

October 4, 2013

VIA EMAIL: comments@osc.gov.on.ca

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Dear Sir:

**RE: Ontario Securities Commission Staff Consultation Paper 58-401
*Disclosure Requirements Regarding Women on Boards and in Senior Management***

British Columbia Investment Management Corporation (bcIMC) welcomes the opportunity to respond to the request for comments Ontario Securities Commission Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management* (“Consultation Paper”) published on July 30, 2013 proposing a “comply or explain” disclosure requirement to be applicable to TSX-listed and other non-venture issuers.

bcIMC is one of the largest Canadian institutional investors and manages a C\$100 billion portfolio of globally diversified investments on behalf of the public sector pension plans of British Columbia and publicly-administered trust funds, as well as other public sector bodies. Almost half of bcIMC’s overall portfolio is invested in the public markets and in connection with this share ownership, bcIMC places significant value on good corporate governance which includes gender diversity on boards of directors and in senior management.

In our submission to the Canadian Senate in January 2011, we stated that voluntary, business-led initiatives should form the next steps in board diversity reform and that government intervention on board gender parity should only occur when market-based efforts at improving gender balance have been exhausted. Since it is clear that reliance on voluntary efforts has not resulted in any change, bcIMC appreciates this opportunity to put our views forward on the issue of improving gender balance on boards and in senior management.

Summary of bcIMC Recommendations

bcIMC recommends that the Ontario Securities Commission (“OSC”) take this opportunity to advance real progress on gender diversity in Canada by going beyond the proposed disclosure requirements outlined in the Consultation Paper. Many jurisdictions, including the United States in 2009, have adopted a “comply or explain” disclosure approach to gender diversity policies but disclosure alone does not result in real progress.

bcIMC 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.

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 “comply or explain” disclosure to the implementation of the policy and progress toward achieving the targets.

bcIMC’s specific recommendations on enhancements to the proposed disclosure requirements are included below.

Current Situation

As the research cited in the Consultation Paper demonstrates, there has been no real increase in the representation of women on Canadian boards of public companies since 2009 and very little improvement overall in the representation of women in senior management positions. A recent study conducted by Thomson Reuters¹ confirms that board diversity in the Americas has been essentially flat since 2008 while the Europe, Middle East and Africa (EMEA) and Asia Pacific markets show significant gains in all three areas examined – any women on a board, 10% or more women and 20% or more women. In Canada, women hold only 14.5% of all board positions in the Financial Post 500 and more than 46% of those companies do not have a single female board member.²

In Australia, a “comply or explain” disclosure approach combined with principles and recommended practices was adopted in 2010, but a 2013 report³ notes that progress has been inconsistent, the rate of appointment of women to boards has slowed and, in some cases, the percentages of women on boards in various sectors has declined. In addition to disclosure requirements, many jurisdictions include targets or quotas, with 25%, 30% and 40% being the most common. As the European experience demonstrates, while many countries have adopted targets for percentages of women on boards, only Norway has been definitively successful in achieving its goal. In 2002, Norway set a 40% target with a three-year deadline but, by 2005, the proportion of women on boards had only reached 24%. In 2006, Norway then set a 40% quota, a two-year deadline and serious penalties of fines or closure of the business for noncompliance. By 2009, the quota was achieved.

The statistics with respect to women in senior management positions also demonstrate the lack of overall progress and the need for action. The Grant Thornton International Business Report

¹ Andre Chanavat and Katharine Ramsden. *Mining the Metrics of Board Diversit*. Thomson Reuters. June 2013. Website: http://share.thomsonreuters.com/pr_us/gender_diversity_whitepaper.pdf.

² Catalyst. *2011 Catalyst Census: Financial Post 500 Women Board Director*. March 8, 2012. Website: <http://www.catalyst.org/knowledge/2011-catalyst-census-financial-post-500-women-board-directors>.

³ Women on Boards. *Boardroom Diversity Index 2013*. Website: www.womenonboards.org.au/pubs/bdi/2013/index.htm.

2013⁴ indicates that women hold 24% of senior management roles globally, which marks a return to the rate first met in 2007. The North American rate of 21% places it in the bottom 10 countries, well behind top 10 countries such as China at 51%, Philippines at 37% and Vietnam at 33%.

