

CSA REPORTS A CORRELATION BETWEEN DIVERSITY TARGETS AND WOMEN REPRESENTATION ON BOARDS

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More women are holding board seats of Canadian public companies, reports the Canadian Securities Administrators ("CSA") in their [CSA Multilateral Staff Notice 58-314 Review of Disclosure Regarding Women on Boards and in Executive Officer Positions](#) (the "Notice"). While progress was made on female representation both on boards and in the C-Suite, the overall pace of change continues to be a gradual one.

Eighth-Year Review Results

The Notice continues the review of "comply or explain" disclosure of female representation on boards and in executive positions, as required by Form 58-101F1 *Corporate Governance Disclosure*. The trends reported by the CSA for 625 non-venture issuers with financial year-ends between December 31, 2021 and March 31, 2022 are generally positive, with more women holding board seats every year since the first review in 2015. However, progress in the C-Suite continues to be very slow. Data from the Notice shows that while 70 per cent of non-venture issuers had at least one woman in an executive officer position, only 5 per cent had a woman chief executive officer (CEO). Additional key trends identified in the CSA's review are as follows:

- 24 per cent of total board seats were occupied by women, up from 22 per cent in 2021 and more than doubling the 11 per cent in 2015.
- 87 per cent of issuers, up from 82 per cent in 2021 and 49 per cent in 2015, now have at least one woman on their boards.
- 30 per cent of issuers have three or more women on their boards, up from 24 per cent in 2021 and 8 per cent in 2015. The number of women on boards varied by industry, with the mining industry having the lowest percentage of issuers with one or more women on their boards.
- 70 per cent of issuers, up from 67 per cent in 2021 and 60 per cent in 2015, have at least one woman in an executive officer position. Similar to the number of women on boards, the number of women in executive positions varied by industry. The mining industry also had the lowest percentage of issuers with one or more women in executive officer positions.
- 61 per cent of issuers have adopted a policy relating to the representation of women on their boards, up from 60 per cent in 2021 and 15 per cent in 2015.

- 436 of 580 vacant board seats were filled during the year. Of those filled seats, 196 seats were filled by women, representing a 10 per cent increase over the last year.

Recommendations by Third-Party Proxy Advisors on Gender Diversity

For meetings held in 2022, third-party proxy advisors Institutional Shareholder Services (“ISS”) and Glass Lewis & Co. (“Glass Lewis”) expanded their proxy voting guidelines on gender diversity. For S&P/TSX Composite Index companies, ISS will generally recommend a withhold vote on the chair of the nominating committee where women comprise less than 30 per cent of the board and the company has not provided a formal, publicly disclosed written commitment to achieve a 30 per cent target at or prior to its next annual general meeting. For TSX issuers that are not S&P/TSX Composite Index companies, ISS will generally recommend a withhold vote on the nominating committee chair if the company has not disclosed a formal written gender diversity policy and there are no women on the board. Meanwhile, Glass Lewis will generally recommend voting against the chair of the nominating committee of TSX-listed issuers that do not have at least two gender diverse directors or have a nominating committee with no gender diverse directors. For non-TSX issuers and boards with six or fewer directors, Glass Lewis will require a minimum of one gender diverse director.

Looking ahead to 2023, rather than a fixed number, Glass Lewis will require a minimum of 30 per cent gender diversity on boards of TSX issuers. We note that Glass Lewis’ concept of gender diversity on boards includes both women and directors that identify with a gender other than male or female.

What Gets Measured Gets Done

The CSA identified a correlation between issuers that adopted gender diversity measures and the percentage of board seats held by women. The Notice revealed that issuers that had set targets regarding women on boards had an average of 30 per cent of their board seats held by women, compared to 20 per cent for those without targets. To make meaningful progress towards gender equality, as best practice, companies should consider:

- **Setting gender diversity policies.** The data supports the efficacy of written policies in enhancing gender balance. Among other things, gender diversity policies should include a set target.
- **Adopting term limits.** The Notice also identified a difference between issuers that adopted term limits (age limit, tenure limit, or both) and issuers that did not. Issuers that adopted a term limit had an average of 31 per cent of their boards comprised of women, compared to 22 per cent for issuers that did not have term limits.
- **Providing consistent disclosure.** Consistency in how issuers disclose and present diversity-related information will lead to better understanding and dialogue about the benefits of diversity. The CSA noted

that inconsistencies in the disclosure can make it difficult to locate and interpret the relevant information. The CSA recommends providing information in a common tabular format.

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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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