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CSA Publish Third Annual Review of Gender Diversity Disclosure

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The Canadian Securities Administrators (“**CSA**”) have released Staff Notice 58-309 (the “**Staff Notice**”) summarizing their third annual review of disclosure relating to gender diversity on boards and in executive officer positions. The review covers certain disclosure relating to gender diversity that is required for non-venture issuers under amendments to National Instrument 58-101 (“**NI 58-101**”) that came into force in 2015, including the number and percentage of women on boards and in executive officer positions; policies, targets and processes relating to the appointment of women on boards and in executive officer positions; and director term limits or other board renewal mechanisms.

The Staff Notice

The Staff Notice outlines the regulators’ review of the continuous disclosure of 660 issuers listed on the Toronto Stock Exchange (“**TSX**”) that are subject to NI 58-101 and had year-ends between December 31, 2016 and March 31, 2017. While the results indicate an overall increase in the representation of women on boards and in executive officer roles, if the ultimate aim is to eliminate – or meaningfully reduce – the current gender disparity on boards and in executive officer positions of reporting issuers, there is still a long way to go. The CSA highlighted the following statistics and trends:

- 61% of issuers have at least one woman on their board, which represents a 6% increase from 2016 and a 12% increase from 2015.
- 14% of board seats are occupied by women, as compared to 12% in 2016 and 11% in 2015.
- 24% of board seats in the case of issuers with a market capitalization of greater than \$10 billion are held by women.
- 62% of issuers have at least one woman in an executive officer position, as compared to 59% in 2016 and 60% in 2015.

The Staff Notice also noted that:

- 35% of issuers disclosed that they had adopted a policy relating to identification and nomination of women directors.
- 11% of issuers set targets for the representation of women on their boards and 3% set targets for executive officer positions, with many issuers noting that candidates should be selected based on merit and that setting targets is arbitrary or restrictive.
- 21% of issuers disclosed that they had adopted director term limits, with 50% of those adopting age limits, 23% adopting tenure limits and 27% adopting a combination of both.

The CSA noted that improved disclosure is needed to achieve the objective of providing transparency in corporate governance practices in relation to women on boards and in executive officer positions.

The Legislative and Investment Context

The amendments to NI 58-101 and resulting annual disclosure reviews are partly the product of a cultural and political climate that has begun to demand a change in the composition of leadership positions, including on boards and in management roles at major corporations. As Justin Trudeau famously quipped when asked why gender parity in his cabinet was important to him: “Because it’s 2015.” Canada now has the first gender-balanced federal cabinet in its history, and the issue of the underrepresentation of women in leadership roles has gained meaningful traction at the federal level. In particular, for certain public companies, proposed amendments to the [Canada Business Corporations Act](#), once in force, will require disclosure similar to that required by NI 58-101.

These developments are supported by research that suggests a positive correlation between gender diversity on boards and improved financial performance. As a result, major institutional investors have also begun to demand more diversity on public company boards, particularly gender diversity. State Street Global Advisors, for example, has cited “gender diversity as one of many ways a board can introduce a varied set of skills and expertise among its directors to help improve financial performance.” Blackrock, in its engagement priorities for 2017 and 2018, states simply that “diverse boards, including but not limited to diversity of expertise, experience, age, race and gender, make better decisions.

The results of the CSA’s review have been released into an environment where the paradigm appears to be shifting through changes wrought in both law and private ordering. The trends shown in the Staff Notice are likely to continue, and even accelerate, and reporting issuers should remain aware of both regulatory scrutiny of the issue of gender diversity and the expectations of important investors.



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