



All talk, no action?

**Considering the effects of CSA
disclosure amendments on the
representation of women on
S&P/TSX 60 boards**



In October 2014, regional securities regulators (excepting British Columbia, Alberta, and PEI), overseen by Canadian Securities Administrators (CSA), amended rules for public disclosure. The updates required Toronto Stock Exchange (TSE) listed companies to publish details about the representation of women on their boards. Since then, companies must disclose in their public filings, details of gender diversity policies and targets for the number of female directors, or explain why they choose not to adopt such strategies.

The Clarkson Centre for Board Effectiveness (CCBE) has been collecting information about the representation of women on boards—including the number of female directors and the implementation of policies and targets—since 2014.ⁱ Initially, we interpreted parameters for disclosure on gender diversity in the boardroom somewhat flexibly, in order to accommodate companies as they formalized their own approaches.ⁱⁱ Currently, we give credit in our Board Shareholder Confidence Index board ratings to companies with formal processes in place that consider and promote women on their boards.

In this article, we consider whether the CSA amendments to disclosure requirements have catalyzed tangible improvements in the number of female directors on boards. Can we find evidence showing that companies have altered recruitment processes and outcomes? Has the number of women on boards increased?

BY THE NUMBERS: COMPARING CHANGES IN DISCLOSURE WITH THE NUMBER OF WOMEN ON BOARDS

Table 1: TSX 60ⁱⁱⁱ company disclosure about policies and targets for gender diversity on the board

Year of data collection	Total companies	Diversity policy in place	Diversity target in place	Diversity target disclosed	Target timeline disclosed or met
2014	58	16%	12%	12%	0%
2015	59	47%	32%	25%	31%
2016	59	63%	41%	41%	37%
2017	60	65%	48%	48%	45%

¹ *Table 1* discloses the percentage of S&P/TSX companies that have disclosed a both diversity policy and their decision to adopt a target, the numeric value of the intended target, and a timeline to achieve the target.



We observed three events of interest, occurring after the 2014 amendments to disclosure requirements.

First, we noticed a threefold increase in the disclosure of diversity policies from 2014 to 2015. We believe the increase was motivated by two decisions: securities regulators' new mandatory disclosure requirements, and the *Globe and Mail* "Board Games" scoring criteria, which incorporated data—collected by the CCBE—on initiatives to increase the number of women on boards, starting in 2014.

Second, we saw a steady rise in the momentum of disclosure surrounding the adoption of targets, which tells us that boards are beginning to tie policies to measurable outcomes. On average, the 29 companies that disclosed a target in 2017, chose 30% for their intended proportion of female directors. Our close reading of the public filings of the 250 largest companies on the TSX has revealed that a target of one-third female representation has been commonly adopted among boards with diversity policies. However, and third, we observed that the disclosure of gender diversity policy adoption has plateaued, as shown in the 2% increase from 2016 to 2017, a stiff drop compared with the 16% increase from 2015 to 2016, and the 31% increase from 2014 to 2015. It would be pre-emptive to see the recent statistic as a trend, but the stagnation is notable in comparison to the momentum observed in the previous years, and tells us that the motivation to adopt and disclose a diversity policy has waned.

Disclosure has undoubtedly improved since the CSA's comply or explain amendments. More than two-thirds of companies listed on the TSX 60 now disclose diversity policies—a 50% increase from the year before the disclosure amendments were put into place—and nearly half have a target and corresponding timeline in place or have achieved a target. These are encouraging statistics. Prior to 2014, very few companies provided details of their initiatives to increase the number of women at the board level, or explained their decision not to do so. Now, every company on the TSX is required to explain their approach to gender diversity, and board renewal processes too. The absence of board renewal processes, including term limits and retirement policies, can hinder momentum to improve board gender diversity. Drawing attention to the effects both renewal and gender diversity policies have on one another, as part of the 2014 disclosure amendments, the CSA also implemented a requirement for listed companies to adopt a renewal mechanism, or explain why they have chosen not to do so.



Have changes in disclosure materialized into an increased representation of women in the boardroom?

