

Amendments to NI 58-101

Women on boards and in senior management



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Leading practices in gender diversity disclosure

The recent amendments to National Instrument 58-101, *Disclosure of Corporate Governance Practices*, have begun to have an impact on businesses in Canada. The new requirements are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in senior management of non-venture issuers. This transparency is intended to assist investors when making investment and voting decisions. Many public companies are now required to disclose where they are with respect to advancing women on boards and in senior leadership.

We have reviewed current disclosures in Canada and other jurisdictions and outline our findings in the following pages. We hope you'll find this publication useful, not only in the implementation of the disclosure requirements, but also as you consider your own gender diversity policies.

While the new rules leave it to issuers to decide which corporate governance policies and practices relating to gender diversity are appropriate for their particular circumstances, it is clear that regulators in Canada and around the world are concerned by the underrepresentation of women on the boards of publicly traded companies.

For most jurisdictions in Canada, the rules came into force on 31 December 2014. Nevertheless, certain organizations have already made the decision to include most of the new disclosure requirements in their existing public filings.

We have found that entities with comprehensive gender diversity policies and disclosures are, for the most part, from the financial services sector. Many financial institutions concluded years ago that inclusiveness was a critical success factor for their business and have acted accordingly. However, we have also seen leading examples in other industries, including the natural resources sector.

While progress toward gender diversity on boards continues, gender diversity by industry varies greatly.

The new requirements are based on a "comply or explain" approach, which gives companies flexibility in how they tailor their disclosures to their specific situations while providing relevant and comparable information to the market. This approach has been successfully adopted in other jurisdictions, most notably Australia.

Canadian jurisdictions participating in the amendments to NI 58-101

Non-venture issuers reporting in the following provinces and territories are required to comply with the new disclosure requirements, regardless of their primary jurisdiction:

- ▶ Saskatchewan
- ▶ Manitoba
- ▶ Ontario
- ▶ Quebec
- ▶ New Brunswick
- ▶ Nova Scotia
- ▶ Newfoundland and Labrador
- ▶ Northwest Territories
- ▶ Nunavut



Is gender diversity a choice?

Women's advancement and leadership are central to business performance and economic prosperity. Research shows that board diversity enhances corporate performance, and that failing to address the gender gap can have economic consequences. Yet in most countries around the world, including Canada, women remain underrepresented.

The issue is not only about focusing on complying with the new regulations. It's about fundamentally shifting business culture to drive measurable and sustained improvement year over year by devoting more time and attention to human capital at the highest levels in the organization.

Based on the comments provided to the Canadian Securities Administrators, the regulation has received strong support, though not from everyone. Those who do not support it say that it will lead to motherhood disclosure that only people who compile rankings will read. Others say this action is too weak and the regulators should have actually implemented quotas if they truly are concerned about gender diversity.

We support the new requirements and encourage businesses to set targets for achieving gender diversity.

We believe the emphasis should be on action on three fronts: public sector focus, private sector commitment and corporate transparency. It's clear that the attention of public officials as well as both male and female CEOs of publicly held companies makes a difference. And when that is combined with corporate transparency about gender diversity, investors can help by supporting progress and holding companies accountable. Collaboration and mutually reinforcing initiatives can lead to real and measurable results that will benefit companies and investors everywhere.

Question the answer

Today, most agree that diversity is good for business.

However, for society overall, having more balanced representation of women in leadership roles requires major change. Any change requires courage and the ability to see the potential benefits in the face of real and well-understood barriers.

It should be much easier to effect change today than at any time in the past. There are more highly educated women in the workforce than ever, and based on university enrolment trends those numbers are likely to only increase. Attitudes towards women in the workforce and non-traditional family structures and parenting models are also different among the younger generations.

The majority of Canadian companies have yet to actually draft the policies relating to the identification and nomination of women directors, as well as the different disclosures pertaining to targets and actual numbers of women on the board and in executive positions. In the following pages, we outline some leading practices of organizations that may help guide you as you draft your company's disclosures. We trust you will find these examples useful as you determine your goals.



The requirements: some leading practices

The following are some examples of companies that have implemented initiatives and have provided disclosures similar to what NI 58-101 requires for compliance.

1.

Director term limits and other mechanisms of board renewal

Disclose whether or not the issuer has adopted term limits for the directors on its board or other mechanisms of board renewal and, if so, include a description of those director term limits or other mechanisms of board renewal. If the issuer has not adopted director term limits or other mechanisms of board renewal, disclose why it has not done so.