Despite women accounting for close to half of the Canadian labour force, only 18.1% of Canadian women in business are senior officers⁵ and in the United States, 56% of the S&P100 companies have no women in senior executive positions.⁶ Similar numbers could be expected in Canada. The same study concluded that while disclosure policies are important, simply having and disclosing diversity policies and programs does not result in improvement in the numbers of women in senior positions.

Business Case

Credible research demonstrates that having more women on boards and in senior management has a measurable and positive effect on corporate performance. A McKinsey study⁷ concluded that companies perform the best when women are most strongly represented on boards or in senior management and that companies with three or more women in senior management functions score more highly, with performance improving significantly once a critical mass is achieved. Another study⁸ concluded that board diversity is associated with improved financial value and a Credit Suisse report⁹ determined that having women on boards of directors improves business performance on key metrics including stock performance and net income and results in less risk tolerance and lower debt. Almost 80% of the members of the Institute of Corporate Directors (“ICD”) believe that board diversity contributes to better decision-making.¹⁰

The classic Catalyst report¹¹ on Fortune 500 companies from 2004 to 2008 demonstrated that companies with the most female board members outperformed those with the least by at least 16% in terms of return on sales and 26% in terms of return on invested capital. Other studies have found improvements on non-financial indicators including corporate reputation and

⁴ Grant Thornton. *Women in Senior Management: Setting the Stage for Growth*. International Business Report 2013. Website: http://www.internationalbusinessreport.com/files/ibr2013_wib_report_final.pdf.

⁵ Catalyst. *Catalyst Pyramid: Canadian Women in Business*. New York: Catalyst, 2013. Website: <http://www.catalyst.org/knowledge/canadian-women-business-0>.

⁶ Calvert Investments. *Examining the Cracks in the Ceiling: A Survey of Corporate Diversity Practices of the S&P 100*. March 2013. Website: <http://www.calvert.com/NRC/literature/documents/BR10063.pdf>.

⁷ McKinsey & Company. *Women Matter: Making the Breakthrough*. March 2012. Website: http://www.mckinsey.com/client_service/organization/latest_thinking/women_matter.

⁸ Lawrence J. Trautman. *Boardroom Diversity: Why It Matters*. American University; George Washington University; Oklahoma City University - School of Law. September 16, 2012. Website: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2047750.

⁹ Credit Suisse Research Institute. *Gender Diversity and Corporate Performance*. August 2012. Website: https://www.credit-suisse.com/newsletter/doc/gender_diversity.pdf.

¹⁰ Institute of Corporate Directors. *Diversity in the Boardroom*. December 5, 2011. Website: <http://www.icd.ca/Resource-Centre/Policy-on-Director-Issues/Research/Diversity-in-the-Boardroom-Findings-and-Solutions.aspx>.

¹¹ Catalyst. *The Bottom Line: Corporate Performance and Women’s Representation on Boards*. 2007. Website: <http://catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards>.

employee relations.¹² Two other studies¹³ conclude that having three or more women on a board enhances corporate governance and, more importantly, is critical to achieving corporate outperformance. This concept of a necessary critical mass has been incorporated into legislation adopted by the California Senate¹⁴ that encourages but does not require companies to include at least three women on boards of nine or more directors, at least two directors on boards of five to eight directors and a minimum of one woman on boards with less than five directors.

bcIMC's purpose in citing additional research to that presented in the Consultation Paper is to emphasize that advances in gender diversity in Canada are required, not for social policy purposes, but because there is a sound supporting business case. Canada is far behind the rest of the world in capitalizing on a recognized competitive advantage despite there being more than enough qualified women to fill director positions, as the many resources provided by the ICD and Catalyst demonstrate.

Detailed bcIMC Recommendations

bcIMC recognizes that even though a mandatory quota to improve female representation on boards of directors would be the most effective, it would not be acceptable in Canada today. bcIMC nevertheless urges 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 years for venture issuers). It would improve the likelihood that Canadian companies will make real progress on this issue; it is likely to improve corporate performance; and it might raise Canada from its current status as one of the global laggards on gender diversity.

