

# Corporate governance: More engagement

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Over the course of 2018, corporations and their boards of directors were increasingly asked to engage on a wider range of topics, both with shareholders as well as other key stakeholders. Strong financial performance is as important as ever, but there is a growing recognition that achieving long-term strategic success requires directors to devote more time to environmental, social and governance (ESG) issues and stakeholder communications.

## Environmental, social and governance issues

Corporate performance on ESG matters is receiving heightened attention. For example, in 2018, Institutional Shareholder Services began including an environmental and social quality score to its voting recommendation reports and Glass Lewis announced that it would integrate into its voting recommendation reports guidance on material ESG topics from the Sustainability Accounting Standards Board (SASB). However, the key areas of focus in Canada were climate change and diversity.

## Climate change

In April, the Canadian Securities Administrators issued [CSA Staff Notice 51-354 Report on Climate change-related Disclosure Project](#), containing its findings after a year-long review of issuer disclosure practices and investor needs. The CSA found that there is a broad consensus among those who make use of climate change information disclosed by companies that the quality, clarity, consistency and comparability of disclosure needs to improve. Issuers emphasized the importance of mandating disclosure only of information determined to be material under securities laws, while encouraging voluntary disclosure of additional information on climate change matters, most of which they viewed as being non-material. Outside of Canada, the Task Force on Climate-related Financial Disclosures issued its [first status report](#), noting the increasing support received for its original report since its release in June 2017. In the UK, the Secretary of State issued draft regulations proposing to require public companies and large private companies to disclose information regarding their carbon emissions, energy consumption and energy efficiency actions — [The Companies \(Directors' Report\) and Limited Liability Partnerships \(Energy and Carbon Report\) Regulations 2018](#).

## Diversity

The representation of women on boards and in executive officer positions continued to be of interest to regulators, investors and the media. Our [fourth comprehensive annual report](#) highlights developments over the past year and noted continued incremental progress in 2018. Women now hold 16.4% of all board seats, over two-thirds of companies

have at least one woman director and one-third have two or more. A majority of issuers have adopted board diversity policies. However, there has been almost no growth in the average number of women executive officers and relatively few issuers adopt targets for the representation of women on the board or in executive officer positions. In our annual report, we also highlight best practices and identify diversity leaders.

In September, the CSA issued its [Report on Fourth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions](#). In the report, CSA staff stated that they had consulted with a variety of stakeholders to better understand their needs and perspectives and that the CSA is considering whether changes to the disclosure requirements or new or supplemental guidelines regarding corporate governance practices are warranted.

There is also a budding movement to focus on diversity characteristics other than gender. Amendments to the *Canada Business Corporations Act* (CBCA) approved in May, 2018 (but not yet in force) and proposed regulations under that Act would introduce a new diversity disclosure requirement applicable to all publicly traded CBCA companies, including venture issuers. Such companies would be required to provide disclosure regarding the representation on the board and in executive officer positions of “designated group members,” being women, visible minorities, Canadian indigenous people and disabled persons.

## Stakeholder engagement

The strategic necessity of ongoing, meaningful stakeholder engagement efforts was underlined when the Federal Court of Appeal, in a unanimous decision, held that the federal government failed to adequately consider the concerns of some First Nations regarding the Trans Mountain expansion project. In today's environment of rapid social media communications, failure to engage effectively with stakeholders such as governments, regulators, affected communities, employees and the media can adversely impact the business and even threaten its viability. In September, the Chartered Professional Accountants of Canada released a [Director Briefing - Stakeholder Engagement](#), co-authored by Osler partner Andrew MacDougall and Josh Pekarsky of Longview Communications & Public Affairs, to help board members understand their role in overseeing a company's constructive engagement with its stakeholders.

## Notice-and-access

CBCA companies now have an opportunity to use notice-and-access for delivery of proxy materials to beneficial owners of their shares. Under notice-and-access, shareholders receive a form of proxy or voting instruction form and a notice of meeting with details on how shareholders may access an electronic copy of the corporation's annual financial statements and proxy circular. While corporations governed by other Canadian corporate statutes were already able to use notice-and-access to send materials to both their registered shareholders and their beneficial owners, CBCA companies could only apply for an exemption to use notice-and-access for sending materials to their registered shareholders. As a result of amendments to the CBCA which came into effect in May, it is now possible to apply for exemptive relief in order to use notice-and-access to send such materials to beneficial owners as well.

## Soliciting dealer arrangements

In April, the CSA issued [CSA Staff Notice 61-303 and Request for Comment: Soliciting Dealer Arrangements](#) requesting views on the use of soliciting dealer arrangements in proxy contests. A soliciting dealer arrangement involves a party engaging one or more registered investment dealers to solicit their clients to support a particular corporate action or transaction and that party agreeing to pay to the dealers a fee for each security successfully solicited. These arrangements have been used in a variety of transaction circumstances. However, their use in the course of a proxy contest has been subject to criticism by dissident shareholders (since invariably it is the issuer which engages the dealers). Some shareholders have expressed concerns about a lack of transparency regarding the use of such arrangements, potential conflicts of interest arising from the use of corporate funds for this purpose and the fact that dealers are paid only for favourable votes.

## OSFI Corporate Governance Guideline

In September, the Office of the Superintendent of Financial Institutions released the final version of its updated [Corporate Governance Guideline](#) applicable to federally incorporated financial institutions. The changes provide greater flexibility to meet the Corporate Governance Guideline, better articulate the respective roles of board and senior management and consolidate board requirements into one place.

While the focus on ESG and engagement increased in Canada over the year, there were few substantive changes to corporate governance requirements. However, the impending proclamation of the amendments to the CBCA and the finalization of the regulations thereunder, as well as potential CSA responses to consultations on climate change, diversity disclosure and soliciting dealer arrangements may well lead to substantial changes in regulatory requirements in 2019.