Diversity: Many institutional investors rewriting requirements for makeup of boards

FROM B1

“There [are] many ways to get this work done – we do believe targets are effective because in all things business, what gets measured gets done,” says Tanya van Biesen, the Canadian executive director of Catalyst, a group that promotes the progress of women in the workplace. “Yet comply-or-explain, without a doubt, has helped move this conversation forward.”

The Canada Business Corporations Act (CBCA) changes do several new things: One, they extend the rules to Indigenous persons, persons with disabilities and members of visible minority groups. Two, they make clear which types of executive positions companies must report data for. And three, they will apply to any company with a federal incorporation, even if they list on the smaller TSX Venture Exchange.

Some of those companies hadn't even been subject to a gender-disclosure rules; now, they'll have to ramp up their disclosure to include the additional groups as well. Law firm Osler Hoskins & Harcourt LLP estimates there are about 250 CBCA companies listed on the venture exchange that will now be subject to the new disclosure obligation.

In many ways, the comply-or-explain method is similar to the approach many, but not all, Canadian companies take. Most provinces, as well as the Toronto Stock Exchange, require publicly traded companies to quantify the women on their board and in executive management, and explain their approach to gender diversity in their annual proxy statement to shareholders. If there's no formal target for the number or proportion of women on the board, the company must explain why.

The gender rules, rolled out in 2015, have coincided with a steady increase in women on boards, even without requiring companies to adopt formal targets for representation.

An annual study conducted by the Canadian Securities Administrators showed the total number of board seats occupied by women in a sample of more than 600 companies increased to 17 per cent in 2019, compared with 11 per cent in 2015, and found 73 per cent of companies had at least one woman on their board, an increase from 49 per cent in 2015.

Studies that examine larger companies, which exclude the tiny energy and mining companies that have historically lagged in the number of women on boards, have shown better progress.

As of September, none of the roughly 230 companies in the S&P/TSX Composite Index have all-male boards, according to governance consultant Kingsdale Advisors. (Two companies had all-male boards in their circulars this spring, but later added female directors. One, Barrick Gold, had its sole female director die shortly before it prepared its proxy.)

Osler says women now hold 30.2 per cent of board seats in the S&P/TSX 60 Index of the largest companies in Canada, which was a key goal of the 30% Club of Canada, a group that aims to increase the proportion of women in board seats and top executive roles by 2022.

Raymond Chan, a director at Telus Corp. and the former chief executive officer of Baytex Energy Corp., hopes we are at the beginning of a similar arc in the number of visible minorities, but says the conversation about these broader elements of diversity has barely begun.

Mr. Chan personally reviewed the proxy circulars of all the TSX/S&P 60 companies and believes that there are just two dozen visible minorities, or about 4 per cent of all directors. He counted just three directors of Chinese origin when he did his study, including himself, at a time when every major company needs to be considering how to do business with China.

“It seems like there must be a lot of qualified visible minority business people around this country – these are just shocking statistics to me,” he said, saying he is speaking in a personal capacity, not for Telus.

“The Canadian corporate boardrooms appear to be still very much a closed shop. It is not consistent with the multicultural and diversified communities most Canadians experienced and treasured in their everyday lives.”

Similarly, there is virtually no representation on corporate boards by people with disabilities.

The Shareholder Association for Research & Education, known as SHARE Canada, has for years helped institutional investors place proposals calling for greater board diversity. Executive director Kevin Thomas calls the 2015 comply-or-explain gender rules a “milestone” and hopes to see similar progress from the new federal rules.

“It really helped to fan the fire and give us a bit more of an impetus to move this because the data was finally being collected in a consistent way,” he said. “One of the things we've been able to do is to highlight the companies where they really are laggards on this, compared to their peers in the Canadian market, and file shareholder proposals that have a way of moving that market along.”

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>
> RAYMOND CHAN
> TELUS CORP. DIRECTOR AND FORMER CEO OF BAYTEX ENERGY CORP.

For example, Mr. Thomas said, “when we looked a bit closer, we found that the boards that had an explicit recognition of Indigenous heritage as a criterion in their board diversity policies were also the only ones that actually had Indigenous directors on the boards. So we went to a few more companies and asked them to adjust their diversity policies and add that as a criterion. And we found that in some cases those are the ones that then subsequently added Indigenous people to their boards.”

