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Women on Boards: An OSC Report Card and What's Next

CSA Multilateral Staff Notice 58-307 released on September 28, 2015, reports on the results of OSC and other participating regulators' staff review of the corporate disclosure of over 700 TSX-listed issuers regarding their compliance with the amendments to National Instrument 58-101, *Disclosure of Corporate Governance Practices*, which was implemented on December 31, 2014 (the Rule Amendments). As previously reported, the Rule Amendments require annual disclosure of the number and percentage of women on the board of directors and in executive positions, board renewal mechanisms, and policies and targets relating to the advancement of women on boards and in executive positions. The OSC held a roundtable discussion on September 29, 2015 to present the report and solicit comments on progress to date and next steps.

Based on the issuer sample, the CSA's notice reveals the following:

- 49% have at least one woman on their board
- 60% have at least one woman in an executive officer position
- 15% have added one or more women to their board this year
- Over 30% of the issuers with a market capitalization above \$2 billion have adopted a written policy for identifying and nominating women directors
- Of those with written policies, 48% disclosed that they were adopted or updated this year
- About 65% of all sample issuers disclosed they had not adopted a written policy
- 60% of the issuers with a market capitalization above \$2 billion have two or more female directors
- 19% have adopted director term limits, while 56% have adopted other mechanisms of board renewal (most commonly, some form of annual board assessment)

While the report shows that there has been progress in achieving some of the regulators' objectives, it concludes that the level and detail of disclosure of many issuers fail to satisfy the requirements of the Rule Amendments in that the disclosure provided does not sufficiently increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions. The OSC roundtable discussion supported this conclusion. There was general consensus that the implementation of the Rule Amendments has facilitated an increase in the number and percentage of women on boards and in executive officer positions and that these very early results were indicative of a cultural shift toward increasing representation of women. However, the tone of the comments was that too few issuers (i) have adopted written policies relating to the identification and nomination of women directors or targets; and (ii) have taken steps to effectively implement such a policy and to measure the effectiveness of the policy and the progress in achieving its objectives.

Issuers can expect continued scrutiny by regulators in the coming years over their practices and disclosures in this area. On the basis of comments at the OSC roundtable, we will likely also see more prescriptive disclosure requirements, particularly with respect to the adoption of written policies that establish processes such as training and programs for the advancement of women and targets. Targets were differentiated from quotas with commentators suggesting that targets should reflect the aspirational goals of an issuer for women in executive and board positions. Targets were also supported as allowing progress toward those goals to be measured. Prescriptive quotas for a specified number or percentage of women holding such positions do not appear to have any support at this time.

Issuers can also expect additional guidance on the content and formatting of their disclosure. Although the Rule Amendments do not mandate the format in which issuers report the number of women on their boards and in executive officer positions, the report encourages issuers to report current and prior year numbers in table format.

Although the Rule Amendments are presented as a "comply or disclose" regime, as one commentator noted, it is a challenge to explain why a corporation is not complying. That comment suggests a view that increasing the number of women and implementing policies to do so is an expectation, rather than simply a disclosure regime as to an issuer's position on the matter.

The OSC committed to continuing to track the number and percentage of women on boards and in executive officer positions, as well as the disclosure practices of other issuers whose corporate governance disclosures were not released prior to July 31, 2015 (including most major Canadian banks with October year-ends). A further update on its findings is expected in early 2016.

Read the report [here](#). The transcript of the roundtable discussion will be published shortly on the OSC website.

If you have any questions regarding the foregoing, please contact [Carol Pennycook](#) (416.863.5546), [Jennifer Longhurst](#) (416.367.7453) or [Cynthia Hill](#) (416.367.7557) in our Toronto office or [Franziska Ruf](#) (514.841.6480) in our Montréal office.

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