Bank of Montreal, 2013 proxy

“The Board approved a new approach to its Director Tenure Policy in 2009, as refined in 2011, to ensure ongoing Board renewal, sustain Board performance, and add expertise. Directors who joined the Board prior to January 1, 2010, may serve until the earlier of when they turn 70 years of age or they have served 20 years. Directors who joined the Board on or after January 1, 2010, may serve until the earlier of when they turn 70 years of age or they have served 15 years. However, all directors will be allowed to serve for at least seven years, regardless of their age. In addition, the Chairman may serve a full five-year term as Chairman regardless of his or her age or how long he or she has been on the Board. The Director Tenure Policy was further refined in 2013 to allow for the Board to recommend any director for re-election for additional terms, after age 70 or the expiry of the relevant 15- or 20-year term, in exceptional circumstances and to further the best interests of the Bank.”

CIBC, 2013 proxy

“Under the *Bank Act* and CIBC’s By-Law, a director’s term expires at the close of the next annual meeting of shareholders after the election or appointment of that director. CIBC fosters Board renewal to create a balance between new perspectives and the experience of seasoned Board members through its Director Tenure Policy and approach to chair rotation. Under CIBC’s Director Tenure Policy, the maximum period a director may serve on the Board is 15 years, assuming the director is re-elected by the shareholders.”

The six required annual disclosures

1. Director term limits and other mechanisms of renewal of the board of directors
2. Policies regarding the representation of women on the board
3. The board’s or nominating committee’s consideration of the representation of women in the director identification and selection process
4. The issuer’s consideration of the representation of women in executive officer positions when making executive officer appointments
5. Targets regarding the representation of women on the board and in executive officer positions
6. Number of women on the board and in executive officer positions

Sun Life, 2013 proxy

Tenure and board renewal

"Every year the Governance, Nomination & Investment Committee recommends a list of people for nomination to the board for a one-year term. The board charter includes provisions on directors' tenure. Independent directors will generally retire from the board after they have served for 12 years. The independent directors can waive this retirement requirement to allow a director to serve for up to three additional years if they unanimously determine that it is in the company's best interests to do so. Thereafter, the retirement requirement can be waived by the independent directors on an annual basis if they unanimously determine that it is in the company's best interests to do so. The board does not have a mandatory retirement age for directors."

Perpetual Limited (Australian financial services organization), 2013 annual report

"Directors who have been in office without re-election for three years since their last appointment must retire and seek re-election at the company's Annual General Meeting. In order to continue to refresh the composition of the Board, Directors agree not to seek re-election after three terms of three years unless the Board requests them to do so. The nine-year principle does not displace shareholders' rights to vote on the appointment and removal of Directors, as set out in the ASX Listing Rules and the Corporations Act 2001 (Cth) (Corporations Act)."



2.

Policies regarding the representation of women on the board

- a) *Disclose whether the issuer has adopted a written policy relating to the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not done so.*
- b) *If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:*
 - (i) *A short summary of its objectives and key provisions,*
 - (ii) *The measures taken to ensure that the policy has been effectively implemented,*
 - (iii) *Annual and cumulative progress by the issuer in achieving the objectives of the policy, and*
 - (iv) *Whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.*

Bank of Montreal, 2013 proxy

“The Board has adopted a Board Diversity Policy to facilitate more effective governance. In so doing, the Board positions itself to be made up of highly qualified directors from diverse backgrounds and who reflect the changing population demographics of the markets in which the Bank operates, the talent available with the required expertise, and the Bank’s evolving customer and employee base. The Board Diversity Policy includes the goal that each gender comprise at least one-third of the independent directors.”

Mirvac Group (Australian asset development and construction company), 2013 annual report

“Mirvac’s commitment to diversity extends beyond the programs and initiatives in place; the Group strives to create a culture in which both visible and tacit differences are recognised and valued. Mirvac believes its competitive advantage lies in creating and maintaining a culture where all employees are able to contribute and fulfil their potential without artificial barriers. Mirvac’s goal is to have a workforce representative of the communities in which Mirvac operates.

The Board has committed to measurable gender diversity targets and reports on progress each year. The HRC [Human Resources Committee] is responsible for the regular review of diversity-related activities.