Catherine McCall, executive director of the Canadian Coalition for Good Governance, a group representing institutional investors, says her group “doesn't just think [diversity] stops at gender. And when we meet with directors in our engagement process, they will often point out that gender isn't the be all and end all of diversity.”

Canadian institutional investors, many of them members of the 30% Club, have also been ratcheting up their gender diversity voting policies. For example, Canada Pension Plan Investment Board increased its requirement in 2019 for Canadian companies to have at least two female directors. British Columbia Investment Management Corp. (BCI) now expects a minimum of either three female directors, or 25 per cent of the board, to be represented by women.

When the pension funds feel the companies have violated their guidelines, they withhold votes for the director who chairs the nominating committee – the board committee responsible for director recruitment and nominations. Sometimes they vote against all the committee members for repeat offenders. BCI voted against 200 directors globally for gender diversity issues in 2019, while CPPIB voted against 626.

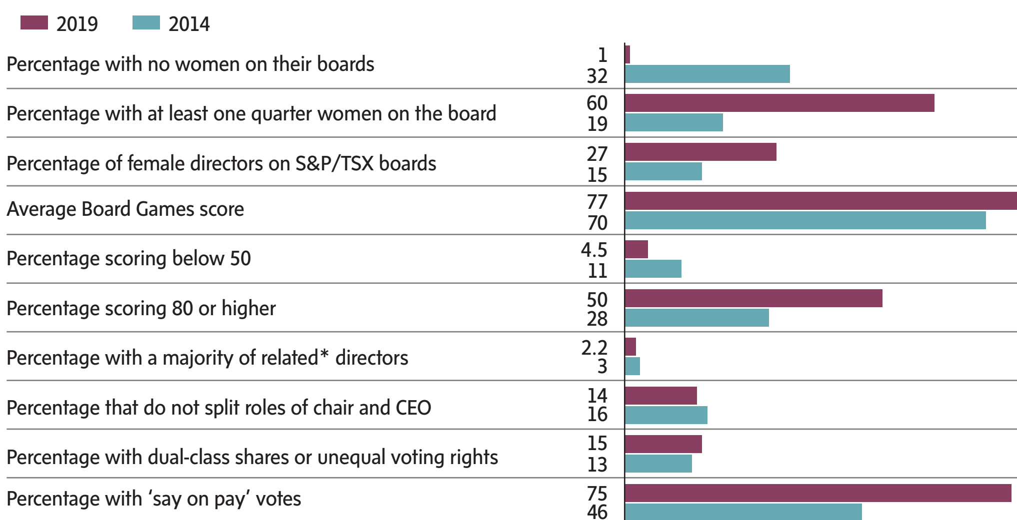
The pension plans typically say, however, that they won't be making changes in their policies in 2020 to match the new broader federal rules. Instead, they'll be looking at the 2020 disclosures, consulting with governance leaders and seeing what needs to be done if companies fall short. Healthcare of Ontario Pension Plan spokeswoman Judy Mann says, “We look forward to seeing how companies address the increased requirements on diversity disclosure, and will review our policies as we see how companies explain their approaches to diversity beyond gender.”

In the meantime, companies must prepare for the new disclosure regime.

Rima Ramchandani of law firm Torys LLP says “some of our clients, like the financial institutions who are early adopters of best practices from a corporate governance perspective, are ahead of these rules.”

But others new to the rules may struggle, says Jennifer Longhurst of law firm Davies Ward Phillips & Vineberg LLP.

“It could be quite difficult if people aren't willing to self identify and share that information for privacy reasons,” she says. “… I think many companies are going to find themselves challenged to really provide the information that investors are probably looking for.”



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JOHN SOPINSKI/THE GLOBE AND MAIL

WASTE CONNECTIONS SHAREHOLDERS PASS POLICY TO ENSURE MORE FEMALE DIRECTORS

The shareholders of **Waste Connections Inc.** demonstrated that one female director on a corporate board is, in their eyes, no longer enough.

The company, a member of the S&P/TSX 60, faced a shareholder proposal this spring from the British Columbia Teachers' Federation calling on it to release a formal, written diversity policy, as well as plans and timelines for increasing the number of female board members and executives.

It passed with support from 64 per cent of the shareholders. Law firm Davies Ward Phillips & Vineberg LLP says it's the first time in Canadian history that a shareholder proposal on gender diversity has passed. It was the only shareholder proposal of any kind to pass among the 62 in Canada studied by Davies in 2019.

