

Goodmans^{LLP} Update

CBCA Diversity Disclosure Requirements Effective for 2020 Proxy Season

For the upcoming 2020 proxy season, new disclosure requirements will be effective for publicly-listed corporations incorporated under the *Canada Business Corporations Act* (CBCA). They mandate additional diversity disclosure in connection with an annual meeting of shareholders held on or after January 1, 2020. Notably, the new regulations align with the “comply or explain” regime adopted under Canadian securities laws, which prescribe disclosure regarding gender diversity on boards and in senior management. But the regulations also go beyond these requirements by (i) expanding the scope to include diversity disclosure with respect to a broader range of “designated groups”¹, and (ii) requiring such disclosure from “venture” issuers in addition to “non-venture” issuers (i.e., issuers listed on the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSX-V) and Canadian Securities Exchange (CSE)).

The CBCA amendments implement parts of 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*, which received assent on May 1, 2018 (available [here](#)), and the corresponding *Regulations Amending the Canada Business Corporations Regulations*, 2001: SOR/2019-258 (available [here](#)).

Details of Required Disclosure

Commencing with their 2020 annual shareholder meetings, publicly-listed CBCA corporations will need to disclose in their management information circulars the following information:

1. *Term Limits*. Whether the corporation has adopted term limits or other mechanisms of board renewal and either a description of those term limits or mechanisms or the reasons why it has not adopted them.
2. *Written Policies*. Whether the corporation has a written policy relating to the identification and nomination of directors from the designated groups and, where it does not have a policy, the reasons for not adopting one or, where it has a policy, the following information:
 - i. a short summary of the policy’s objectives and key provisions;
 - ii. a description of the measures taken to ensure effective implementation;
 - iii. a description of the annual and cumulative progress in achieving the objectives of the policy; and
 - iv. whether the effectiveness of the policy is measured and, if so, a description of how it is measured.
3. *Level of Representation*. Whether the level of representation of the designated groups is considered when nominating individuals as directors and when appointing members of senior management² and a description of how that level is considered or, if not considered, the reasons why not.

¹For the purposes of the requirements, “designated groups” is defined with reference to the federal *Employment Equity Act*, and includes women, Aboriginal peoples, persons with disabilities and members of visible minorities. Corporations may rely on self-identification by members of the designated groups (e.g., by including voluntary questions in the annual questionnaire) for disclosure purposes.

²For the purposes of the requirements, “senior management” is defined to include the chair and vice-chair of the board of directors, president, chief executive officer, chief financial officer, vice-presidents in charge of a principal business unit, division or function, and individuals performing a policy-making function in respect of the corporation.

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4. *Targets.* Whether there are targets for representation on the board and among senior management for each of the designated groups and, if so, a description of the progress made in achieving the targets and, for each group with a target, the annual and cumulative progress in achieving that target or, if there is no target, the reasons for not adopting a target.
5. *Statistics.* The number and proportion (in percentage terms) of members from each of the designated groups on the board and in senior management.

Other CBCA Amendments

Other amendments to the CBCA related to annual shareholder meetings have been passed, but are not yet in force. Such amendments include reforms with respect to majority voting requirements, say-on-pay, clawback policies, disclosure related to well-being, director elections, shareholder proposals and notice-and-access. We will provide an additional update and guidance when these amendments come into force.

For further information about these new requirements or assistance in complying with them, please contact any member of our [Corporate Finance and Securities Group](#).