Table 2: Female directors on the TSX 60, by number of unique directors and number of seats ^{iv}

Year of data collection	Total unique directors	Total unique female directors		Total seats	Total seats held by women		New seats	New seats held by women	
2014	633	126	20%	711	148	21%	83	29	35%
2015	622	141	23%	702	166	24%	67	26	39%
2016	633	152	24%	711	178	25%	85	30	35%
2017	624	155	25%	701	185	26%	51	16	31%

The total number of unique female directors on TSX 60 boards is increasing steadily, and if the trend continues, may eventually match the percentage of women occupying new seats. However, the process is undeniably gradual. For what reason? One potential explanation can be found in the director turnover we've documented by tracking the number of new board seats. For example, in 2016, new nominees renewed board makeup across the TSX 60 by 12%, through the turnover of 85 seats (out of 711 total seats). But only 30 women occupied new seats, representing just over 4% of total director seats. Furthermore, from 2015 to 2016, the total number of women on the board only grew by 12, which tells us that incoming female directors are replacing outgoing female directors, although not necessarily on the same board. Gender diversity in the boardroom will continue to improve, but very slowly, if renewal rates persist at such low levels.

While the pace of change for women on the boards of Canadian listed companies is slow, gender diversity is increasing steadily. It is encouraging to see growth in the number of women occupying TSX 60 board seats. In 2017, we find 155 unique female directors on the TSX 60, a 20% increase from 2014. More women are finding seats on the boards of some of Canada's largest companies.



A CLOSER LOOK: COMPARING COMPANIES WITH AND WITHOUT BOARD GENDER DIVERSITY POLICIES

After our cursory analysis of the data shown in *Tables 1* and *2*, we were prompted to consider more closely how boards choose to speak about gender diversity, and whether they actualize their choices into visible changes.

Does the absence of a board diversity policy correspond with few or no female directors?

First, we considered companies without gender diversity policies in place. We were curious to find out how else they might be engaging with the issue of female representation, and whether the number of women on their boards correlated with the lack of publicly disclosed initiative. As of 2017, on any given TSX 60 board with no gender diversity policy in place, female directors represent as few as 0% and as many as 33% of total directors. However, boards have responded in very different ways to the public scrutiny of their engagement with gender diversity.

For example, shareholders in Constellation Software Inc. proposed the adoption of a formal board diversity policy by December 2017, including “process and activities for increasing gender diversity on the Board and amongst senior management” (2017 proxy, p. 19). The proposal cites amendments to disclosure requirements made by securities regulators in 2014. Constellation advised shareholders not to vote for the policy because “The Board does not believe that quotas or strict rules result in the identification or selection of the best candidates for director or employee roles” (proxy, p. 19). The Constellation board remains 100% male.

Constellation Software Inc. was not the only issuer to receive shareholder pressure on gender diversity. Shareholders submitted proposals to Alimentation Couche-Tard and Restaurant Brands International to adopt diversity policies or improve board gender diversity. Like the Constellation Software Inc. shareholder proposal, each of these proposals also failed to pass in 2017.

Conversely, CCL Industries has increased the proportion of female to male directors from 0% to 27% in the last three years. Noting the change in their 2017 proxy, they write: “As a result of the board’s focus on recruiting women directors, three women directors have joined the board since 2014” (p. 53). While CCL doesn’t explicitly disclose a connection between the amended 2014 disclosure requirements and their own decision to make changes to the board in the same year, assuming causation in the timeline is not without merit. However, while the CCL Board can be commended for its initiative, institutionalizing these efforts would promote their longevity, and evade dependency on current culture to maintain progressive change. For example, CCL hasn’t put any measures in



place to prevent their board from gradually shifting back to all-male directors, resulting from, for example, a change in leadership, or apathy to upholding the recently established precedent.

Does the presence of a diversity policy ensure an increase in the number of female directors?

We were also curious to find out how readily companies have transformed the adoption of diversity policies into real change at the board level. Barrick Gold has had a gender diversity policy since 2015 that “specifically requires the Corporate Governance & Nominating Committee, when identifying and considering the selection of candidates for election or re-election to the Board, to consider the level of representation of women on the Board” (2017 proxy, page 104). However, the number of women on the Barrick board has remained at two, and the proportion has slipped to 13%, as board size increased from 13 to 15 with the addition of two male directors. This percentage is lower than even the 2017 average for companies with no policy in place.

