

New Diversity Disclosure Requirements for CBCA Companies effective January 1, 2020

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Effective January 1, 2020, public companies, including “venture issuers”, that are governed by the *Canada Business Corporations Act* (CBCA) will be required to provide shareholders with enhanced disclosure regarding board and senior management diversity. Senior management includes the following roles: (i) Chair and Vice-Chair of the board; (ii) President; (iii) CEO; (iv) CFO; (v) Vice-president in charge of a principal business unit such as sales or production; and (vi) anyone who performs a policy-making function within the company. This increased diversity disclosure will need to be included in the annual proxy circulars distributed to shareholders in advance of annual general meetings. Companies must also send this information to the director appointed under the CBCA for public access purposes. This can be done by submitting the corporation’s proxy circular through Industry Canada’s **Online Filing Centre**.



Under Bill C-25, *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act*, the current disclosure regime is broadened to include disclosure in respect of the following four designated groups as defined under Canada’s *Employment Equity Act*: (i) Indigenous peoples (First Nations, Inuit and Metis); (ii) persons with disabilities; (iii) women; and (iv) members of visible minorities. These amendments require disclosure, of the number of members of each of these designated groups who are directors and officers of the company, be provided to shareholders. However, there is no requirement to name the specific directors or senior managers who identify with each particular group. The applicable companies must also disclose, for each designated group, the number and proportion, expressed as a percentage, of members of such group who hold board positions and are members of senior management of all of the company’s major subsidiaries.

In addition, public CBCA companies will be required to disclose whether they have adopted a written policy relating to the identification and nomination of members of the four specified designated groups for election as directors and senior managers. They will also need to disclose whether the level of representation of designated groups is considered when identifying candidates. If such a policy does exist, shareholders are entitled to receive a summary of the policy's objectives and a description of measures taken to ensure the policy is carried out together with a description of progress being made in achieving the policy's diversity and inclusion objectives. Alternatively, if a public CBCA company has not adopted or developed such a policy, shareholders must be provided with an explanation. Further disclosure is required as to whether or not the company has adopted a target for each designated group (in terms of numbers, percentage or a range) in relation to board and management positions, and if so, the progress being made to achieve these targets. Finally, shareholders must be provided with an indication of whether the company has adopted term limits, or other mechanisms of board renewal, for its directors and either a description of such mechanisms or reasons for non-adoption.

These new CBCA diversity disclosure requirements follow the 2015 requirements adopted by certain Canadian Securities Administrators in relation to publicizing the number of women on boards and in senior management roles pursuant to *National Instrument 58-101*. According to a November 25, 2019 article in *The Globe and Mail*, these 2015 requirements appear to encourage progress towards gender diversity as total number of board seats occupied by women in a sample of more than 600 companies increased to 17% in 2019, compared to 11% in 2015, and studies of larger companies have shown even more progress. The public nature of proxy circulars should allow for close monitoring of progress towards diversity in respect of the four designated groups highlighted by the CBCA going forward. In the short term and in preparation for upcoming annual general meetings in 2020, members of boards and senior managers of public companies (including venture issuers) that are governed by the CBCA should be familiar with the definitions of designated groups set out in the *Employment Equity Act*.

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