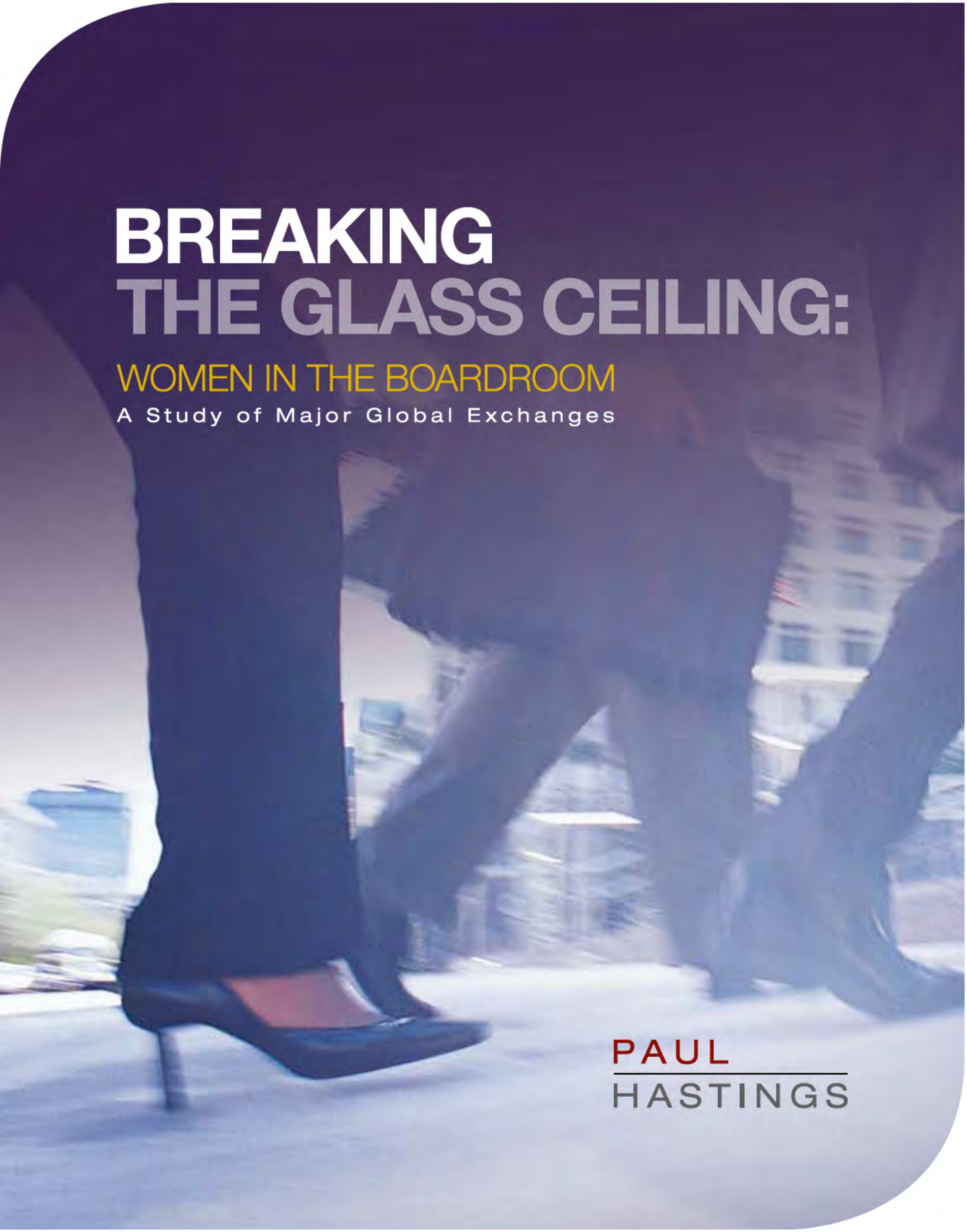
BREAKING THE GLASS CEILING:

WOMEN IN THE BOARDROOM

A Study of Major Global Exchanges



PAUL HASTINGS

BREAKING THE GLASS CEILING:

WOMEN IN THE BOARDROOM

A Study of Major Global Exchanges

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Paul Hastings is pleased to present our study of how major global exchanges in eight countries and the European Union have approached diversity, particularly gender diversity, for their listed companies.