Barrick Gold's appointment of two male directors is perhaps reflective of overall trends on the TSX 60, where two thirds of new board members in 2017 were men.

Barrick Gold shows us that there can be a disconnect between the adoption of diversity policies, and the momentum needed to increase the number of women on the board. Companies with diversity policies in place have effectively managed the optics of their approach to diversity, and have manifested policies from the will to institutionalize a best practice, but some are slow to take significant action on recruitment, and targets are not always implemented.

EXTERNAL PRESSURE IS INCREASING

In late 2017, Institutional Shareholder Services (ISS) took a firm stance on gender diversity by proposing a prescriptive policy governing its voting recommendations to improve board gender diversity on the TSX. In short, if a company has not adopted a formal written gender diversity policy and has no female directors serve on the board then ISS will likely recommend withhold votes for the election of the chair of the nominating committee. ISS also indicated that it will scrutinize board diversity policies for substance and rigour.^v Considering that ISS' voting recommendations can have a significant impact on shareholder voting behaviour, companies with either no women or boilerplate-like diversity policies will have to take notice.



CONCLUSIONS

Disclosure requirements, like those published by the CSA, are useful tools to promote the codification of productive and progressive behaviour in the boardroom. When a benchmark has been set for the publication of corporate engagement with issues of gender equity, those requirements also invite better scrutiny of boards by public news media and shareholders. However, disclosure requirements are not necessarily sufficient measures for improving the representation of women in the boardroom, unless accompanied by action to change the composition of the board and ensure accountability. Conversely, too many boards have become comfortable appealing to merit-based assessments to justify their recruitment and nomination procedures. Merit is necessary for all candidates, but it is not sufficient to ensure that diversity on the boards of publicly listed companies is achieved. Serious consideration and application of diversity-based recruiting should be part of any recruiting process designed to produce board excellence.

ⁱ Data collected in 2014 reflected corporate action on gender diversity in the year prior to the CSA requirement that boards comply or explain their approach to gender diversity among directors.

ⁱⁱ When a best practice is in its infancy, we steer our data collection methods in order to track and nudge into action practices that companies are already implementing, however minimally. In 2014, we believed it would be more effective to endorse any intention to increase the number of women on boards, instead of requiring the disclosure of a specific target level. At the time, companies were not required by securities regulators to disclose any actions taken in order to improve female representation. From 2014 to 2015, we recognized companies for their disclosed intention to increase the number of women on the board, even if they didn't provide a specific number. This accounts for the discrepancy in 2015, between the number of companies with targets (32%) and the number of companies that provide specific targets (25%) in their public filings, disclosed in *Table 1*.

ⁱⁱⁱ In order to track potential changes occurring over time in the same group, the list is current as of September 1, 2017. As a result, information disclosed in *Table 1* shows that years 2014 through 2016 include one or two companies fewer than in 2017. Some of the current TSX 60 companies may not have been listed at the time.

^{iv} Two factors qualify our presentation of the data in *Table 2*. First, numbers provided for 2017 are ultimately preliminary. Boards sometimes change the makeup of their membership after filing public documents. As such, we can't account for forthcoming changes that precede our 2018 data collection period. It is also necessary to explain that some directors sit on more than one board, which accounts for the difference between number of "Total unique directors" and number of "Total seats".

^v Institutional Shareholder Services (2017, 10, 31), *Canada Policy – Director Elections – Board Gender Diversity (TSX –listed Issuers)*, Retrieved from <https://www.issgovernance.com/file/policy/5-2017-comment-period-template-canada-director-elections-board-gender-diversity.pdf>



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The Clarkson Centre for Board Effectiveness (CCBE) at the Rotman School of Management, University of Toronto, is Canada's leading independent corporate governance research body. CCBE's mission is to create practical tools and insights to improve the effectiveness of boards of directors in all sectors. CCBE's research focuses on effective disclosure, adoption of formal governance processes, pay for performance analysis and more.

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