

NEW DISCLOSURE RULES FOR WOMEN ON BOARDS FOR THE 2015 PROXY SEASON

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In time for the 2015 proxy season, the Canadian Securities Administrators (CSA) [announced](#) last week the impending implementation of new corporate governance disclosure rules aimed at increasing gender diversity on boards and in senior management positions. The new rules require non-venture reporting issuers (essentially, TSX-listed companies) to disclose certain information concerning the representation of women on boards and senior management, and their director selection and renewal processes. The change is effective in Ontario, Quebec, Manitoba, Saskatchewan, the Atlantic provinces, Nunavut, and the Northwest Territories.

Generally, the rules will apply to all proxy circulars sent in connection with an annual meeting filed following an issuer's financial year ending on or after December 31, 2014. If the issuer does not send a management information circular to investors, the disclosure must be contained in the issuer's annual information form.

The new disclosure requirements are the culmination of a process initiated by the Ontario Securities Commission (OSC) in July 2013, as we [discussed last year](#). Proposed amendments to Form 58-101F1 were published by the OSC in [January 2014](#). Other participating CSA jurisdictions followed suit in July.

The final amendments do not differ substantially from the previous proposals. The disclosure requirements relate to the following five areas:

1. **Actual Representation:** the number and proportion of directors and executive officers (including executive officers of major subsidiaries) who are women.
2. **Targets:** whether the issuer has adopted a target for the number of women on its board or in executive positions, such as a number or percentage range, and the progress the issuer has made in achieving its target. If the issuer has not adopted a target, it must explain why it has not done so.
3. **Policies and Objectives:** a summary of the objectives of any written policy relating to the identification of women directors, along with a description of the measures taken to ensure the implementation of the policy, the annual and cumulative progress of the objectives, and whether, and if so how, the board or its nominating committee measures the effectiveness of the policy. If the issuer has not adopted such a policy, it must explain why it has not done so.

4. **Hiring Process:** whether, and if so how, the issuer considers the level of representation of women on the board or in executive officer positions when considering identifying new candidates or making appointments, respectively. If the issuer does not make such considerations, it must explain why it does not.
5. **Board Renewal:** a description of any term limits for directors or other mechanisms for board renewal, or an explanation why the issuer does not employ such measures.

The rules follow a "comply or explain" model similar to that of Australia. If an issuer has not adopted the specified measures or made the specified considerations, the issuer must explain why it has not done so.

In response to the OSC's initial consultation paper, McMillan [suggested](#) that additional requirements aimed at increasing the representation of women could supplement the "comply or explain" approach. Specifically, we suggested the implementation of a rule similar to the National Football League's "Rooney Rule," which requires teams to interview at least one minority candidate for coaching or general manager vacancies. McMillan proposed a modified "Rooney Rule" for gender representation, which would require issuers to interview at least one female candidate for open board or senior management positions. Unfortunately, while the CSA acknowledged this approach, it declined to adopt such a rule, preferring to address solely disclosure.

Ultimately, the hope is the new disclosure rules will increase the number of women on boards and in senior management positions. The expanded disclosure on gender diversity and board renewal policies will serve to enhance transparency and assist investors in their decision-making.

by David Andrews

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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