizations take. This policy should describe why the organization feels gender diversity is important, how it links to the organization's overall strategy, and what key steps will be taken to implement the policy and monitor performance against it. Organizations should then be given the leeway to determine how they wish to shape their policy (Frank Vettese and Glenn Ives, October 1, 2013).

- In addition to developing and disclosing diversity policies, it would be useful to recommend that companies consider the following practices: 1) have more than one woman on the board; 2) broaden the definition of what makes a good board member; 3) ensure a succession planning process for senior management positions to provide equitable opportunities for women; 4) identify executive candidates early in their careers and match them with strong executive level sponsors; 5) ensure cohort consistency at all levels when hiring, promoting, and establishing performance ratings and compensation (Frank Vettese and Glenn Ives, October 1, 2013).

- The OSC should mandate a broader approach to diversity on non-venture issuer boards by developing a comprehensive diversity and inclusion strategy with subsequent supporting policies (Noelle Richardson, September 27, 2013).

- Non-venture issuers should have visible and transparent commitments to increasing the diversity of their boards and senior management. KPMG encourages the OSC to provide non-venture issuers with a model policy or guidance as to what should be included in a diversity policy. The policy should include: 1) a statement of commitment to diversity at the board and senior management level; 2) recruitment and selection guidelines to ensure recruitment from a diverse pool of candidates; 3) inclusion of diversity as a consideration of the skills and competencies required by the board and senior management; 4) a plan to review the effectiveness of policies annually; 5) identification of programs to assist in the development of a broader pool of skilled and experienced candidates; 6) information on board succession (William B. Thomas, KPMG LLP, September 27, 2013).

### 5.2.2 Role of search firms

- Issuers should provide directives to search firms that outline the expectation that diverse nominees should be identified as potential candidates and that female candidates are interviewed as part of the selection process (Kevin Dancey and R.N. Barr, Chartered Professional Accountants of Canada, October 2, 2013).

- Recruitment agencies should be challenged by Nomination Committees to look outside the common channels and existing networks to source female candidates. Companies should advertise board vacancies in national and international media (Michelle Edkins, Rita Benoy Bushon, and Paul Lee, International Corporate Governance Network, September 30, 2013).

### 5.2.3 Nomination process

- Should seek changes in the process by which directors and senior officers are groomed, nominated, and selected (Patrick Cowan, August 13, 2013).

- Formalize the director recruitment process by having the nominating committee consider the competencies and skills required on the board, and compare them against the profiles of existing directors. This process should be further expanded to include considerations of identity diversity (Robert Walker, NEI Investments, September 23, 2013).

- Increase the diversity of the pool of candidates for boards by broadening their perspective on what constitutes suitable experience for a director, maintaining a list of qualified director candidates, including candidates who would enhance diversity, and by routinely considering at least one candidate who would enhance diversity when building the candidate list for each upcoming vacancy on the board (Robert Walker, NEI Investments, September 23, 2013).

- Issuers should strive to ensure board nominating committees are comprised of diverse members. The nominating committee should formally recognize the value of diversity in facilitating good corporate governance. Achieving gender diversity among board members could be included as an objective of the nominating committee and as a criterion for identifying potential board members (Dermot Foley, Vancity Investment Management Ltd., September 23, 2013).

- The starting point, the pool of talent, has been too narrowly defined. This needs to be broadened. The proposed model if implemented with or without the recommendations of Hermes Equity Ownership Services Limited will result in the need to consider a broader pool of candidates. The OSC should recommend as a best practice that companies have a critical mass of women on their nominating committees (Bill MacKenzie, Hermes Equity Ownership Services Limited, October 4, 2013).

### 5.2.4 Mentoring programs

- Practices such as mentoring programs and industry-led initiatives, such as the Diversity 50 program led by the Canadian Board Diversity Council and the mentor program that Women on Board provide, can assist in the promotion of women. Mentoring programs should continue to be promoted at all levels and in industry in order to have qualified candidates ready for senior positions (Trudy Curran, Canadian Oil Sands Limited, September 23, 2013).

