

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***

Date: September 28, 2016

Table of Contents

Executive Summary	2
Market Capitalization and Industries in Current Sample	4
Findings	5
<i>Director Term Limits and Other Mechanisms of Board Renewal</i>	5
<i>Policies Regarding the Representation of Women on the Board</i>	6
<i>Consideration of the Representation of Women in the Director Identification and Selection Process</i>	7
<i>Consideration of the Representation of Women in Executive Officer Appointments</i>	8
<i>Issuer’s Targets Regarding the Representation of Women on the Board and in Executive Officer Positions</i>	8
<i>Number of Women on the Board and in Executive Officer Positions</i>	10
Conclusion.....	13
Questions	14

Executive Summary

National Instrument 58-101 *Disclosure of Corporate Governance Practices (NI 58-101)* requires non-venture issuers in Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon (the **Participating Jurisdictions**) to disclose certain information regarding women on boards and in executive positions (the **WB/EP Rules**). The WB/EP Rules require that, on an annual basis, each non-venture issuer disclose:

- the number and percentage of women on the issuer’s board of directors (the board) and in executive officer positions;
- whether it has a policy relating to the identification and nomination of women directors;
- whether it has director term limits or other mechanisms of board renewal;
- whether it has targets for women on its board and in its executive officer positions; and
- if it considers the representation of women in its director identification and selection process and in its executive officer appointments.

In the event that a non-venture issuer has not adopted the above policy, board renewal mechanisms or targets or does not consider the representation of women, the WB/EP Rules require the issuer to explain why it has not done so. The WB/EP Rules are intended to increase transparency for investors and other

stakeholders regarding the representation of women on boards and in executive officer positions and the approach that specific issuers take in respect of such representation. This transparency is intended to assist investors when making investment and voting decisions.

On September 28, 2015, we published 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* (the **Year 1 Notice**). The Year 1 Notice summarized the findings of our review of the corporate governance disclosure of 722 issuers as it relates to the WB/EP Rules (the sample included all issuers having year-ends between December 31, 2014, and March 31, 2015 that released disclosure on corporate governance by July 31, 2015).

Staff in the Participating Jurisdictions (or **we**) are publishing this notice (the **Staff Notice**) to:

- report the findings of our review of the corporate governance disclosure of a sample comprising 677 non-venture issuers relating to the WB/EP Rules, and
- draw comparisons between our current sample and the sample from last year.

As of April 30, 2016, there were 859 issuers listed on the Toronto Stock Exchange and subject to NI 58-101. Of these, 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. Our sample for this Staff Notice comprises these 677 non-venture issuers. To remain consistent with the scope of our Year 1 Notice, our current sample does not capture issuers with year-ends outside of the December 31 to March 31 period.

Our findings, and the comparisons between this sample and the data reported in the Year 1 Notice, provide a partial picture of the year since both samples exclude data from issuers with year-ends outside of the December 31 to March 31 period. In particular, most banks, which are part of an industry that has generally been an early adopter of diversity initiatives, are not included in either sample.¹ Once all issuers have made the corporate governance disclosure required by the WB/EP Rules for two consecutive years, we intend to publish a comparison of the complete two-year results.

Among the issuer sample in year 2, we found that:

Board

- There are more women on boards than last year;
 - The number of women on boards has increased in all size categories of issuers, with large issuers still leading the way;
 - In the case of the 215 largest issuers (over \$1 billion market capitalization), 18% of board seats are now held by women, compared with 16% the year before, and in the case of the 42 largest issuers (over \$10 billion market capitalization) these numbers are 23% and 21%, respectively;

¹ The six largest banks have an average female board representation of 35%, based on information provided in their 2016 circulars.

- Overall, 12% of the total board seats in our sample were occupied by women, up from 11% last year;
- 55% of issuers have at least one woman on their boards, a 6% increase over last year, and 66 issuers (or 10%) have three or more women on their boards, compared to 56 issuers (or 8%) the year before;
- 21% of issuers adopted a policy relating to the identification and nomination of women directors compared to 15% reported in the Year 1 Notice;
 - Issuers that reported having a policy relating to the representation of women on their boards had average female board representation of 18% compared to issuers with no policy, which averaged 10% female board representation;
- 9% of issuers set a target for the representation of women on their boards, up from 7% reported in the Year 1 Notice;
 - Issuers with board targets have an average of 25% female board representation compared to issuers without targets that average 10% female representation;
- 66% of issuers disclosed that they consider the representation of women on their boards as part of their director identification and nominating process, compared to 60% reported in the Year 1 Notice;
- 20% of issuers adopted director term limits compared to 19% reported last year;

