

May 14, 2014

Director General
Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor
Ottawa, Ontario
K1A 0H5

By email: cbca-consultations-lcsa@ic.gc.ca

Dear Director General:

We are pleased to submit our comments in response to the Discussion Paper on the *Canada Business Corporations Act* (the "Act" or "CBCA").

Women's Executive Network

With 17,500 members in Canada, each of whom is in a management, executive, board or professional role in the private, public and non-profits sectors, the Women's Executive Network (WXN) is Canada's largest organization exclusively for women in leadership roles across sectors. Ontario is the home of the highest number of WXN members. We are also the home of Canada's Most Powerful Women: Top 100 Awards. We have recognized 728 women since the Awards began in 2003 through a rigorous selection process led by an Advisory Board of 20 senior executives from across Canada. In 2008, we launched WXN in Ireland, our first step towards creating a global WXN.

We create and deliver innovative networking, mentoring, professional and personal development to inform, inspire, connect and to recognize our community of smart women and their organizations in the pursuit of leadership experience. Since 1997, WXN has provided Canada's employers of choice with high quality networking and mentoring opportunities for women in management, executive, board and professional roles. Exclusion from informal networks and a lack of mentoring opportunities are two

often-cited barriers to women's advancement into leadership roles. We work with 70 companies across Canada ---mostly FP500 and Fortune 500-- who benefit from our 16 year track record of supporting their human capital strategies. Please find below an overview of WXN membership:

- **50%** of our members have 6 – 10 years of full-time work experience in a management, executive or professional role; while the remaining **50%** have 11+ years
- **76%** have completed university degrees: **40%** have undergraduate degrees; **32%** have also completed Masters Degrees, and **4%** have completed PhDs
- **25%** of WXN members have a C-Suite, President, Managing Director or Founder title; **17%** have an EVP or VP title; **32%** have a Director or Senior Manager title; and, **26%** have a Manager title
- **69%** earn an annual personal income of over \$100,000; **13%** earn in excess of \$200,000 per year

Overview

We congratulate Industry Canada for addressing board diversity in the Discussion Paper. 83.8% of WXN members 'strongly support or support' new measures to promote diversity added to the *Canada Business Corporations Act*. While we were pleased to see the mention of the issue of board diversity in the 2012 Federal Budget and to have participated as an ex-officio member of the Advisory Council on Women on Boards beginning in 2013, we are concerned that the federal government has not yet moved forward with any legislative, regulatory or policy changes. In the meantime, we have been active participants in the important work that the Ontario Securities Commission (OSC) has been undertaking. We are strong supporters of the Proposed Amendments released in January of this year.

We believe Industry Canada has an important role to play by amending the Act, the most important business corporations statute in Canada, to include a provision for regulations that address board diversity. This reflects the fact that 15.6% of Financial Post 500 seats were held by women as at May 31, 2013 according to the Canadian Board Diversity Council 2013 Annual Report Card.

At first glance, it is easy to define this issue as a women's issue. It is not a women's issue. It is an economic and business issue that affects Canada's competitiveness and prosperity. It affects men and women of all backgrounds. It is an issue that needs to be resolved for the sake of our children and our grandchildren so they will live in a country where there is greater equality and prosperity. We recognize that change is not easy. Change requires strong leadership and action now by governments and regulators.

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 in the pipeline and there continues to be a large pool of women who are board ready.

The pool is large enough: the reality is the supply is greater than the demand. The low demand is accounted for by the way boards recruit.

Currently, the research shows most director seats are filled by directors utilizing their own networks, made up overwhelmingly of other white males. The prevailing point of view was shared by a speaker with 130 WXN members at a WXN Breakfast in Calgary the week of September 23: “[I]t is difficult to find the balance between subject matter experts and diverse candidates.” This opinion is not based on fact and only serves to perpetuate the problem as articulated by corporate governance expert Professor Richard Leblanc in his submission to the OSC: “[u]nless women are biologically unqualified or unfit to be public company Directors or senior Managers, and do not possess the very minimal qualifications of being over 18, not bankrupt and not insane, the proposition is that women do possess skill parity with men. It would be disingenuous to suggest otherwise absent any evidence,” he wrote.