This study is a supplement to our full report, "Breaking the Glass Ceiling: Women in the Boardroom", which examines the legislative, regulatory, and private sector developments impacting the representation of women on boards in 35 jurisdictions around the world. Both the study and full report can be found on our interactive website at **www.paulhastings.com/genderparity**, where we also include interviews with corporate executives and directors as well as individuals who are making strides in addressing this issue—whether at their own companies, within their industries, or as a thought leader. We encourage you to visit the site and provide us with your thoughts.

Year in Review: Exchange Listing Requirements and Corporate Governance Codes

Although the issue of increasing diversity and, in particular, gender diversity on corporate boards of directors has generated significant discussion and debate for some time, stock or securities exchanges have only become involved in the discussion relatively recently. Following a survey of major global exchanges, we found that few address diversity-related issues in their stock listing requirements or recommended corporate governance codes. The requirements that have been adopted by major exchanges include direct references to gender or diversity among possible selection criteria for board members and generally require companies to disclose in annual reports whether they maintain a diversity policy or, in some cases, the gender composition of their boards.

Leading the way are major exchanges in New Zealand and Australia, as well as in certain Asian countries. In New Zealand, the NZX Limited has adopted Listing Rules for the NZSX and NZDX exchanges that require listed companies to provide a breakdown of the gender composition of their boards of directors and officers in their annual report and to self-evaluate their performance with respect to their own diversity policies. In Australia, the Australian Securities Exchange Corporate Governance Council has revised its Corporate Governance Principles and Recommendations to prominently discuss diversity. Specifically, Recommendation 1.5 encourages listed entities to have a diversity policy, disclose such policies (or a summary thereof), and disclose at the end of each reporting period measurable objectives for achieving gender diversity set by the entity.

In Asia, exchanges in Hong Kong and Malaysia have included diversity-related provisions in corporate governance requirements. For example, the Hong Kong Exchanges and Clearing Limited recently added two provisions to its corporate governance code related to diversity. The first states that a listed company's board should have a balance of skills, experience, and diversity of perspectives appropriate for the company's business. The second provision provides that a company's board or nomination committee should have a policy concerning board diversity, which should be disclosed in the company's corporate governance report. In Malaysia, the Bursa Malaysia's listing requirements state that a listed issuer must provide information in its annual report regarding the policy on board composition "having regard to the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the listed issuer."

Although Europe continues to be a leader in public and private initiatives to increase diversity on corporate boards of directors, few stock or securities exchanges include diversity-related provisions in listing or corporate governance requirements. The European Commission has not directed stock exchanges to include provisions related to gender diversity of corporate boards in listing requirements. However, the European Commission has proposed two significant pieces of legislation to increase gender diversity on corporate boards in EU Member States by requiring large companies to disclose non-financial and diversity-related information in annual reports and to increase women's presence on corporate boards of certain listed companies to 40% by 2020.

Following a survey of major global exchanges, we found that few address diversity-related issues in their stock listing requirements or recommended corporate governance codes.

In Italy, the Borsa Italiana S.p.A. stock exchange recently amended its corporate governance guidelines, which are voluntary for Borsa-listed companies, to recommend that a corporate board consider its gender composition and the gender of candidates for open board seats. In the United Kingdom, the Financial Reporting Council amended its recommended corporate governance code to adopt a voluntary requirement that corporations disclose their nomination committee practices and disclose descriptions of board policies on diversity, including gender diversity. The London Stock Exchange incentivizes compliance with the Financial Reporting Council's diversity policies by mandating compliance with such policies for a company to qualify for a "Premium Listing" on the exchange.

In contrast, exchanges in the United States and Canada do not include any diversity-related provisions in their listing requirements. Despite the renewed attention and discourse in the United States regarding the lack of women in the highest echelons of corporate leadership, major exchanges have not entered into this debate by proposing or adopting any diversity-related requirements.

Conclusion

As detailed in this study, the discussion on gender parity is being addressed in a number of ways in different countries, including legislation, governance codes, and private sector initiatives. Overall, there is significant room for improvement, and, hopefully, the ideas and strategies summarized in this study will advance the discussion on how to move forward. Efforts made by stock or securities exchanges to promote diversity and gender parity in listed corporations, through listing or corporate governance requirements, may further incent companies to examine their own diversity policies and initiatives, and increase the importance of such issues to shareholders.