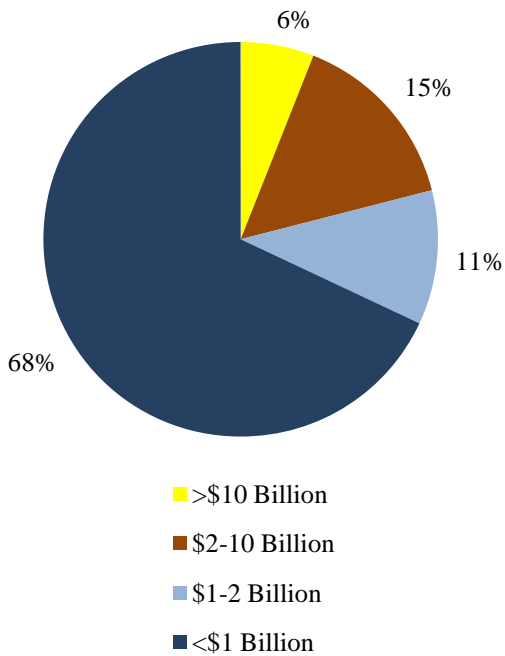
Executive Officers

- Although the number of issuers having at least one female executive officer has remained relatively stable, 58% of issuers disclosed that they consider the representation of women when making executive officer appointments, an increase from 53% last year.

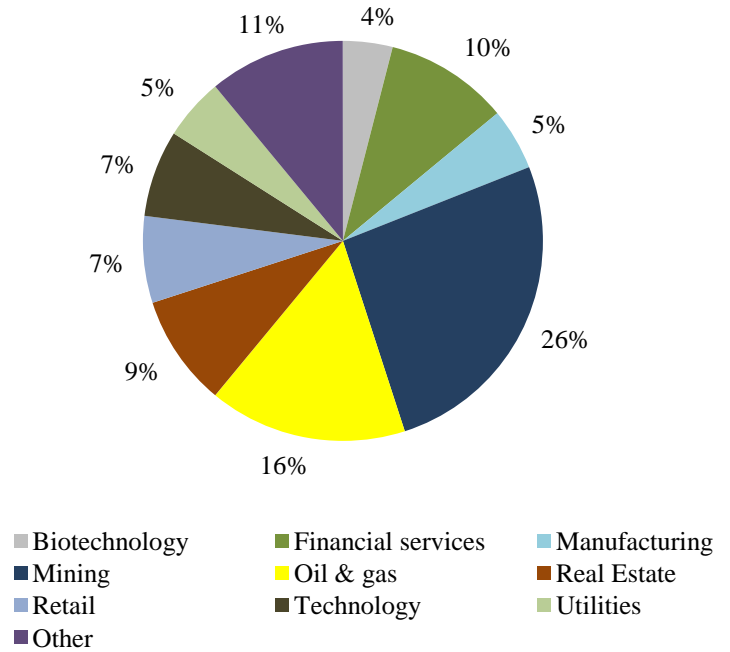
Market Capitalization and Industries in Current Sample

The market capitalization of most of the issuers in the sample is below \$1 billion (68%). Just over 40% of the sampled issuers are in either the mining or oil and gas industries, with other industries fairly evenly represented. Consistent with our findings in the Year 1 Notice, the results of the current review did not vary significantly by region. Once again, issuer size and industry were the most significant indicators of whether issuers adopted initiatives to increase the representation of women on their boards or in executive officer positions.

Market capitalization in sample



Industries in sample



Findings

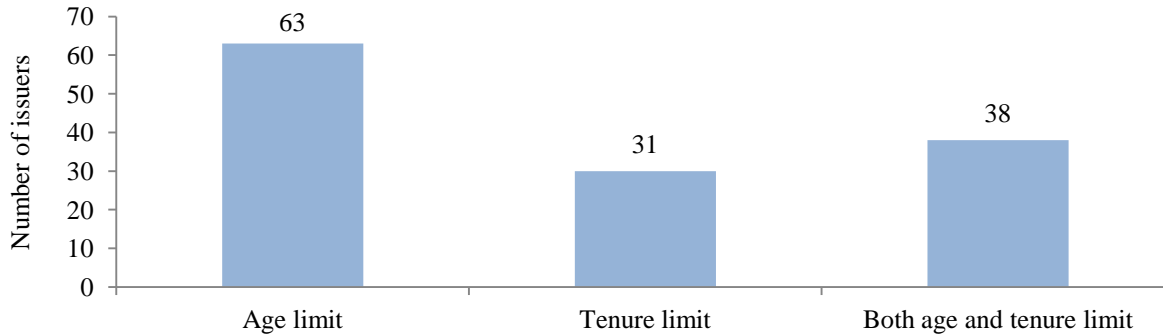
Director Term Limits and Other Mechanisms of Board Renewal

Form 58-101F1 *Corporate Governance Disclosure (Form 58-101F1)*, Item 10

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.

