



## Board Diversity Series: Results of Canadian initiatives for gender diversity on boards

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In September 2016, certain members of the CSA released CSA Multilateral Staff Notice 58-308<sup>[1]</sup>, a comprehensive survey of 677 issuers listed on the TSX that reviewed the impact of the mandatory disclosure requirements two years after their implementation<sup>[2]</sup>. Some of the more notable results from the review include the following:

- 55% of issuers had at least one woman on their board, a 6% increase over 2015;
- 10% of issuers had added one or more women to their board in the past year, as compared to 15% reported in 2015;
- 12% of the total board seats in the sample were occupied by women;
- 59% of issuers that disclosed executive officer information had at least one woman in an executive officer position;
- The utilities and retail industries had the fewest boards with no women on them at 18% and 21%, respectively, and the mining, oil and gas and technology industries had the most issuers with no women on their boards at 62%, 60% and 48%, respectively;
- 21% of the issuers had adopted a policy on the identification and nomination of women directors as compared to 15% in 2015,
  - this rate was 22% for issuers with market capitalizations of \$2-\$10 billion and 25% for issuers with market capitalization of over \$10 billion; and
- 20% had adopted director term limits (of which 48% included age limits, 23% had tenure limits and 29% had both).

In order to understand the long-term effectiveness of term limits and written gender diversity policies in Canada, Catalyst also reviewed the board composition of S&P/TSX Composite Issuers in great detail, comparing the difference between 2011 and 2015. In its report released on June 7, 2016 entitled “*Gender Diversity on Boards in Canada: Recommendations for Accelerating Progress*” (the Catalyst Report), discussed in detail below, Catalyst noted that issuers with the highest rates of board renewal have increased the percentage of women on their boards by 9%, which is almost double the rate of boards with the least renewal. Catalyst also found that issuers with board term limits are more gender-diverse, and that issuers with both age and tenure term limits had the highest percentage of women board directors in 2015. Finally, boards that explicitly stated they consider women when recruiting new board positions were more diverse than boards that do not explicitly state it, almost doubling the representation of women on their boards<sup>[3]</sup>. Overall, the research also demonstrates that a greater number of female nominees are replacing male directors who are leaving boards. Board renewal and refresh, while significant for other purposes, is therefore closely connected with the issue of board diversity.

As featured in the Catalyst Report, the Canadian banking sector is a leader in gender diversity on boards, with 34.5% of senior management positions and 50% of middle management positions being occupied by women at Canada's six largest banks in 2014. This high level of representation of women on the boards of Canada's banks has been attributed by some to the federal *Employment Equity Act* of 1995<sup>[4]</sup>. While the legislation does not address gender diversity on boards specifically, many banks were considered to have viewed the act's implementation as an opportunity to set measurable objectives and to track their progress on these issues. Among these objectives were age and term limits to provide for board renewal, resulting in greater opportunity for diversity. Although Canadian banks are leaders in gender diversity in Canada, in contrast, the data shows that the financial services sector in general, lags behind. On a global basis, it was reported that only 20% of the boards of financial services firms, and 16% of executive committees, are comprised of women. While Canada fared better than the general average, with 25% female representation on executive committees, it still lagged behind global leaders such as Norway and Sweden with 33% and 32%, respectively. Furthermore, women in financial services are almost 30% more likely to leave their employer when compared to employers in other industries<sup>[5]</sup>.

Therefore, despite the initial improvements that have resulted from the mandatory disclosure model, early results demonstrate that there is much room for improvement, particularly in specific industries and sectors, and when compared to other leading jurisdictions. It is therefore not surprising that the OSC announced in Notice 11-775 *Notice of Statement of Priorities for Financial Year to End March 31, 2017* (Notice 11-775) that the focus on gender diversity and the addition of diversity measures for board members and executive and senior management positions is an ongoing priority.

*This article is the second in a four-part series of articles discussing the Ontario Securities Commission's disclosure requirements in 2014, and how the issue of board diversity has evolved in Canada since then. The **first post in the series** addressed the disclosure rules that were adopted by the Ontario Securities Commission and other Canadian securities regulators. This post discusses the results that the disclosure rules have achieved.*

<sup>[1]</sup> CSA Multilateral Staff Notice 58-308 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices*. Staff Notice 58-308 is the second notice published by the CSA summarizing the findings of the CSA's review of the corporate governance disclosure of TSX-listed issuers. In September 2015, the CSA published the results of its first review of the corporate governance disclosure of 722 issuers in CSA Multilateral Staff Notice 58-307 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices*.

<sup>[2]</sup> According to Staff Notice 58-308, as of April 30, 2016, there were 859 issuers listed on the Toronto Stock Exchange and subject NI 58-101. Of the 859, 677 issuers had year-ends between December 31, 2015 and March 31, 2016 and filed information circulars or annual information forms by July 31, 2016. These are the 677 issuers that were reviewed by the CSA in Staff Notice 58-308.

<sup>[3]</sup> *Supra*, note 1.

<sup>[4]</sup> *Ibid.*

<sup>[5]</sup> James Langton, "Gender Diversity at the Top of Financial Services Stalled", *Investment Executive*, July 13, 2016.

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