We welcome your feedback. It is our hope that this report sparks ideas and discussions about possible strategies and initiatives to address board gender disparities. We look forward to reporting on future efforts to increase women's participation on corporate boards globally in the upcoming year.

Efforts made by stock or securities exchanges to promote diversity and gender party in listed corporations… may further incent companies to examine their own diversity policies and initiatives, and increase the importance of such issues to shareholders.

Tara Giunta, Partner
Editor
Paul Hastings (Washington, DC)

Michelle Cline, Associate
Assistant Editor
Paul Hastings (Washington, DC)

Summary of Gender-Parity Provisions in Stock Exchange Listing Requirements and Recommended Corporate Governance Codes

Country	Exchange	Nature of Requirement (e.g., comply or explain)	Provision Language
Australia	ASX—Australian Securities Exchange	Voluntary Disclosure	The ASX Corporate Governance Council has amended Principle 1 ("Lay Solid Foundations for Management and Oversight") of the ASX Corporate Governance Principles and Recommendations to include a recommendation that ASX-listed companies disclose in their annual reports achievements against gender objectives set by the board and the proportion of women in senior management and wider company roles.
Canada	Toronto Stock Exchange	--	--
European Union	--	--	--
Hong Kong	HKEx—Hong Kong Exchanges and Clearing Ltd.	Comply or Explain	**Appendix 14** (regarding Corporate Governance Code and Corporate Governance Reports) to the Listing Rules has been revised to include language regarding diversity in board composition. **Section A.3** now states that, "[t]he board should have a balance of skills, experience, and diversity of perspectives appropriate to the requirements for the issuer's business." **Section A.5.6** also has been revised to state that "[t]he nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report." A note states that board diversity will differ according to the circumstances of each issuer and stated that diversity can be achieved by consideration of a number of factors, including gender.
Italy	Borsa Italiana S.p.A. (Italian Stock Exchange)	Disclosure	**Criteria 1.C.1(g)** of the Corporate Governance Code adopted by the Corporate Governance Committee requires boards of directors to perform an evaluation at least annually of the performance of the board and its committees as well as their size and composition, taking into account the gender of their members, among other factors. In comments, the Corporate Governance Committee stated that boards should take into account the benefits that could stem from the presence of different genders, ages, and seniority in carrying out its annual self-assessment. In other comments, the Corporate Governance Committee stated that in identifying candidates for directors, shareholders shall consider the gender of the candidates, among other things.
Malaysia	Bursa Malaysia (f/k/a Kuala Lumpur Stock Exchange)	Disclosure	**Part 15.08A(3)** of Chapter 15 of the Listing Requirements (regarding Corporate Governance) requires listed corporations to include information in their annual reports on policies on board composition having regard to the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the listed corporation.
New Zealand	NZX Limited—NZSX (New Zealand Stock Exchange Main Board) and NZDX (New Zealand Stock Exchange Debt Market)	Disclosure	**Rule 10.4.5(j)** of the NZSX/NZDX Listing Rules requires listed companies to include "a quantitative breakdown, as to the gender composition of the Issuer's Directors and Officers as at the Issuer's balance date and including comparative figures for the prior balance date of the Issuer." **Rule 10.4.5(k)** of the NZSX/NXDX Listing Rules requires listed companies who have chosen to adopt a diversity policy to include a statement from their board in the company's annual report providing the board's evaluation of the company's performance with respect to its diversity policy. Note that Rule 10.4.5(k) does *not* require listed companies to adopt a diversity policy.
United Kingdom	London Stock Exchange	Comply or Explain	To qualify for a "Premium Listing" on the London Stock Exchange, a company must comply with all of the Financial Reporting Council's corporate governance policies, including the gender diversity disclosures, or explain its failure to comply.
United States	NASDAQ, NYSE	--	--

Australia

Australia

Australian Securities Exchange

Mary Hamner Walser, Associate
Paul Hastings (Washington, DC)

Significant progress has been made in corporate Australia over the past several years with respect to women in leadership positions. The Australian Securities Exchange Corporate Governance Council has made important strides to encourage greater gender diversity on corporate boards, and the private sector is implementing these changes at an increasing rate.