We found that 20% of issuers adopted director term limits compared to 19% reported last year. Of the 132 issuers that reported having director term limits, 48% set age limits, 23% had tenure limits and 29% had both. Similar to last year, less than 3% of issuers failed to provide a reason for not adopting board renewal mechanisms. Generally, issuers without director term limits or other mechanisms of board renewal provided several reasons for not adopting board renewal mechanisms. The most common reason provided is that director terms limits reduce continuity or experience on the board. Many issuers continue to remark that they have other mechanisms of board renewal. We remind non-venture issuers that they have an obligation under Item 9 of Form 58-101F1 to regularly assess their boards and committees for effectiveness and contribution and that the other mechanisms of board renewal under Item 10 may require additional procedures.

Types of Term Limits Adopted



Policies Regarding the Representation of Women on the Board

Form 58-101F1, Item 11

(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.

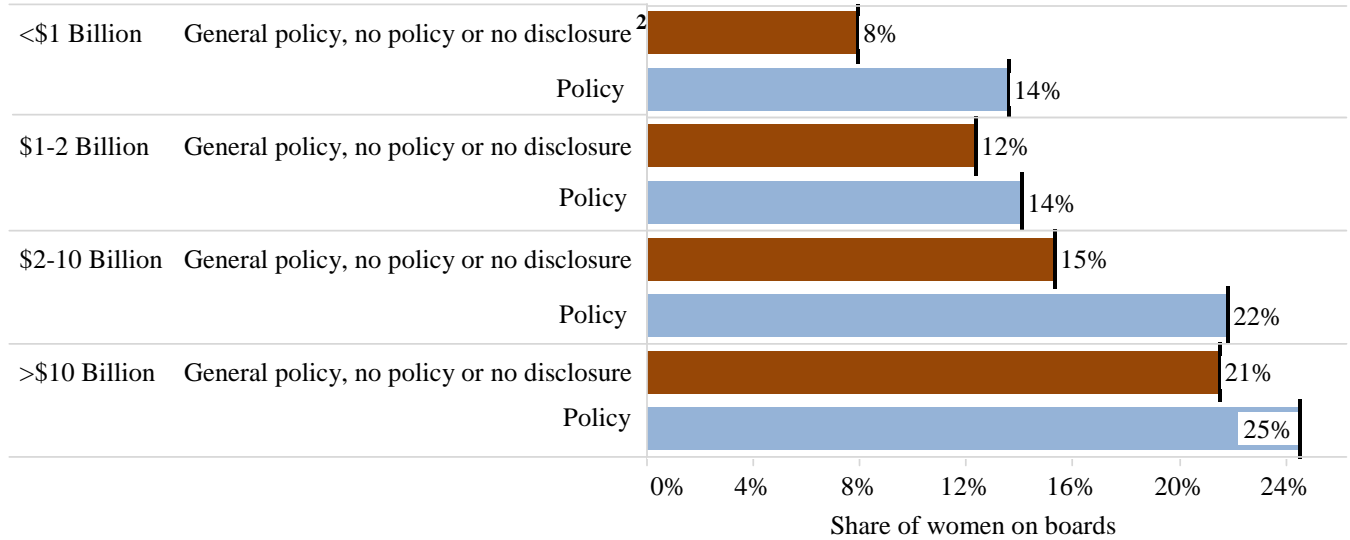
(b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:

- (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.*

Of the issuers in the sample, 21% (or 141 issuers) clearly disclosed the adoption of a policy relating to the identification and nomination of women directors, which is an increase over the 15% (or 111 issuers) reported in the Year 1 Notice, and 59% of issuers disclosed that they did not adopt a policy, compared to 65% in the Year 1 Notice. Only 2% of issuers (or 13 issuers) provided no disclosure related to policy adoption, compared to 8% (or 61 issuers) last year. The remaining issuers had diversity policies that did not specifically address women.