The Board has appointed the Chair, James MacKenzie, as the diversity program sponsor. The CEO & Managing Director, Susan Lloyd-Hurwitz, chairs the Mirvac Diversity Council. The Mirvac Diversity Council regularly meets to coordinate diversity activities and reports to the HRC regarding diversity initiatives and progress.

Mirvac aspires to ensure diversity outcomes are integrated at every level of its business. With a priority focus on gender, Mirvac’s approach to diversity demonstrates its strong commitment in supporting women entering the workforce, equity in promotion and initiatives to enhance female retention.”

Mirvac’s detailed diversity policy is included as an appendix to this publication.

Westpac Group (Australian financial services company), 2014 annual report

“Westpac Group has a Group Diversity Policy that sets out the diversity initiatives for the Westpac Group. In this context, diversity covers gender, age, ethnicity, accessibility, flexibility, cultural background, sexual orientation and religious beliefs.

The objectives of the policy are to ensure that the Westpac Group:

- ▶ Has a workforce profile that delivers competitive advantage through the ability to garner a deep understanding of customer needs;
- ▶ Has a truly inclusive workplace where every individual can shine regardless of gender, cultural identity, age, work style or approach;
- ▶ Leverages the value of diversity for all our stakeholders to deliver the best customer experience, improved financial performance and a stronger corporate reputation; and
- ▶ Continues to take a leadership position on diversity practices and setting the agenda in the external community.

To achieve these objectives the Westpac Group:

- ▶ Has set Board-determined, measurable objectives for achieving gender diversity. The Board assesses annually both the objectives and progress in achieving them;
- ▶ Assesses pay equity on an annual basis;
- ▶ Encourages and supports the application of flexibility policies into practice across the business;
- ▶ Is committed to proactively assisting Indigenous Australians to access employment across our brands;
- ▶ Implements our Accessibility Action Plan for employees and customers with a disability, including ensuring employment opportunities are accessible for people with disabilities; and
- ▶ Actively promotes an environment of inclusion for lesbian, gay, bisexual, transgender and intersex (LGBTI) employees.

The implementation of these objectives is overseen by the Westpac Group Diversity Council chaired by the CEO.

The Board, or an appropriate Board Committee, will receive regular updates from the Westpac Group Diversity Council on these diversity initiatives.”

3.

Consideration of the representation of women in the director identification and selection process

Disclose whether and, if so, how the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so.

Bank of Montreal, 2013 proxy

"In keeping with the Board's Diversity Policy, potential candidates are screened for several attributes including ethics and integrity, range of experience, good business judgment, areas of expertise, personal skills and qualities, gender, age, ethnicity and geographic background. The Governance and Nominating Committee also takes into consideration possible conflicts, and the candidate's ability to devote sufficient time and commitment as a director. The Board has set a goal that each gender comprise at least one-third of the independent directors."

Shell, corporate website

"In response to the report by Lord Davies of Abersoch published in February 2011 entitled 'Women on Boards' (the 'Davies Report'), the Board of Royal Dutch Shell plc has issued the following statement:

"The Board welcomed the Davies Report on Women on Boards and its recommendations. The Board and the senior succession planning of the Company in general takes into consideration a number of factors including gender and other diversity criteria: by 2015 it is expected that at least 25% of the Directors will be women, as recommended by the Report."

Westfield Group (Australian shopping centre group), 2013 annual report

"Specifically, the Nomination Committee monitors and reviews and, where appropriate, makes recommendations to the Board on:

- ▶ The Group's Diversity Policy (which is set out later in this Statement);
- ▶ The measurable objective adopted by the Group and the initiatives to support those objectives;
- ▶ The progress made towards achieving the measurable objectives; and
- ▶ The representation of women and men at all levels and divisions within the Group."



4.

Consideration given to the representation of women in executive officer appointments

Disclose whether and, if so, how the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.

While we have not found leading examples in this area, we expect that the considerations similar to those in the preceding examples would apply.

5.