Waste Connections came to its shareholders in the spring with one woman among its seven directors. Proxy-advisory firm Institutional Shareholder Services recommended a Yes vote, contrary to Waste Connections' wishes, saying it lagged Canadian companies in female representation and the company disclosed neither a formal gender policy nor a target to fix that.

In an interview, chief financial officer Mary Anne Whitney said Waste Connections was looking for an additional board member at the time of the annual meeting and later added a woman, making two of its eight members female.

“We had identified that diversity, specifically gender diversity, was one of the factors that should be considered. That was a priority for us.”

Ms. Whitney declined to comment on the status of a formal diversity policy for the company.

While the company's administrative offices are based in Houston, the company is considered Canadian by S&P Dow Jones Indices, because its corporate home is in Ontario.

DAVID MILSTEAD

The push for corporate gender diversity is just getting started

MICHELLE DE CORDOVA
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OPINION

Michelle de Cordova is a principal and Rebecca Zentner-Barrett is an associate at ESG Global Advisors

For North American board diversity, 2019 was a landmark year. July saw the announcement that the last all-male S&P 500 company board had recruited a female director, while a September survey found no S&P/TSX Composite boards with zero female directors.

This was welcome news, but progress in increasing the percentage of female directors remains slow. It is worth recalling that in a U.K. survey, one of the top excuses made by board chairs when asked why they did not have more women directors was that “we have one woman already on the board, so we are done – it is someone else's turn.”

Canadian boards that have recruited their first female director would be advised not to rest on their laurels.

In fact, shareholder pressure to improve corporate diversity is just getting started.

Some of Canada's largest investors have recently strengthened their proxy voting guidelines in this area. Ontario Teachers' Pension Plan, British Columbia Investment Management Corporation, Alberta Investment Management Corporation and RBC Global Asset Management are just a sample of institutional investors to have published expectations that boards should have more than just one female director, in order to avoid a vote against re-election of the directors responsible for nominating board candidates.

Companies cannot lay the blame on proxy voting advisers here: When it comes to board diversity, the baseline policies of the two most prominent proxy advisers, Institutional Shareholder Services and Glass Lewis, are less stringent than the custom voting guidelines of these investors.

Further ratcheting-up of voting guidelines on board gender diversity should be anticipated, given how many large and influential investors are represented in the 30 per cent Club of Canada's Investor Group, which is committed to “exercise our ownership rights, including voting and engagement, to effect change on company boards and within senior management.” It aims to achieve a minimum of 30 per cent female representation on boards and at the executive level by 2022.

Is it enough for the nominating committee to work on recruiting additional female directors? That would be advisable, but still insufficient. The shareholder discussion on corporate diversity that started with representation of women on the board is evolving outward and downward to include forms of board diversity beyond gender, along with diversity throughout the organization.

During consultations about the Canadian Securities Administrators' board gender diversity disclosure requirements, institutional investors expressed a desire to include other forms of diversity in proxy voting and engagement, but noted that they were hampered by the lack of reliable data. That is about to change, at least for a segment of Canadian companies.

Recent amendments that come into effect Jan. 1, 2020, will introduce diversity disclosure requirements beyond gender for public companies governed by the Canada Business Corporations Act. Companies will need to disclose the number and percentage of members of the board and senior management who are women, Indigenous persons, visible minorities, and persons with disabilities. As this information becomes available, we expect to see investor stewardship expand to address more forms of board diversity.

The scope of stewardship on diversity is also expanding from the boardroom to the broader workforce. For example, there has been increasing support for shareholder proposals targeting gender and race-associated pay gaps at U.S. companies, while larger companies in the U.K. are now required to report on gender pay differentials. This topic is now on the engagement agenda in Canada.

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In 2019, four Canadian financial services companies received shareholder proposals asking them to disclose the pay gap between female and male employees. Shareholder proposals represent the tip of the iceberg when it comes to investor engagement, so boards should anticipate a wider range of questions about how they are approaching diversity, inclusion and equality within their organizations.

But the most important reason for boards to reject “one and we're done” thinking on gender diversity is not to avoid the risk of difficult conversations with institutional investors, but to embrace an opportunity to enhance governance capacity and generate value. Investor interest in board diversity is not driven mainly by equality concerns: Research suggests that the strongest correlation between board diversity and corporate value begins to emerge when a critical mass of diversity on the board is achieved, usually pegged to at least 30 per cent female directors.