In 2010, the Australian Securities Exchange (ASX) Corporate Governance Council amended its Corporate Governance Principles and Recommendations to include provisions relating to the reporting of diversity (the "Diversity Recommendations"). The key elements of the Diversity Recommendations include that entities: (i) should establish a diversity policy and disclose the policy or a summary of that policy; (ii) should disclose in each annual report the "measurable objectives" set by the board in accordance with the diversity policy and progress toward achieving them; (iii) should disclose in each annual report the proportion of women employees in the organization, women in senior executive positions, and women on the board; and (iv) must disclose in the corporate governance statement of the annual report an explanation of any departure from the recommendations. Companies are encouraged to make their diversity policies publicly available.

In March 2014, the Council released the third edition of the Corporate Governance Principles and Recommendations, thereby solidifying the 2010 Amendments. Released after an extensive review and consultation process, the third edition demonstrates a shift toward viewing diversity as a smart business practice rather than an ethical commitment. It reflects the view that diversity is a critical component in establishing an effective foundation for management, rather than the view that diversity is an ethical commitment. In explanatory comments, the Council observed that "[r]esearch has shown that increased gender diversity on boards is associated with better financial performance."[1]

The third edition also provides guidance on the meaning of "measurable objectives" that the board of a listed company may set as part of its diversity policy. For example, a company may create an objective to achieve specific numerical targets (e.g., a target percentage) for the proportion of women employed by the organization generally, in senior executive roles, or on the board of directors within a specified timeframe. Further, listed entities are encouraged to provide a clear definition of "senior executive" when reporting the proportion of women holding senior executive positions. Comments accompanying the Recommendation note that objectives such as introducing a diversity policy or establishing a diversity council by themselves are unlikely to be effective unless they are backed up with appropriate numerical targets. Significantly, the Council observed that "[r]eporting annually on an entity's gender diversity profile and on its progress in achieving gender diversity objectives is important. It encourages greater transparency and accountability and, because of that, is likely to improve the effectiveness of the entity's diversity policy in achieving the outcomes the board has set."[2]

It is not mandatory to follow the Recommendations. However, the ASX requires listed companies to disclose in their annual report or their website the extent to which they have followed them during the reporting period. Where companies have not followed all of the recommendations, they must provide an explanation as to why—often referred to as "if not, why not" reporting.

Impact of ASX Corporate Governance Council Principles and Recommendations

Since the adoption of the Recommendations, the ASX Education and Research Program has funded an annual research report by KPMG to analyze the disclosures on diversity made by a selection of listed entities in three categories: (i) Standard & Poors (S&P)/ASX200, (ii) ASX201-500 by market capitalization, and (iii) ASX501 and over by market capitalization.[3]

1 ASX CORPORATE GOVERNANCE COUNCIL AND RECOMMENDATIONS, 3RD EDITION, ASX CORPORATE GOVERNANCE COUNCIL, *available at* http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf.

2 *Id.*

3 ASX Corporate Governance Council Principles and Recommendations on Diversity, Analysis of disclosures for financial years ended between 31 December 2012 and 30 December 2013, *available at* http://www.asx.com.au/documents/asx-compliance/kpmg-report-diversity-2014.pdf.

The purpose of the research is to enhance listed entities' understanding of how their peers are complying with the reporting obligations under the ASX Listing Rules regarding the Diversity Recommendations. The report may assist these companies with their own compliance through case studies and benchmarking. The most recent KPMG report shows that the adoption of a diversity policy has increased in the top and bottom sample groups while the middle remained stable. Additionally, an increasing number of entities articulated the business benefits of diversity. Size and stage of development was the main reason given in the "if not, why not" reporting. The second most common "if not, why not" reporting reason was that companies were in the process of rolling out diversity measures. Consequently, compliance with the Diversity Recommendations will hopefully increase over time.