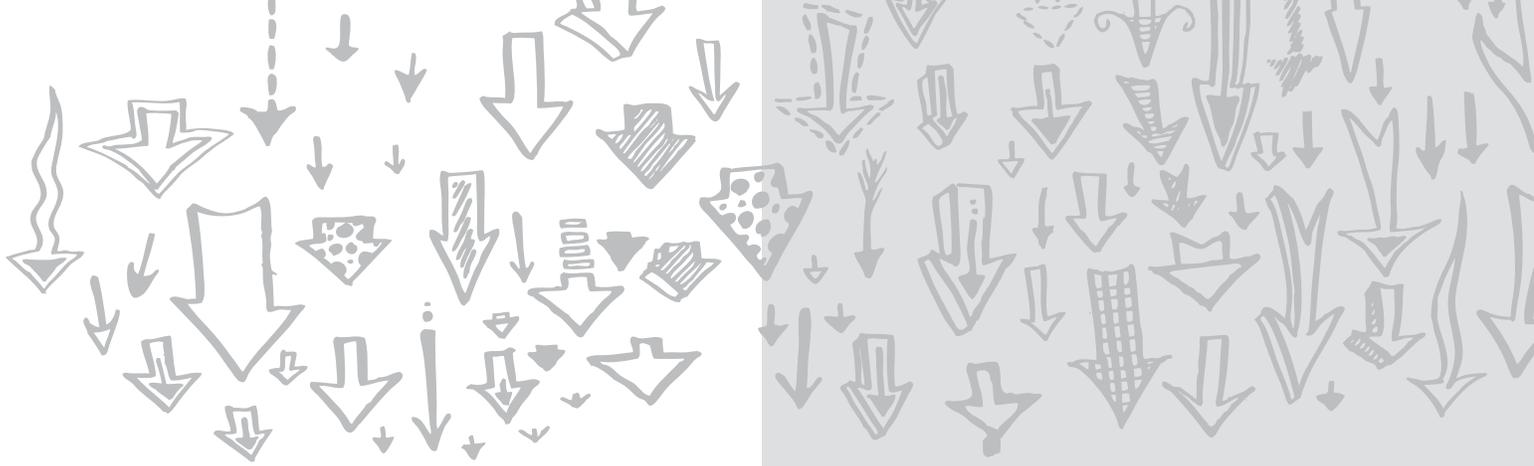
Targets regarding the representation of women on the board and in executive officer positions

- (a) *For purposes of this Item, a "target" means a number or percentage, or a range of numbers or percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date.*
- (b) *Disclose whether the issuer has adopted a target regarding women on the issuer's board. If the issuer has not adopted a target, disclose why it has not done so.*
- (c) *Disclose whether the issuer has adopted a target regarding women in executive officer positions of the issuer. If the issuer has not adopted a target, disclose why it has not done so.*
- (d) *If the issuer has adopted a target referred to in either (b) or (c), disclose:*
 - (i) *The target, and*
 - (ii) *The annual and cumulative progress of the issuer in achieving the target.*

WestPac Group, website and 2014 annual report

"By 2014 we want 40% of our senior leadership roles to be filled by women. We are focusing on our most senior 4,000 roles – a large enough population to drive real, sustainable change. Appointments will be merit based – this is an AND scenario – women promoted AND with merit."

"In October 2010, the Board set a measurable objective to increase the proportion of women in leadership roles (over 5,000 leaders from our Executive Team through to our bank managers) from 33% to 40% by 2014, which was achieved in September 2012, two years ahead of schedule."



Rio Tinto Group, website and annual report

“We are focused on increasing the representation of women, and achieving a better balance in gender in the short term, and in ethnicity and nationality in the medium term. We are also focused on developing a more diverse leadership team, specifically to ensure that local nationals in emerging regions have the capability and experience to lead our operations.

Our Group diversity targets for 2015 are:

- ▶ Women to represent 20% of our senior management;
- ▶ Women to represent 40% of our graduate intake;
- ▶ 15% of our graduate intake to be nationals from regions where we are developing new businesses.”

Diversity and inclusion at Rio Tinto

Diversity and inclusion is now sponsored at the highest levels at Rio Tinto. The company’s CEO became chair of its Diversity & Inclusion Council in January 2015, demonstrating the organization’s commitment to delivering improved diversity and inclusiveness outcomes.

With a goal of having a workforce that is representative of the countries and communities in which it operates in order to underpin the health and sustainability of its businesses, the company has set some bold targets and is well on the way to achieving them.

2015 target	Progress by end of 2013*
▶ Women to represent 20% of senior management by 2015	▶ Women represented 14% of senior management in 2013
▶ Women to represent 40% of 2015 graduate intake	▶ Women represented 28% of 2013 graduate intake
▶ 15% of 2015 graduate intake to be nationals from regions where the company is developing new businesses	▶ 30% of 2013 graduate intake were nationals from regions where the company is developing new businesses

**2014 data will be published in the 2014 Annual Report.*

In 2014, Rio Tinto’s 14-member board included three women.