Boards that have adopted a more structured approach to director recruitment to look outside existing networks for that first female director should not put that approach aside after they find her. A wider pool of potential director candidates is not just important to increase diversity.

At a time when boards face new expectations to provide effective oversight, and disclosure of material financial, environmental, social and governance risks and opportunities, boards need access to an expanded range of expertise and insight.

On diversity, one is not done – it is just the beginning.

Boards navigate new rules on climate risk disclosure

Canadian regulators have updated their guidance to ensure more relevant information reaches investors

DAVID MILSTEAD
INSTITUTIONAL INVESTMENT REPORTER

There's a lot that can be said about climate risk. Canadian companies are still trying to get up to speed on saying it.

The Canadian Securities Administrators, an umbrella group of provincial regulators, have updated their guidance on disclosure of climate change-related risks, with time for companies to punch up their annual reports next spring.

The group says the guidance, released earlier this year, was necessary because Canadian companies had problems following the previous environmental-reporting guidance, released in 2010. A 2018 review of disclosures by the CSA found that while 56 per cent of Canadian companies followed the original guidance, 22 per cent used "boilerplate" language (indistinct and unhelpful, in other words) and another 22 per cent didn't address climate at all.

When companies did address climate change risks, they often focused on what would happen if environmental regulations increased, the CSA said. Energy companies had the most disclosure, while many companies in other industries failed to make any mentions of climate risk. Some argued climate risk wasn't "material." The CSA defines information as material "if a reasonable investor's decision whether to buy, sell or hold securities in an issuer would likely be influenced or changed if the information in question was omitted or misstated."

Limited or absent climate disclosure seems increasingly out of step with what institutional investors are demanding. Regulatory risk is just one element of what climate change can mean for a business's bottom line and, ultimately, its value.

"It's not just a tick-the-box paragraph of words," says Deborah Orida, the global head of active equities at the Canada Pension Plan Investment Board.

"We're trying to incorporate our risks into financial sensitivities. And it's not as simple as just carbon. It's very company- and fact-specific."

With better disclosure, "you can consider specifically where the assets of the company are located, how will they be impacted by climate change? Whether it's rising sea levels, or increasing severity of storms, or changes in policy regulation, you can incorporate that into your projections or your sensitivities on the financial returns from that investment."

In 2015, the Financial Stability Board, an international body that monitors and makes recommendations about the global financial system, formed a task force on climate-related financial disclosures with Canadian Mark Carney, Governor of the Bank of England, playing a leading role. The group has issued a series of reports and guidelines.

"Although that framework of recommendations was voluntary, the uptake has been quite substantial," says KPMG partner Bill Murphy, the accounting firm's Canada practice leader for climate change and sustainability. "The regulators and stock exchanges and central bankers are saying, 'We need to get a handle on this. We need to get information from the financial intermediaries, be they banks, insurance companies or institutional investors, on what the potentially systemic climate risks are, both from a transition and a physical risk perspective.' And those financial intermediaries, in turn, are saying, 'We need that information from the corporate clients that we lend to, insure and invest in.' "

And if the information isn't forthcoming or is perceived as inaccurate, the stakes are getting higher. New York's attorney-general sued Exxon in 2018, alleging it caused investors to lose up to US$1.6-billion by falsely telling them it had properly evaluated the impact of future climate regulations on its business, particularly the Alberta oil sands reserves held by its Calgary-based subsidiary Imperial Oil Ltd. In closing arguments at trial earlier this month, an attorney for Exxon called the case "a cruel joke ... because the reputations of a lot of people have been hurt and disparaged by the bringing of the complaint."

A group of Canadian energy executives, concerned about the import of the Exxon suit, has been discussing the issues raised for well over a year, looking into engineering and accounting solutions to the problem. "This is impacting oil sands producers' stock market valuations and access to capital markets," says David Robinson, a Calgary-based consultant advocating on the issue.

KPMG's Mr. Murphy said he wouldn't opine on the merits of the New York case against Exxon, but "the litigation risk is going to increase because of these types of lawsuits. I can certainly recommend boards be paying particular attention, as litigation risk could become as significant as the strategic and reputational risks."

With files from Reuters

Energy companies have in the past had the most disclosure of climate change-related risks in their businesses, but Canadian regulators are now seeking greater clarity from all companies on potential impact. NICK OXFORD/REUTERS

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