

Corporate Securities Law

January 20, 2014

OSC Proposes Rule on Gender Diversity

The Ontario Securities Commission (“**OSC**”) recently published for comment proposed amendments to Form 58-101F1 of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (“**Form 58-101F1**”).

The proposed amendments would require issuers listed on the Toronto Stock Exchange (“**TSX**”) and other non-venture issuers that are reporting issuers in Ontario to provide annual disclosure regarding:

- director term limits or why there are no such limits;
- policies regarding the representation of women on the board or why there are no such policies;
- the board’s or nominating committee’s consideration of the representation of women in the director identification and selection process or why there is no such consideration;
- the issuer’s consideration of the representation of women in executive officer positions when making executive officer appointments or why there is no such consideration;
- targets for the representation of women on the board and in executive officer positions or why there are no such targets; and
- the number of women on the board and in executive officer positions.

Background

As outlined in our earlier client update from August 7, 2013, entitled *OSC Initiates Public Consultation Process Regarding Women on Boards and in Senior Management*, the OSC responded to a request by the Ontario provincial government, which highlighted gender diversity as a

priority in its 2013 budget, by initiating a public consultation process regarding women on boards and in senior management.

OSC Staff Consultation Paper 58-401 *Disclosure Requirements Regarding Women on Boards and in Senior Management* (the “**Consultation Paper**”) highlighted the relatively low rate of women among the ranks of public company directors and senior officers, outlined the approaches being adopted in other jurisdictions to enhance gender diversity and proposed a “comply or explain” disclosure regime to encourage and facilitate public comment and debate. Throughout the fall, the OSC convened a public roundtable to discuss the model of disclosure requirements set out in the Consultation Paper, issued a survey to TSX-listed issuers regarding gender diversity and participated in events held by a number of other organizations.

The OSC received an abundance of feedback through its stakeholder consultations, and identified the following themes:

- many stakeholders supported the Consultation Paper’s “comply or explain” model of disclosure requirements;
- most stakeholders recognized the value of diversity on boards and in senior management and the leadership attributes that women would bring to these roles; and
- many stakeholders believed that now is an appropriate time to take action.

After considering the feedback from stakeholders, the OSC recommended in its 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* amendments to Form 58-101F1 following the “comply or explain” approach.

Goodmans^{LLP} Update

Conclusion

The proposed amendments are intended to encourage more effective boards and better corporate decision making through requirements for greater transparency, which will benefit investors and the capital markets. According to Howard I Wetston, Q.C., Chair and Chief Executive Officer of the OSC, “[T]his is about helping TSX-listed issuers tap into a pool of talented and capable resources currently under-represented on today's boards and senior management.”

The OSC invites interested parties to comment in writing by April 16, 2014. The OSC will also take into account the comments submitted in respect of the Consultation Paper.

The full text of the proposed amendments is available at:

http://www.osc.gov.on.ca/documents/en/Securities-Category5/ni_20140116_58-101_pro-amd-f1.pdf

For further information on the proposed amendments, please contact any member of our Corporate Securities Group.