While the organization has made some progress, its leaders recognize that the change can be accelerated and are taking actions to achieve that. Defining measurable goals and working towards them is a chief factor in how Rio Tinto is demonstrating its progress.



6. Number of women on the board and in executive officer positions

- (a) *Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women.*
- (b) *Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all major subsidiaries of the issuer, who are women.*

Westpac Group, 2014 annual report

"At 30 September 2014, the proportion of women employed by Westpac Group was as follows:

- ▶ Board of Directors: 44%;
- ▶ Leadership roles: 44%; and
- ▶ Total Westpac workforce: 59%."

GrainCorp Limited (Australian agribusiness), 2014 annual report

"FY14 performance:

Diversity, Inclusion and Equal Opportunity

- ▶ Women occupied 20% of people leadership roles (from 19% in FY13 but below 25% target);
- ▶ Female representation at Board level consistent at 25%;
- ▶ Female representation at executive level reduced from 2 to 1"

Rio Tinto Group, website and annual report

"In 2013, women represented 14% (female: 102; male: 608) of senior management, 17% (female: two; male: ten) of the board, 19% (female: 11,090; male: 48,435) of our total workforce and 28% (female: 118; male: 305) of our graduate intake. Our graduate intake in 2013 included 30% of nationals from regions where we are developing new business."

How do you want to be perceived?

The above examples demonstrate how global leaders in gender diversity set the related policies and targets, and approach public disclosures. We're proud to say that many of these leaders call Canada home.

Increasingly, companies are realizing that gender diversity is an economic issue. Many are becoming more transparent about their actions and the progress they're making on diversifying their boards as well as their leadership pipelines. Several organizations, sometimes working with executive search firms, have compiled directories and databases of "board-ready" women to counter suggestions that there is an insufficient number of viable female candidates. Also, some boards are looking at board turnover and succession planning as a strategic way to increase diversity.

With the introduction of the Canadian disclosure requirements, we would like to see more Canadian entities disclosing their leading practices or being inspired by leaders to introduce effective programs that allow them to attract and retain the very best talent. We believe that this is key to continued global competitiveness.

If you have any questions about this publication, please contact:

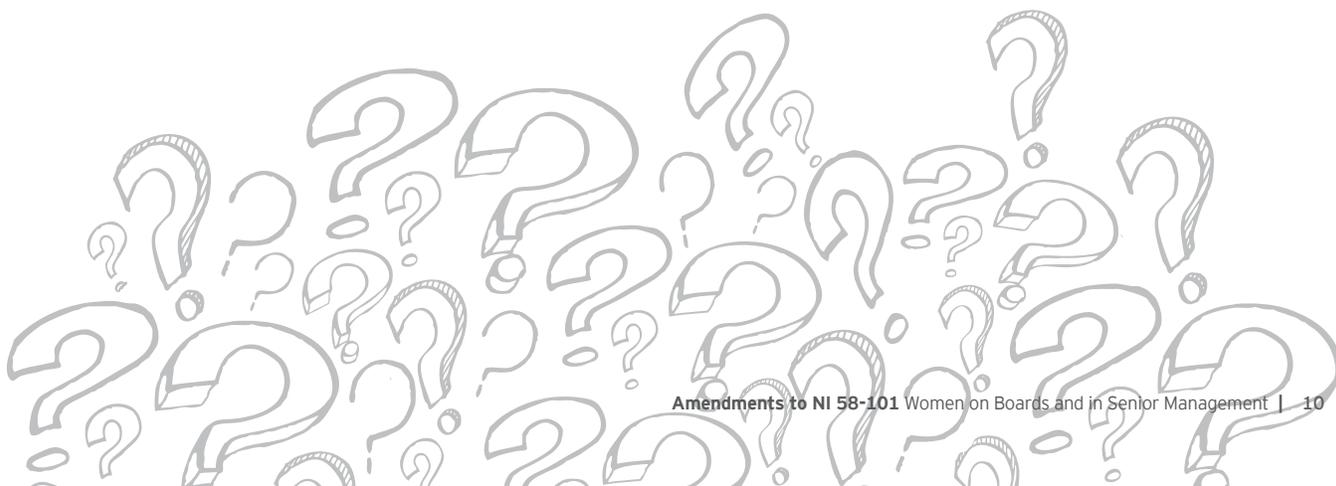
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