### 5.2.5 Role of the OSC and Government

- The OSC, the Minister of Finance, and the Minister Responsible for Women’s Issues should consider the following recommendations when implementing a diversity policy: 1) summarize public company filings related to diversity, including the results of any regulatory reviews and a summary of best practices, and provide a publicly available annual overview report; 2) prepare guidance documentation that provides examples of policies and disclosures to help companies succeed in meeting their objectives; 3) consider holding webinars or seminars before and during the implementation of the new policies in order to educate preparers and address their questions; 4) focus on non-venture issuers first before considering venture issuers (Frank Vettese and Glenn Ives, October 1, 2013).

- The federal advisory board should expand its definition of "female leadership" to include entrepreneurs, small business owners and women who run not-for-profits as well as incorporate a range of ages and cultural backgrounds (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

- The Women’s Executive Network would also like to see the introduction of targets for federal and provincial crown corporations' boards of directors so governments are seen to play a leadership role in addressing the issue of increased female representation on boards (Women’s Executive Network, October 4, 2013).

- The OSC should establish a steering committee to facilitate increased representation of women on boards which in turn would: 1) establish best practices on disclosure policies, measurement, and reporting; 2) conduct an RFP to companies who believe they are best suited to establish and manage a repository for board candidates; 3) be responsible for reporting back to the Minister and the public on progress on this every six months; 4) be transparent, communicative, and most importantly have a sense of urgency (Helen Kearns, Bell Kearns and Associates Ltd, October 7, 2013).

- It is important to set goals to move towards gender parity within all areas of the workplace, including the board and senior management, to measure progress and communicate it transparently. The government should show progressive leadership in reinforcing that all businesses in Ontario apply a gender lens to their corporate sustainability agenda (Linda Davis, Business and Professional Women's Clubs of Ontario, October 4, 2013).

### 5.2.6 Mandatory Periodic Review of Programs

- Alongside the implementation of measurable and time-sensitive corporate goals on gender diversity, there should be a review process to determine the success of each company's policy. By mandating that review after 2-3 years of the policy, next steps can be taken to address whether a different method is needed (Alexis Klein, Global Women's Equity Fund, October 1, 2013).

- Program "checkpoint" after five years to assess if the "comply or explain" model has had significant impact on the objective of the regulation to diversify Canadian boards and senior management (William B. Thomas, KPMG LLP, September 27, 2013).

### 5.2.7 Training and development

- Workshops to explain the new disclosure requirements, and alternative practices during year of inception (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

- The Women's Executive Network recommends that the OSC suggest the following best practices to non-venture issuers to help them achieve the measurable objectives of their board diversity policy at the senior management level: 1) strong CEO commitment, rigorous monitoring, strong implementation of programs and enablers and a culture that is supportive of gender diversity; 2) increase managers' and executives' awareness within the organization of the psychological drivers of bias toward male leaders, and work to address hidden biases; 3) introduce more objectivity into performance reviews; 4) ensure that there is a critical mass of women at the senior management level, the executive level, and the board level; 5) ensure that women have equal access to networking, mentoring, and sponsorship opportunities (Women's Executive Network, October 4, 2013).

- Companies should establish programmes to address any failures to deliver levels of diversity that reflect the relevant wider society. Programmes to enable and encourage gender diversity throughout the organization should encompass: 1) appropriately tailored recruitment policies; 2) on-going skills development and mentoring; 3) human capital strategy development; 4) flexible working and telecommuting opportunities (Michelle Edkins, Rita Benoy Bushon and Paul Lee, International Corporate Governance Network, September 30, 2013).

- Required diversity training for directors of the board by directors of NGOs or not-for-profit organizations (Belinda Labatte, The Capital Lab Inc., September 24, 2013).

### 5.2.8 Other

- BlackRock Inc., highlights the importance of companies setting measurable goals and disclosing progress towards those goals in addition to any significant obstacles faced in their achievement. If an issuer has chosen not to have such a policy, it should explain why it reached that conclusion and identify any risks or benefits associated with the decision not to have such a policy (Michelle Edkins, BlackRock Inc., October 3, 2013).

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Hansell LLP acknowledges the careful work and assistance of Caroline Lo in preparing the summary of comments. If you have any questions or comments on the foregoing, please do not hesitate to contact any of the following:

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