For issuers of all sizes, those that had a policy relating to the representation of women on their boards had a higher percentage of women on their boards than issuers without a policy. The 141 issuers with a policy relating to the representation of women on their boards had average female board representation of 18% compared to issuers with no such policy, which averaged 10% female board representation.

Policy and Women on Boards, by Issuer Size



Consideration of the Representation of Women in the Director Identification and Selection Process

Form 58-101F1, Item 12

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.

In our sample, 66% of issuers disclosed that they consider the representation of women on their boards as part of their director identification and nominating process compared to 60% reported in the Year 1 Notice. Disclosure by issuers of how they consider the representation of female directors on their boards in their identification and nomination process significantly improved. This disclosure was made by 70% of issuers compared to 42% last year. The most common reason given by issuers that do not consider the representation of women was that the issuer seeks the best candidates, regardless of gender (91%).

² “General policy” refers to a policy that relates to diversity generally, with no specific mention of women on boards.

Consideration of the Representation of Women in Executive Officer Appointments

Form 58-101F1, Item 13

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.

More than half of the sampled issuers (58%) disclosed that they consider the representation of women when making executive officer appointments, an increase from 53% last year. As with board nominations, there was significant improvement this year in the number of issuers that discussed how they consider the level of representation of women with 68% providing an explanation compared to 38% in the Year 1 Notice. Issuers should remember that we expect them to fully comply with this requirement. Again this year, the most common explanation given by issuers that do not consider the representation of women in executive officer appointments was that their selection is based on merit.

Issuer's Targets Regarding the Representation of Women on the Board and in Executive Officer Positions

Form 58-101F1, Item 14

(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.

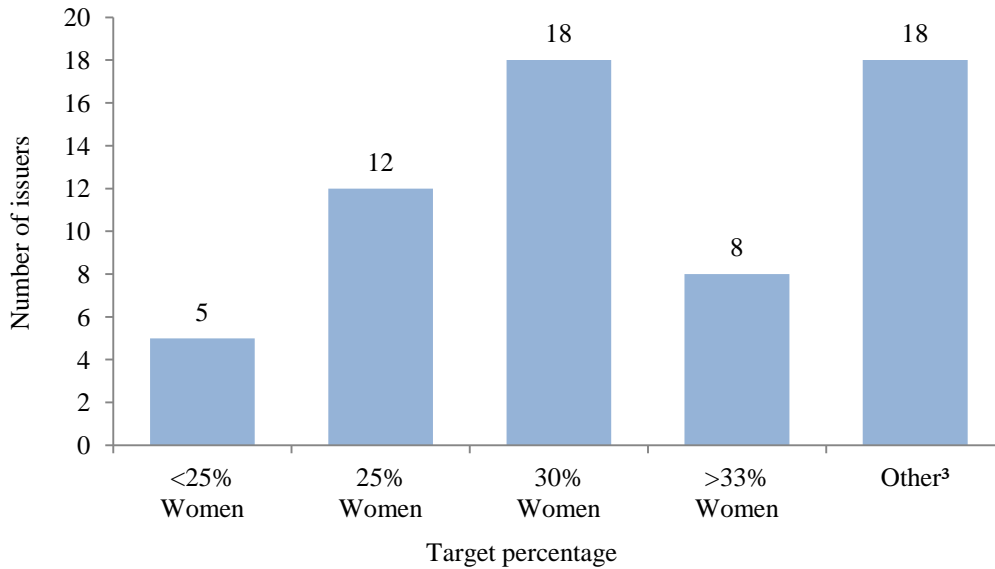
(d) If the issuer has adopted a target referred to in either (b) or (c), disclose:

(i) the target, and

(ii) the annual and cumulative progress of the issuer in achieving the target.