Corporate directors and the business community agree the lack of diversity on the FP500 is an economic issue that requires strong leadership and action now by governments and regulators. We note with interest that 62% of FP500 directors surveyed by the Canadian Board Diversity Council in the summer of 2013 supported government action to set either i) a requirement to publicly describe the company’s approach to, and progress toward achieving increased gender diversity (54%) or ii) quotas (8%). Only 38% supported the status quo. Last month, most of the companies and groups who sent comments about the January 2014 OSC Proposed Amendments on gender diversity disclosure requirements supported the “comply and explain” approach taken by the securities regulator. A small minority said the Proposed Amendments did not go far enough, and advocated a quota system.

Addressing the gender diversity gap is necessary in ensuring the best corporate performance and good corporate governance on Canadian boards. We would like to see regulations that clearly spell out disclosure obligations. Otherwise, regulations that address diversity more generally will only maintain the status quo.

At the risk of oversimplifying, let us share with you how we define the size of the problem. The Canadian Board Diversity Council’s 2013 Annual Report Card revealed that women held 15.6% of 3,771 FP500 board seats. This totals 588 board seats. To move to 20%, or 754 board seats, requires 166 additional female directors assuming each director held one seat. To move to 30%, or 1,131 board seats, requires 377 additional female directors assuming each director held one seat. The Women’s Executive Network is made up of 17,500 women each of whom is in a management, executive, board or professional role.

Feedback on Discussion Paper Section VII: Diversity of Corporate Boards and Management

Introduction

While definitions of diversity and methods of achieving this goal vary, it has been suggested by many stakeholders that a commitment to diversity, including gender diversity, could provide a corporation with access to a broader pool of knowledge and experience, varied social backgrounds and skills beyond those traditionally found in corporate boardrooms. This could result in new market opportunities, greater innovation and access to new talent pools for recruitment.

Several jurisdictions have adopted measures to increase women's representation on boards of directors, including legislating quotas for representation, mandating diversity targets, and issuing voluntary guidelines for corporations to put in place gender diversity policies, targets and reporting.

Stakeholders and others are invited to comment as to whether new measures to promote diversity within corporate boards should be included in the CBCA and what such measures might entail.

Our comments in this letter have been informed by our two surveys (September 2013 survey on the July 2013 OSC Consultation Paper; and a March 2014 WXN survey on the Industry Canada Discussion Paper and the January 2014 OSC Proposed Amendments) of WXN members. We have also reviewed the literature on women in senior management and board roles and submissions to the Ontario Securities Commission over the last eight months. We would like to underline that our submission reflects the opinions of women in their 20s, 30s, 40s, 50s and 60s: 34% of respondents are between the ages of 25-45. 63.6% of respondents are between the ages of 46-65. The remaining 2.4% are over 65. We believe this makes our submission unique as it reflects the views of women at various stages in their careers. 16% of our respondents are recipients of a Canada's Most Powerful Women: Top 100 Award. They are Canada's leaders. It is telling that of our respondents, 94.4% do not currently serve or have never served on an FP500 board.

This comment letter compliments recommendations in both our submissions to the Ontario Securities Commission. In our October 4, 2013 submission, we recommended more onerous disclosure requirements than envisioned in the July 30, 2013 Consultation Paper. We were pleased to see more onerous disclosure requirements in their January 16, 2014 Proposed OSC Amendments to Form 58-101FI *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices*. In our April 14, 2014 OSC submission, we recommended a small number of revisions to the Proposed Amendments. Overall, we believe the Proposed Amendments are reflective of thoughtful, sensible and progressive thought leadership in tackling the need to improve corporate governance in Canada.

Specific Feedback

I. Should new measures to promote diversity within corporate boards be included in the CBCA and what might such measures entail?

There has been much discussion of quotas and targets to address the lack of women on boards. The Women's Executive Network does not support quotas. However, we do support the setting of national timelines and targets. We will address this on pages 7-8.

