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Subject: Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure (Form 58-101F1) of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101)

Ladies and Gentlemen:

This letter is submitted on behalf of Mercer (Canada) Limited ("Mercer") in response to the Canadian Securities Administrators (CSA) request for comment on Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure* (issued July 3, 2014 and referred to herein as the "Proposed Amendments") regarding proposed amendments to the rules governing the disclosure of information about the representation of women on boards and in senior management. This letter is similar to the letter Mercer submitted April 16, 2014 to the Ontario Securities Commission (OSC) in response to a request for comments on its January 16, 2014 proposal on gender diversity disclosure.

Mercer is a consulting leader in talent, health, retirement, and investments. We help clients in Canada and around the world advance the health, wealth, and performance of their most vital asset – their people. Mercer's more than 20,000 employees are based in 43 countries, and the firm operates in over 140 countries. In Canada, Mercer has over 1,300 employees serving more than 3,100 clients across all lines of business from 12 major cities. Mercer is a wholly-owned subsidiary of Marsh & McLennan Companies (NYSE: MMC), a global team of professional services companies offering clients advice and solutions in the areas of risk, strategy, and human capital.

Mercer's Talent business services include consulting and expertise on workforce analytics and planning, learning and development, diversity and inclusion, workforce and executive rewards, communication, and mobility, as well as a full range of best-in-class information and technology solutions. We have been assisting Canadian and global organizations to achieve their diversity and inclusion objectives at all levels. We also are currently undertaking an analysis of board diversity in Canada as it relates to the network connections among boards to identify barriers and opportunities to achieving greater gender diversity on Canadian boards. In addition, we have assisted many companies in improving their executive compensation and governance disclosure under the current reporting requirements.

The comments and recommendations expressed in this letter reflect the views of Mercer and do not necessarily represent the views of Marsh & McLennan Companies or its affiliated companies, or those of our clients.

Summary of Mercer's Position

Recently, there has been an intense focus on board and senior management diversity in the Canadian business community. Leading Canadian companies and policymakers see the composition of boards and the need for a range of perspectives as a key corporate governance issue. As demonstrated in part by the CSA and OSC initiatives, there is mounting pressure on companies to show real progress on diversity and ensure that it is sustainable. Rapid progress on gender diversity is seen as a critical step in these efforts.

From Mercer's perspective the business case for diversity and in particular gender diversity is clear. Diversity contributes to better decision making, problem solving, creativity and innovation. Diverse (and inclusive) organizations attract the best talent and build stronger relationships with their customers and in the communities in which they operate.

We would like to express our overall support for the objectives of the Proposed Amendments: to increase transparency for investors and other stakeholders regarding the representation of women on boards and in senior management of non-venture issuers and to assist investors when making investment and voting decisions.

- We believe that the "comply or explain" approach is appropriate to provide companies with sufficient flexibility to address gender diversity in the manner that best fits their organization.
- We fully agree with the requirement that companies disclose their diversity policy (including the policy of representation of women on boards and in senior management) and key representation statistics.
- We do not support a quota approach to drive gender diversity on boards and in senior management. From our view, more emphasis should be placed on voluntary adoption of

diversity goals and a purposeful, systematic approach to talent pipeline planning and developing diversity throughout an organization and at the industry and society levels.
- We are not convinced that disclosure of director term limits is an effective mechanism to increase the flow of female talent onto Canadian boards. From our perspective the focus should be placed on board directors' performance evaluations.

Mercer Comments on the Proposed Amendments

We support the goal of the Proposed Amendments to improve transparency regarding the representation of women on boards and in senior management and the "comply or explain" approach to the proposed disclosure requirements. However, we have the following comments to ensure the proposal will provide companies with sufficient flexibility to address gender diversity in the most appropriate manner for their organization.

On a Board Diversity Policy

Mercer supports the proposed "comply or explain" approach to gender diversity policies. Requiring a company to disclose whether it has a diversity policy and, if not, explain why not, will give companies flexibility to adopt a policy that is appropriate for them. We agree that disclosure of these policies will provide more transparency in the board selection process and help ensure companies consider a diverse range of candidates and increase the representation of women on the board. In addition, requiring policy disclosure is likely to encourage more companies to address diversity and inclusion issues and consider how the adoption of a diversity policy might result in benefits to the company as a whole.