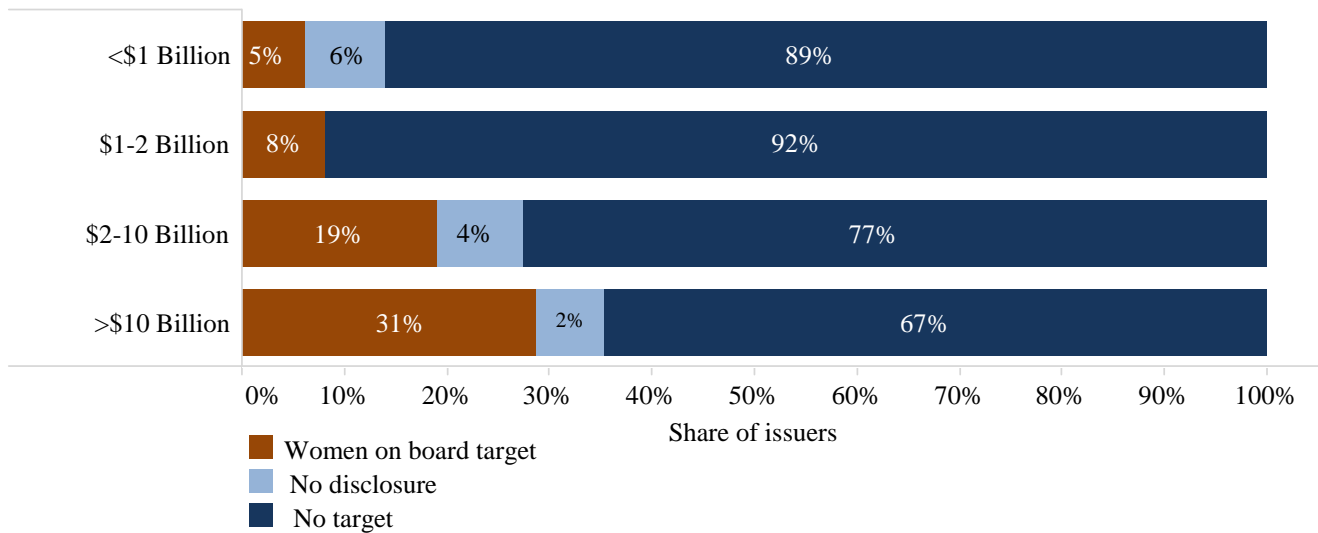
Formal targets for the representation of women on their boards were set by 61 issuers (9%), up from 49 issuers (7%) disclosed last year. Formal targets for the representation of women in executive officer positions were set by 15 issuers (2%) compared to 11 issuers (2%) reported in the Year 1 Notice. Of issuers with board targets, 57% had already achieved their stated target.

Adopted Women on Board Targets



The larger an issuer the more likely it was to implement a target for board representation, with 31% of companies over \$10 billion adopting a target compared to just 5% of companies under \$1 billion. A variety of reasons were given by issuers for not adopting targets for the representation of women on their boards or in executive officer positions. The most common reason cited was that candidates are selected based on merit (70%).

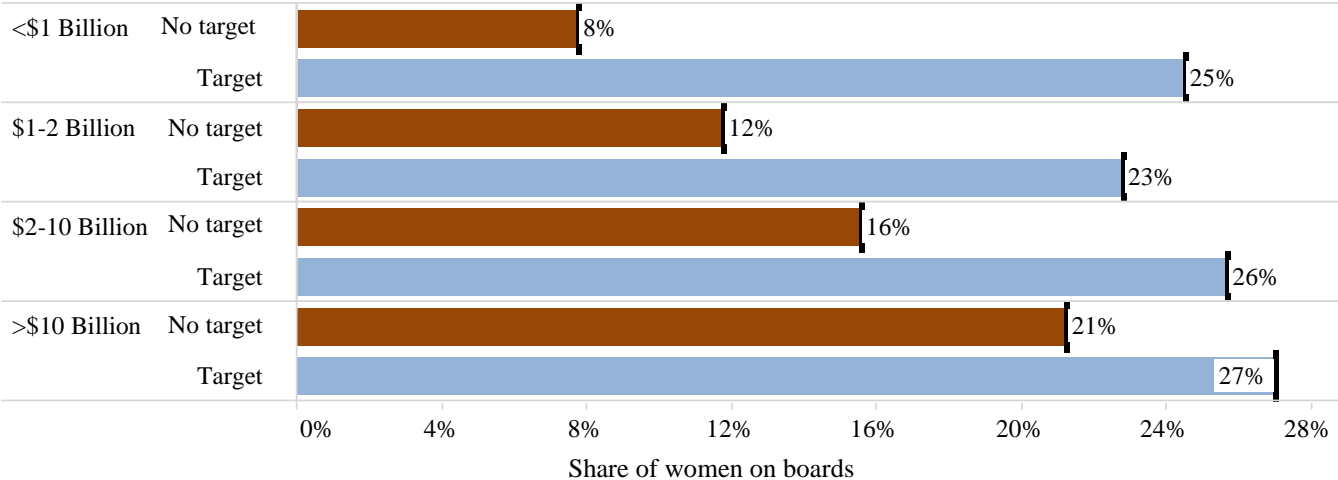
Board Target Adoption Rates, by Issuer Size



³ Includes targets set for a number of board members without specifying the size of the board and targets set for only a portion of the board such as the independent directors.

