

OSC PROPOSES AMENDMENTS TO FORM 58-101F1 TO ENCOURAGE GENDER DIVERSITY ON BOARDS AND IN SENIOR MANAGEMENT

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Introduction

On January 16, 2014, the Ontario Securities Commission (OSC) released proposed amendments (Proposed Amendments) to Form 58-101F1 requiring greater transparency regarding the representation of women on boards and in senior management of non-venture issuers.

As per our article dated August 8, 2013, the OSC began public consultation on this topic on July 30, 2013, with the publication of OSC Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management* (Consultation Paper). The Consultation Paper set out a model of disclosure requirements for non-venture issuers addressing the need for disclosure regarding the representation of women on boards and in senior management. The OSC also held a public roundtable in October 2013, and conducted a survey of TSX-listed issuers in November 2013. On December 18, 2013, the OSC delivered OSC Report 58-402 *Report to Minister of Finance and Minister Responsible for Women's Issues – Disclosure Requirements Regarding Women on Boards and in Senior Management* (Report). In the Report, the OSC recommended the adoption of the Proposed Amendments, as discussed in further detail below.

Proposed Amendments

The Proposed Amendments require disclosure in the following six areas:

1. Disclosure regarding director term limits or an explanation for the absence of such limits;
2. Disclosure of policies regarding the representation of women on the board or an explanation for the absence of such policies;
3. Disclosure of the board's or nominating committee's consideration of the representation of women in the director identification and selection process or an explanation for the absence of such consideration;
4. Disclosure of the consideration given to the representation of women in executive officer positions when making executive officer appointments or an explanation for the absence of such consideration;

5. Disclosure of targets adopted regarding the representation of women on the board and in executive officer positions or an explanation for the absence of such targets; and
6. Disclosure of the number of women on the board and in executive officer positions.

The Proposed Amendments would apply to all TSX-listed and other non-venture issuers reporting in Ontario. Issuers would be required to provide such disclosure on a "comply or explain" basis, consistent with existing corporate governance disclosure requirements. As such, issuers would need to either provide the requested disclosure or to explain why such policies or targets are omitted from their disclosure.

Request for Comments

The OSC has requested comments on the Proposed Amendments generally, as well as on the following questions:

1. Are the scope and content of the Proposed Amendments appropriate? Are there additional or different disclosure requirements that should be considered? Please explain.
2. Should the Proposed Amendments be phased in, with only larger non-venture issuers being required to comply with them initially? If so, which issuers should be required to comply with the Proposed Amendments initially? Should the test be based on an issuer's market capitalization or index membership? When should smaller non-venture issuers be required to comply with the Proposed Amendments?
3. Do you agree that the Proposed Amendments requiring non-venture issuers to provide disclosure regarding term limits will encourage an appropriate level of board renewal?
4. In support of disclosure regarding director term limits, should there be greater transparency regarding the number of new directors appointed to an issuer's board and whether those new appointees are women? Specifically, should there be an additional disclosure requirement that non-venture issuers disclose: (i) the number of new directors appointed to the issuer's board at its last annual general meeting and (ii) of these new appointments, how many were women?
5. The Proposed Amendments require disclosure of policies regarding the representation of women on the board or an explanation for the absence of such policies. The term "policy" can be interpreted broadly. Should the proposed disclosure item explicitly indicate that the term "policy" can include both formal written policies and informal unwritten policies? What are the challenges for non-venture issuers reporting publicly on informal unwritten policies adopted by their boards?

The comment period ends on April 16, 2014.

by Alexis Marach

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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