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Cybersecurity: Guidance for the Board and Audit Committee

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Framework

- Standards and guidance have evolved over the past couple of years and continue to evolve as events occur and the nature of cybersecurity risks develop
- Canadian Securities Administrators and Securities and Exchange Commission
- The *Wyndham* case

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Considerations for the Board and Audit Committee

- How is the perception of cyber risk evolving?
- Cybersecurity as an enterprise risk.
- Questions for the board and audit committee to consider
 - data security
 - breach/disaster preparedness
 - budgeting for IT and improvements

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Cyberinsurance

- Considering cyberinsurance
- What types of risks are covered by cyberinsurance?
- What is typically excluded?
- Trends in types of claims

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Implementation of the TSX Majority Voting Policy

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Agenda

1. Overview of TSX Majority Voting Policy
 - Corporate law requirements applicable to the election of directors
 - Effort to improve governance standards
 - Summary of TSX current Majority Voting Policy
2. How issuers have fared to date?
3. Panel discussion

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1. Overview of TSX Majority Voting Policy

- a) Corporate law requirements
 - « For/withheld »
 - Use of « slate » voting
- b) Effort to improve governance standards
 - 2012: initial TSX policy introduced
 - 2014: TSX policy is amended to require majority voting
 - CCGG / ISS and other stakeholders positions on this matter

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1. Overview of TSX Majority Voting Policy ⁽²⁾

- c) 2014 TSX Majority Voting Policy
 - Requirement to adopt a policy
 - Scope and content of the policy
 - Issuer's obligations when policy is triggered

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2. How issuers have fared to date?

- Review of how issuers have responded to date when the policy has been triggered

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3. Panel discussion

- TSX experience to date
- Unintended consequences for issuers and their shareholders
- Responding when the policy is triggered

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CONCLUSION

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Board & Executive Officers Gender Representation Disclosure Update

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Overview

- Introduction
- Recap – 2015 Experience
- New CSA Guidance
- Other Initiatives
- 30% Club Canada

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Introduction

- Gender Representation Disclosure Requirements – NI 58-101 - *Disclosure of Corporate Governance Practices*:
 - Number and percentage of women on the board and in executive officer (EO) positions;
 - Term limits or other mechanisms of board renewal;
 - Policies on the identification and nomination of women directors;
 - Consideration of representation of women in the director identification process and in EO appointments; and
 - Targets for women on boards and in EO positions

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Recap – 2015 Experience

- NI 58-101 *Gender Disclosure Requirements* came into effect 31/12/2014
- Apply to circulars filed following a non-venture issuer's financial year ending on or after that date
- Have now seen disclosure from the vast majority of issuers subject to new disclosure obligations
- October 31 issuers were not subject to the rules for their 2015 circulars (including banks), although many provided voluntary disclosure

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New CSA Guidance

CSA Multilateral Staff Notice 58-307 – *Staff Review of Women on Boards & in EO Positions* – 28/9/15

- Scope of review
- Noted deficiencies:
 - Mechanisms for board renewal
 - Written policies:
 - General diversity v. gender specific
 - Measures taken to ensure policy effectively implemented
 - Consideration of representation of women: how

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New CSA Guidance: Some Statistics

- 19% have term limits, 56% have "other mechanism" for board renewal
- 14% have clearly adopted a written policy
- 60% consider the representation of women on the board in identification and selection process
- 7% set board target, 2% set an E.O. target
- 50% of issuers had no women on their board

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New CSA Guidance: Trends

- Disclosure obligations inciting change?
 - 15% of issuers added one or more women to the board this past year
 - Almost half of the disclosed written policies were adopted or updated in the past year
- Trends by market capitalization and industry
 - Written policies much more prevalent amongst high market cap issuers
 - Utility/communications/entertainment: 30% have policies
 - Oil & gas/technology/biotech/hospitality/environmental: 10% have policies

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Other Initiatives

- Western Europe (Norway, Spain, France, Italy, Germany) moving to quotas
- New German quota rules (30% at Supervisory board) & flexi-quota (management board) in force 1/1/2016
- U.S. continues with (undefined) diversity disclosure requirement for boards

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Other Initiatives

- CCGG Board Gender Diversity Policy Oct. 2015
 - NI 58-101 requirements do not constitute a true “comply or explain” regime because the CSA has issued no formal guidance
 - Advocates for inclusion of adoption of policies (but not prescribing content) in corporate governance best practices (NI 58-201)

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- IGOPP Policy Paper 2009, October 2015 follow-up
 - Proposes every board should have at least 40% of each gender; a woman should be appointed for every 2 vacancies until 40% target reached
 - Proposes more rigorous assessment of contributions of directors rather than age or time limited terms

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30% Club Canada

- What is objective of 30% Club Canada?
- Why select an aspirational approach (target) rather than quota?
- What types of organizations have signed up?
- www.30percentclub.org

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Top Ten Trends and Developments

David Frost, Partner
Wendi Locke, Partner



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Top Ten Trends and Developments

- **Cooperative Capital Markets Regulatory System**
 - Launch delayed until Fall 2016
 - Comments on draft legislation/regulations due December 23, 2015
- **Proxy Circular Disclosure**
 - CCGG's Best Practices for 2015

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Top Ten Trends and Developments

- **Enhanced Proxy Access**
 - CCGG Proposal to facilitate nomination of directors

- **OSC Whistleblower Program**
 - Proposed OSC Policy 15-601
 - Comments due January 12, 2016

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Top Ten Trends and Developments

- **Continuous Disclosure Review Program**
 - Summary of Common Deficiencies Identified by CSA in 2015

- **Say on Pay**
 - More issuers adopting
 - Highlights of 2015 voting results

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Top Ten Trends and Developments

- **New Disclosure Rules for TSX-V Issuers**
 - Amendments to NI 51-102 re: disclosure and governance requirements

- **Notice and Access**
 - Prevalence of use
 - Issues to consider

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Top Ten Trends and Developments

- **Executive Compensation**
 - US rules re: disclosure of CEO compensation as a multiple of average employee wages

- **Corporate Social Responsibility**
 - Emerging trend?

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