Regardless of market capitalization, for issuers that have board targets, we saw a greater number of women on their boards when compared to issuers without targets. Issuers with board targets have an average of 25% female representation on their boards compared to issuers without a target that have an average of 10% female representation.

Target Setting and Women on Boards, by Issuer Size



Number of Women on the Board and in Executive Officer Positions

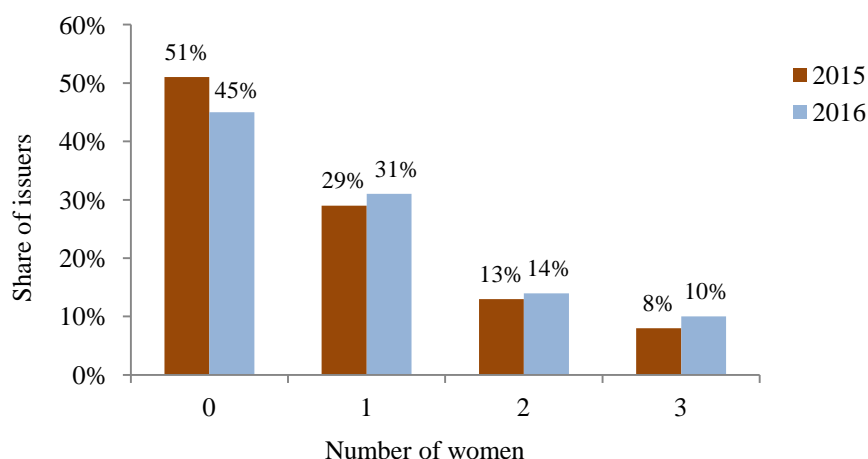
Form 58-101F1, Item 15

(a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women.

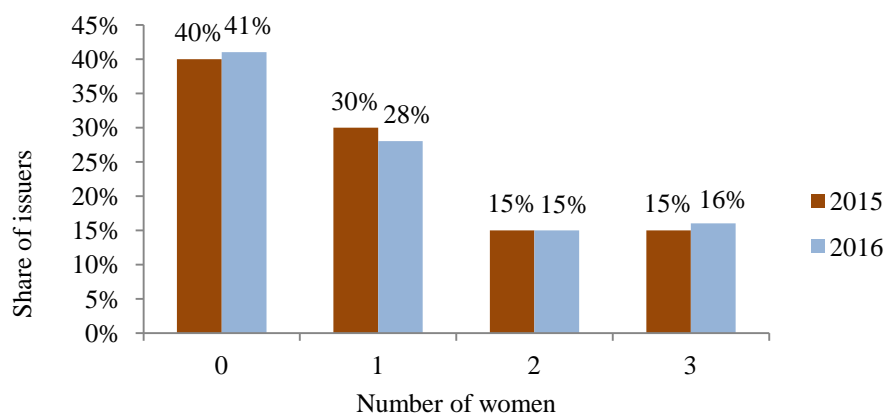
(b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all major subsidiaries of the issuer, who are women.

The number or the percentage of women on their boards was disclosed by 94% of issuers in the sample and 90% disclosed the number or the percentage of women in executive officer positions. Although this is an improvement in disclosure over last year, we remind issuers that they must provide both the number and percentage each year. We found that 55% of issuers have at least one woman on their boards, a 6% increase over last year, whereas 59% of issuers that disclosed executive officer information have at least one female executive officer, consistent with the 60% reported last year.