We see a strong connection between the board director and senior management pools of talent. It is Mercer's perspective that companies should place greater emphasis on managing the flow of diverse talent through their organizations to senior roles to ensure that diverse talent is nurtured for future leadership. From our experience working with organizations, companies need to look closely at their own data, understand current barriers to women's retention, advancement and development and identify possible "choke points". Not only can these challenges be identified, but the impact can also be quantified through statistical analysis, allowing organizations to put hard numbers to their most intangible asset — their people.

We would also like to note that a diversity policy should be a driver of real change within an organization and not merely adopted to address a disclosure requirement. Adopting a diversity and inclusion approach that is data driven as well as closely linked to the organization's business strategy and culture will make it more effective in creating real change.

On Diversity Targets

Mercer supports disclosure around diversity issues and consideration of diversity in board nominations and executive officer appointments. However, we do not support mandated diversity targets.

Canadian companies already disclose the number (and percentage) of women on boards of directors in annual proxy circulars. However, the proposal to require disclosure of the number and percentage of women in executive officer positions, including subsidiaries, would be a new disclosure item. We agree that it would likely facilitate accountability on gender diversity and may shed light on the effectiveness of a company's gender diversity policy.

However, proposed disclosures on diversity targets may lead to *de facto* mandates by proxy advisors and governance organizations. These *de facto* mandates could result in companies feeling artificial pressure to nominate directors or appoint executives without due deliberation or the benefit of proper succession planning. Executive hiring and promotion decisions are complex and fact-dependent and should not be rushed, or subject to heavy government regulations or the undue influence of proxy advisory firms or corporate governance organizations.

From our view, more emphasis should be placed on voluntary adoption of diversity goals and a systematic approach to the talent pipeline planning and development.

On Term Limits for Board Directors

We recognize that term limits may play a role in helping companies boost their percentage of female directors. The proposal to require disclosure of a company's policy on term limits for directors may encourage more companies to adopt term limits, which may contribute to board effectiveness through regular renewal of board membership and opportunities for women. Term limits may also address the potential loss of objectivity and independence where a director has served for many years.

However, term limits are a blunt instrument for addressing board diversity and independence. They may force long-serving but effective directors off the board and not help remove directors who are underperforming. Term limits also may not result in an increase in the number of women on boards. The rule's flexibility to allow companies to set limits taking into account their particular circumstances is critical but this disclosure item may not produce the results the CSA is seeking with respect to gender diversity. On the contrary, it may result in companies feeling pressure to adopt term limits that could have unintended negative consequences with respect to overall board effectiveness. For example, proxy advisory firms and governance organizations might view the disclosure of no term limits as a governance failure and pressure companies to adopt term limits of a specified length.

We recommend that companies address board diversity and independence more directly through the director and board evaluation process and board diversity policies. An effective board and director evaluation process could root out underperforming directors, reveal board effectiveness issues, and address entrenched directors who are no longer truly independent. In addition, a board diversity policy is the more appropriate place to address diversity matters specifically and would not have the potential unintended consequences of term limits.

Conclusions and observations

From our ongoing analyses of board diversity, we are learning that some boards are more favorably positioned to influence other boards' diversity. Specifically, there is an identifiable network of connections among boards, connections that exist because boards often share directors (that is, a director who sits on two or more boards "connects" those boards). Interestingly, the more diverse boards also tend to be the more richly-connected boards – that is, they are "central" to the network of board relationships. Because of their greater diversity and more extensive connections, these boards are favorably positioned to exert influence on other boards to become more diverse. We believe this is a potential leverage point for accelerating the rate at which women have a seat at the table.

We also recognize that having a seat at the table is not the same as having a voice. In addition to creating a path to the board and senior management diversity, companies must also take responsibility for creating an inclusive environment that allows everyone to contribute to their fullest potential. Inclusiveness is not a "natural" outcome of greater diversity and is often created as the result of a new breed of "inclusive" leaders, who clearly comprehend and use their behaviour-shaping power. The challenge here is two-fold: developing such leaders takes time and confronting and addressing non-inclusive behaviours takes courage.

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We thank the CSA for the opportunity to comment on the Proposed Amendments and would be happy to answer any questions about our comments.

Sincerely,

[redacted]

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