We recommend the *Act* include provision for regulations that require disclosure of board diversity measures through the introduction of a "comply or explain" approach. Our view is that new measures should be in regulation accompanying the statute, not in the statute itself. The new measures that we would like to see are in five key areas: i) disclosure of term limits, ii) disclosure of policies regarding the representation of women on the board, iii) disclosure of the consideration of the representation of women in the director identification and selection process, iv) targets regarding the representation of women on the board and v) disclosure of the number and percentage of women on the board.

Please find below our comments on each of the five key areas. We do believe it is important that *CBCA* regulations pertaining to board diversity disclosure are aligned with securities Instruments and Policy. Measures in these five key areas were addressed in five of the Proposed OSC Amendments to Form 58-101FI *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices*. We strongly support these five Proposed OSC Amendments.

Our comments on each area end with the relevant Proposed OSC Amendment. In the case where we have recommended a revision to the Amendment, our recommended revision(s) appears and is underlined.

i) Disclosure of term limits

94.2% of WXN members 'strongly support' or 'support' disclosure of term limits.

Furthermore, when asked if the *CBCA* should be amended to include this measure, 90.6% of WXN members agreed that the *Act* should include this measure. According to the OSC January 2014 summary of feedback (to the July Consultation Paper), "[m]any stakeholders believe that regular renewal of board membership contributes to the effectiveness of a board and that director term limits may promote an appropriate level of board renewal."

Proposed OSC Amendment on Term limits (WXN proposed revisions are underlined) - Disclose whether or not the issuer has adopted term limits for the directors on its board. If the issuer has not adopted term limits, disclose why it has not. In addition, 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.

ii) Disclosure of policies regarding the representation of women on the board

83.9% of WXN members 'strongly support' or 'support' the disclosure of whether a company has a policy for the representation of women on the board.

Furthermore, when asked if the *CBCA* should be amended to include this measure, 89.3% of WXN members agreed that the *Act* should include this measure.

We note with interest the Canadian Board Diversity Council research in respect of board diversity policy. Their annual research, most recently presented in their 2013 Annual Report Card, shows that 21% of FP500 boards have a written diversity policy. This underscores another disappointing Council research finding: 76% of board member respondents said they felt their board was diverse when asked if they felt their board was diverse. It is interesting to note the correlation that exists between the presence of a written diversity policy and the presence of female directors: sectors in which companies are more likely to have written board diversity policies have a higher representation of women on their boards. For example, 16% of mining, oil and gas companies have a written board diversity policy; 9% of board seats are held by women. This contrasts sharply with finance and insurance companies: 33% of companies in this sector have a written board diversity policy; 23.3% of board seats are held by women.

Proposed OSC Amendment on Policies regarding the representation of women on the board (WXN proposed revisions are underlined) - (a) "Disclose whether the issuer has adopted a written policy for the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not and explain any risks or opportunity costs with the decision not to have such a policy"

(b) If an issuer has adopted a written policy referred to in (a), disclose the following in respect of the policy:

(i) a short summary of its measurable objectives including numerical targets (actual and percentage based on board size over the last five years) and key provisions.

(ii) the measures taken to ensure that the policy has been implemented effectively,

(iii) annual and cumulative progress by the issuer on achieving the objectives of the policy, an

(iv) whether and, if so how, the board or its nominating committee measures the effectiveness of the policy.

iii) Disclosure of the consideration of the representation of women in the director identification and selection process

86.3% of WXN members ‘strongly support’ or ‘support’ the disclosure of how a company considers the representation of women in the director identification and selection process.

This is the key issue in our view which the Proposed Amendments must address, as our research shows in each of the last four years that only 1 in 5 directors are identified through a rigorous process which goes beyond the individual directors’ own networks. To put it bluntly, as women have typically not been in those networks in meaningful numbers, women have not been considered. We believe companies should be required to explicitly indicate whether, and if so how, the board or its nomination committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. This requirement would mean that if the company does not take the representation of women into account in its process, it should explain why not and identify any risks or opportunity costs associated with the decision not to do so.