Number of Women on Boards (2015 – 2016)⁴



Number of Women in Executive Officer Positions (2015 – 2016)⁵



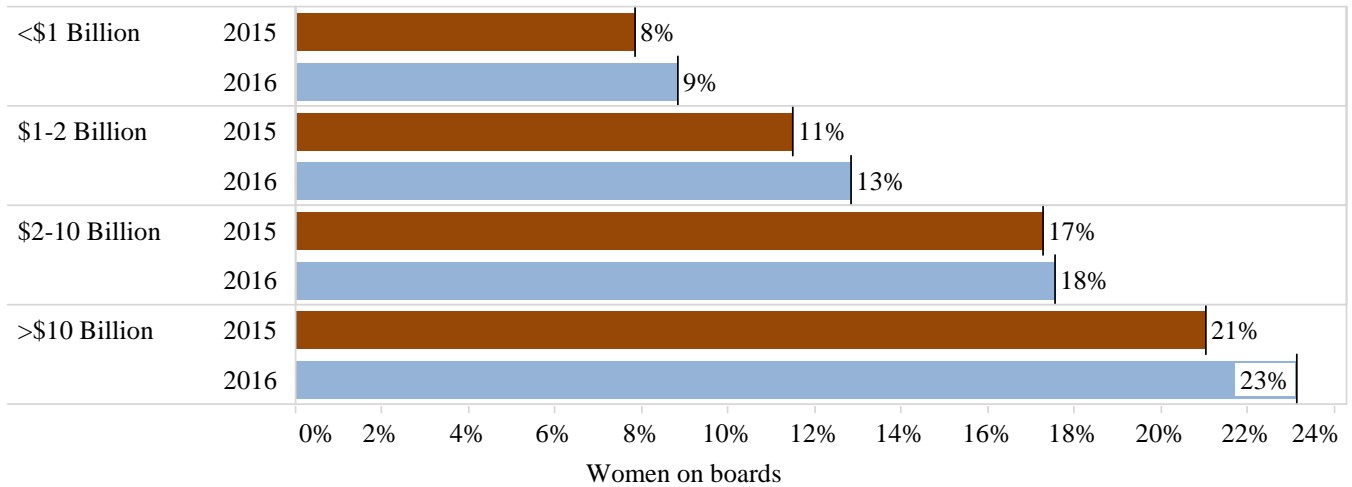
We found 10% of issuers added one or more women to their boards in the past year, compared to 15% reported in the Year 1 Notice.⁶ Although this figure is lower than last year, the overall percentage of board seats occupied by women this year increased from 11% to 12%. As observed last year, the number of women on boards increased with the size of the issuer. Nevertheless, there has been a year over year increase in the number of board seats occupied by women in all size categories of issuers. In the case of very large issuers (over \$10 billion market capitalization), 23% of board seats are now held by women.

⁴ Based on 722 issuers in year 1 and 677 issuers in year 2.

⁵ Based on 598 issuers that provided the number of women in executive officer positions in year 1 and 613 issuers in year 2.

⁶ Based on the 649 issuers that we reviewed in year 1.

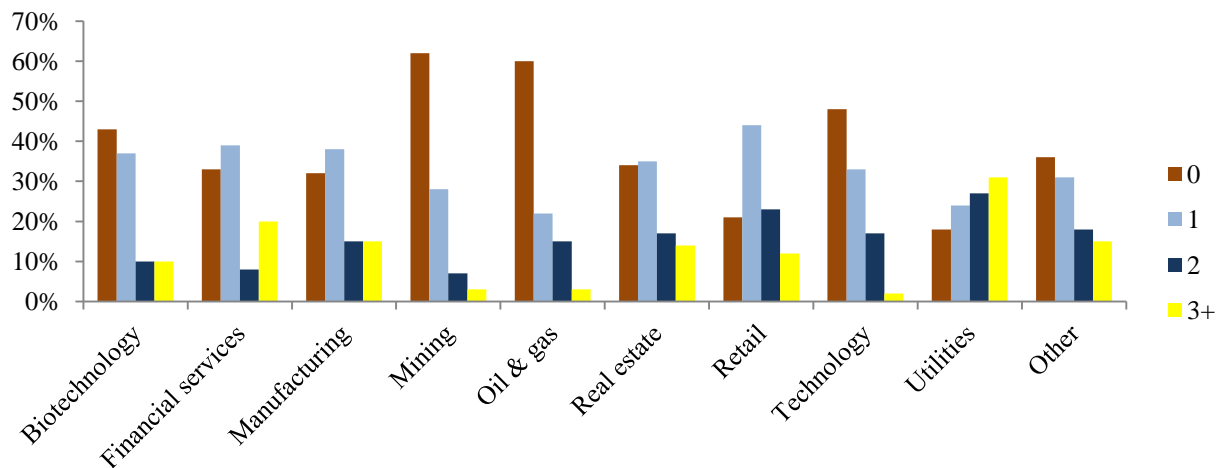
Board Seats Occupied by Women, by Issuer Size (2015 – 2016)