Establishing a 30% target and a deadline together with annual disclosure requirements applicable to all companies will require companies to develop policies and strategies to comply. The OSC should monitor reporting for compliance and bcIMC recommends that the OSC consider the eventual implementation of penalties, such as fines, for failure to comply. The eventual imposition of a quota should not be ruled out. As many studies and reports have concluded, disclosure requirements and "comply or explain" policies raise awareness and can improve the information available to investors and others but are unlikely to achieve measurable progress.

Beyond the proposed model disclosure requirements in the Consultation Paper, avenues for increasing the number of women on boards of directors include:

¹² The Conference Board of Canada. *The Business Case for Women on Boards*. Undated. Website: http://www.conferenceboard.ca/documents/womenonboards_en.pdf.

¹³ Mariateresa Torchia, Andrea Calabro and Morten Huse. *Women Directors on Corporate Boards: From Tokenism to Critical Mass*. *Journal of Business Ethics* (2011). 102.299-317. Jasmin Joecks, Kerstin Pull and Karin Vetter. *Women on Boards and Firm Performance: What Exactly Constitutes a "Critical Mass"?* School of Business & Economics, Tuebingen University. February 22 2012. Website: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009234.

¹⁴ State of California. Senate Concurrent Resolution No. 62 Relative to Women on Corporate Boards. Filed with the Secretary of State on September 20, 2013. Website: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml;jsessionid=2716903c6e9fe500f3a000ae8308?bill_id=201320140SCR62.

- Enable shareholders with proxy access to facilitate shareholder contributions promoting gender diversity.
- Encourage boards and the nominating or governance committees to establish policies with respect to term limits, “overboarding” or accepting too many board appointments, minimizing or prohibiting interlocking directorships, etc. with the goal of increasing board refreshment.
- Encourage 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.
- Encourage boards to consider professional recruitment services and ensure any providers are required to search for qualified female candidates.
- Encourage boards to establish policies to consider a minimum number of female candidates for each board vacancy.
- Encourage boards to develop mentoring programs for women directors.
- Ensure that companies report on the foregoing policies and practices while avoiding reporting that results in boilerplate or compliance-focused responses.

bcIMC also 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. bcIMC recommends a minimum target of 30%. The OSC proposal would require companies to disclose whether or not they have a diversity policy with respect to advancing the participation of women in senior management and if yes, to make disclosures on the content. Instead, bcIMC recommends that the OSC make having the policy mandatory and have “comply or explain” disclosure focus on corporate implementation of the policy, in line with the recommended reporting set out in s. 4.2 of the model disclosure requirements, as well as progress in reaching the target.

To contribute further to the advancement of gender diversity in senior management, the OSC could also:

- Provide guidance on appropriate targets and timelines for implementation (30% or more in three years or five years for venture issuers).
- Encourage companies to adapt some of the recommended board practices for senior management recruitment, for example development of pools of qualified or potentially qualified female candidates for senior management positions or consideration of a minimum number of female candidates for each position.
- Encourage companies to identify and address common workplace barriers.

Additional suggestions for the OSC include:

- Monitor compliance and publish the results.

- Make some reporting requirements mandatory, for example baseline data, targets for improvement and performance against targets in addition to information around policies and programs.
- Ensure there are common reporting metrics for mandatory disclosure for all companies to enable consistency and comparability (narrative as well as quantitative). Consider guidance for voluntary disclosure as well. The Thomson Reuters study notes that it is difficult to analyze data and make appropriate comparisons because there are many disclosure regimes and guidelines around the world and voluntary corporate reporting can add to that difficulty.
- Ensure the requirements apply to all public companies and their operating subsidiaries and do not distinguish based on venture/non-venture issuer or size of company or number of employees, etc.

bcIMC supports the OSC efforts to improve gender diversity in boards and senior management in Canada and encourages the OSC to take these additional steps to ensure that companies will make substantial progress.

bcIMC would like to thank you again for considering our comments and recommendations and for extending the original comment period. Please feel free to contact Barb MacDonald at barb.macdonald@bcimc.com if you require any clarification on the above points.

Yours truly,

/s/ Doug Pearce

Doug Pearce
Chief Executive Officer and Chief Investment Officer