Proposed OSC Amendment on Consideration of the representation of women in the director identification and selection process (WXN proposed revisions are underlined) - (a) Disclose whether and, if so, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer’s reasons for not doing so and explain any risks or opportunity costs with the decision not to have such a policy.

(b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:

(i) the number of female candidates included in the search (whose skills, functional area of expertise and credentials are assessed),

(ii) the number of female candidates included in the search without any prior public company board experience

(iii) the number interviewed either by the search firm and/or the Committee,

(iv) the number (and percentage) on the short list.

iv) Targets regarding the representation of women on the board

86.7% of WXN members 'strongly support' or 'support' companies required to disclose whether targets have been put in place and the annual and cumulative progress.

Furthermore, when asked if the *CBCA* should be amended to include this measure, 79.9% of WXN members agreed that the *Act* should include this measure. We believe this has the potential to play a vitally important role in increasing the number of women executive officers and corporate directors, reflecting the old adage: what gets measured gets done.

In addition, we call upon the federal government to introduce overarching national timelines and targets. Countries that have introduced quotas to increase the number of women on corporate boards have been very successful in increasing the number of women on boards. We however would like to see a made-in-Canada approach of national timelines and targets to give Corporate Canada the opportunity to act. Our support for overarching national timelines and targets together with the 'comply or explain' approach that includes company targets mirror the call to action of the 2011 Lord Davies Report. As its first recommendation, it recommended chairs of the FTSE350 companies on the London Stock Exchange set out the percentage of women they aim to have on their boards in 2013 and 2015 and that FTSE100 boards should aim for a minimum of 25% female representation by 2015. We note there has been strong improvement in the FTSE100 since the Lord Davies Report. According to the April 2013 Davies Review Report, women hold 17.3% of FTSE100 seats as of March 2013 up from 15.6% the year before. According to the Report, only 6 of the FTSE100 have all-male boards.

Proposed OSC Amendment on Targets regarding the representation of women in the director identification and selection process (WXN proposed revisions are underlined) - (a) For purposes of this Item, a "target" means a number and percentage, or a range of numbers and percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date. A target of 3 is a reasonable number for consideration, however the target number can be higher or lower depending on factors such as the industry in which the issuer operates and the board's current gender diversity.

(b) Disclose whether the issuer has adopted target(s) regarding women on the issuer's board. If the issuer has not adopted such target(s), disclose why it has not.

(c) Disclose whether the issuer has adopted target(s) regarding women in executive officer positions of the issuer. If the issuer has not adopted such target(s), disclose why it has not.

(d) If the issuer has adopted target(s) referred to in either Item 14(b) or (c), disclose the annual and cumulative progress of the issuer in achieving its target(s).

(e) All issuers are required to have targets in place by December 31, 2016 and to disclose those targets.

v) Disclosure of the number and percentage of women on the board

97.5% of WXN members 'strongly support' or 'support' a company being required to disclose the proportion (in percentage terms) of women on the board.

In November, 2013, the OSC issued a survey to approximately 1,000 TSX-listed issuers regarding gender diversity. It is interesting to note that the survey results showed level of transparency regarding the representation of women by the respondents was low, with 61% of respondents not publicly disclosing the proportion of women on the board.

According to the OSC January 2014 summary of feedback (to the July Consultation Paper), "[m]any stakeholders believe that measurement is a critical component of [a] proposed disclosure model ...this type of reporting also provides greater transparency to investors and other stakeholders and enables them to make comparisons..."

Proposed OSC Amendment on Number of women on the board and in executive officer positions -

(a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women.

(b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all subsidiary entities of the issuer, who are women.

In Closing

Thank you for the opportunity to share our comments with you on behalf of our 17,500 who make up Canada's largest organization exclusively for women in leadership roles across sectors.

We would value the opportunity to contribute to further discussion on amendment(s) and/or regulations.

With warm regards,



Pamela Jeffery

Founder