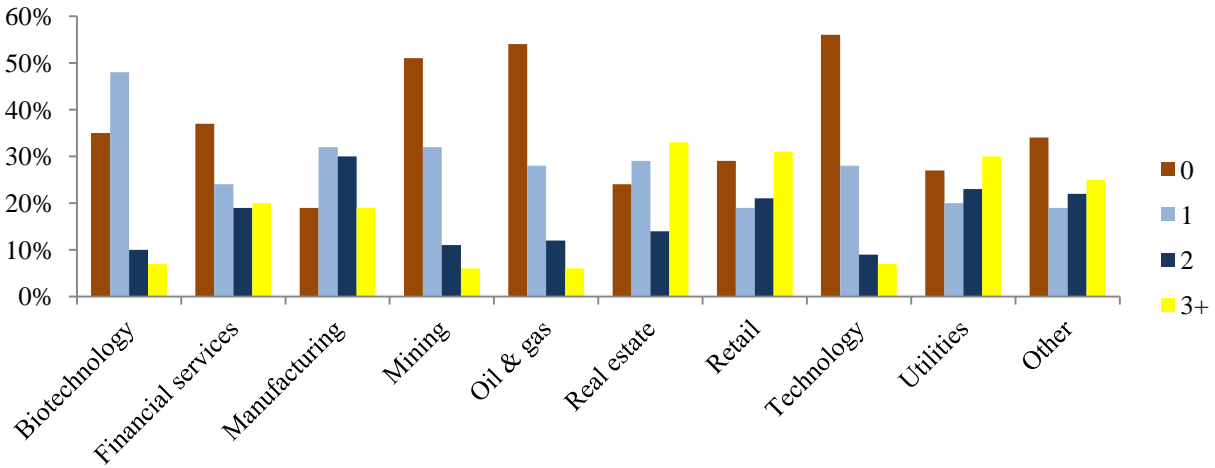
As we observed last year, the number of women on boards and in executive officer positions varied significantly by industry. Once again, the utilities and retail industries had the most women on their boards. Consistent with last year, 58% of issuers in the utilities industry reported having two or more women directors on their boards, whereas 35% of issuers in the retail industry reported having two or more women on their boards, down from 43% of issuers reported last year. The utilities and retail industries also had the fewest boards with no women on them at 18% and 21%, respectively (compared to 14% and 22% last year).

gain this year, the mining, oil and gas and technology industries had the most issuers with no women on their boards. Of issuers in the mining and oil and gas industries, 62% and 60%, respectively, reported that they had no women on their boards. 48% of issuers in the technology industry had no women on their boards, a decrease from the 61% reported last year. The mining, oil and gas and technology industries also have the greatest percentage of issuers that do not have any female executive officers.

Number of Women on Boards, by Industry



Number of Women in Executive Officer Positions, by Industry



Conclusion

This Staff Notice reports the findings of our second year review of the corporate governance disclosure resulting from the WB/EP Rules. This Staff Notice also compares the results of this review against those reported in the Year 1 Notice. Our findings indicate an improvement in the number of women on the boards of non-venture issuers across all size categories of issuers, although there remain important variations by industry.

As noted in various sections of this notice, we found that a number of issuers did not provide complete disclosure with respect to certain requirements of the WB/EP Rules. We remind issuers that we expect them to fully comply with all disclosure requirements. We will continue to evaluate and report on the corporate governance disclosure of non-venture issuers to ensure meaningful disclosure is provided regarding the representation of women on boards and in executive officer positions and to measure the impact of the WB/EP Rules.

Questions

Please refer your questions to any of the following people:

Ontario Securities Commission

Sandra Heldman
Senior Accountant, Corporate Finance
416-593-2355
sheldman@osc.gov.on.ca

Erin O'Donovan
Senior Legal Counsel, Corporate Finance
416-204-8973
eodonovan@osc.gov.on.ca

Autorité des marchés financiers

Martin Latulippe
Director, Continuous Disclosure
514-395-0337, ext. 4331
Toll-free: 1-877-525-0337, ext. 4331
martin.latulippe@lautorite.qc.ca

Nadine Gamelin
Senior Analyst, Continuous Disclosure
514-395-0337, ext. 4417
Toll-free: 1-877-525-0337, ext. 4417
nadine.gamelin@lautorite.qc.ca

Nova Scotia Securities Commission

Heidi Schedler
Senior Enforcement Counsel
902-424-7810
Toll-free: 1-855-424-2499
heidi.schedler@novascotia.ca

The Manitoba Securities Commission

Wayne Bridgeman
Deputy Director, Corporate Finance
Securities Division
204-945-4905
Toll-free: 1-800-655-5244 (MB only)
wayne.bridgeman@gov.mb.ca

Financial and Consumer Services Commission (New Brunswick)

Ella-Jane Loomis
Senior Legal Counsel, Securities
506-658-2602
ella-jane.loomis@fcnb.ca

Financial and Consumer Affairs Authority of Saskatchewan

Tony Herdzik
Deputy Director, Corporate Finance / Securities
306-787-5849
tony.herdzik@gov.sk.ca