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2015 Federal Budget Promises to Modernize Corporate Governance Framework for CBCA Companies

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Gender Diversity “Comply or Explain” Disclosure Required

The federal government announced today as part of its 2015 budget that the 2015 Economic Action Plan will include proposed amendments to the *Canada Business Corporations Act* (CBCA) to promote gender diversity in public companies, using the “comply or explain” model of disclosure currently required by most provincial securities regulators for TSX-listed companies. The budget announcement also promises to modernize director election processes and communications with shareholders.

As we previously reported in December 2013, Industry Canada undertook a public consultation on the CBCA with the release of a discussion paper inviting comments on a number of corporate governance issues. The objectives of the consultation were to ensure that the governance framework for CBCA companies remains effective, fosters competitiveness, supports investment and entrepreneurial activity, and instills investor and business confidence. Today’s budget announcement indicates that the government will amend the CBCA to address several governance issues raised in the consultation.

In addition to the promotion of gender diversity within board and executive ranks of CBCA corporations, the consultation also raised the potential adoption of a majority voting requirement for the election of directors of public companies incorporated under the CBCA and the facilitation of the “notice and access” method for shareholder communications, which is currently not available to CBCA companies. The budget announcement suggests that majority voting and notice-and-access could also be implemented through forthcoming CBCA amendments.

The budget announcement suggests that the amendments to the CBCA to promote gender diversity in public companies will impose requirements that are consistent with the amendments to the comply-or-explain disclosure model under National Instrument 58-101 – *Disclosure of Corporate Governance Practices* recently adopted by the securities regulatory authorities of Ontario, Québec, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Saskatchewan. The enhanced disclosure requirements now mandate disclosure of, among other things, the number and proportion of women on the board and in executive officer positions, the board’s consideration of the level of female representation in nominating and appointing directors and executives, and written policies on the representation of women on the board. These requirements apply to all TSX-listed and other non-venture issuers with financial years ending on or after December 31, 2014, with the relevant disclosure required to be included in their annual management proxy circulars or annual information forms.

Whether the CBCA amendments promised today will enhance current disclosure requirements or merely require comparable disclosure for all publicly traded CBCA companies remains to be seen.

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