A table illustrating the summary of the data collected in the most recent KPMG study is listed below.[4]

Summary data from the report:

	S&P/ASX 200 (198 companies)[2]		ASX 201-500 (200 companies)		ASX 501+ (200 companies)	
	2012	**2013**	2012	**2013**	2012	**2013**
Companies that either adopted a diversity policy or explained why not	99%	**100%**	97%	**99%**	92%	**97%**
Companies with a diversity policy	93%	**98%**	85%	**85%**	58%	**66%**
Companies which set measurable objectives	82%	**86%**	59%	**56%**	28%	**29%**
Companies that disclosed the proportion of women in their organisations	Whole business: 93% Senior executives: 90% Board: 84%	**Whole business: 92% Senior executives: 91% Board: 82%**	Whole business: 79% Senior executives: 71% Board: 73%	**Whole business: 78% Senior executives: 71% Board: 73%**	Whole business: 67% Senior executives: 56% Board: 59%	**Whole business: 69% Senior executives: 57% Board: 49%**

[2] At the time of preparing this report, one entity had merged with another entity and one entity was "foreign exempt". Therefore, the sample size of the entire group is 198 entities. In the 2012 sample, one company was suspended from official quotation while the other was "foreign exempt".

Conclusion

Studies show that the amendments to the Australian Corporate Governance Principles and Recommendations are having a real and measurable impact on the diversity profile of ASX-listed companies. Moreover, the reports demonstrate both encouraging results in the short term and instill confidence of future improvements through greater adherence to the Recommendations over time, leading to greater diversity in corporate Australia.

4 *Id.*

Canada

Canada

Toronto Stock Exchange

Michael London, Associate
Paul Hastings (Washington, DC)

Although there continues to be widespread public discourse on the lack of gender diversity on corporate boards in Canada, there has been little improvement over the past few years. When looking at the composition of the boards of Canada's largest companies, women held 14.5% of Financial Post 500 board seats in 2011. At the outset of 2014, that number rose only marginally to 15.9%.[1] In addition, 36% of Financial Post 500 companies have zero women directors. And even though the continued lack of gender diversity of Canadian corporate boards has attracted the attention of public interest groups and securities regulators, stock exchanges have yet to take significant action to improve the situation.

Ontario Securities Commission

In January 2014, the Ontario Securities Commission (OSC) proposed a gender diversity amendment to the Ontario Corporate Governance Disclosure requirements.[2] Prior to the amendment's proposal, the OSC had issued a consultation paper in July 2013 and held a roundtable discussion regarding gender disclosure of gender parity practices among issuers listed on the Toronto Stock Exchange (TSX).[3] The consultation paper compared approaches to diversity-related disclosures taken in other jurisdictions such as the United States, Australia, and the United Kingdom, and solicited feedback from investors, issuers, and other market participants to enable the OSC to give information to government officials for potential OSC rulemaking.[4]

The January 2014 proposal initiated a 90-day comment period regarding amendments to corporate governance disclosure requirements for TSX-listed issuers.[5] The proposed amendments would require corporations to disclose their policies on the representation of women on their boards or to explain why they do not have such a policy.[6] Additionally, they would be required to disclose how they consider women in the director nomination process. Comments on the proposed amendments were due in April 2014.

A number of parties responded favorably, including the TSX.[7] The TSX supported the OSC's proposed rule, noting that comply or explain is appropriate for gender diversity disclosure.[8] The proposed rules are also supported by public interest groups, such as Catalyst.[9] The comments submitted currently are under review by OSC staff members.

1 Liz Mulligan-Ferry, et al., *2013 Catalyst Census: Financial Post 500 Women Board Directors*, Catalyst (Mar. 3, 2014), http://catalyst.org/knowledge/2013-catalyst-census-financial-post-500-women-board-directors-0.

2 Proposed Disclosure Requirements Regarding the Representation of Women on Boards in Senior Management, 37 OSCB 3 (proposed Jan. 16, 2014), *available at* http://www.osc.gov.on.ca/documents/en/Securities-Category5/ni_20140116_58-101_pro-amd-f1.pdf.

3 Ontario Securities Commission, OSC Staff Consultation Paper 58-401: Disclosure Requirements Regarding Women on Boards and in Senior Management (2013), *available at* http://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20130730_58-401_disclosure-requirements-women.pdf (last visited Aug. 21, 2014); *see also* Tracy L. Hooey, *The OSC Announced a Roundtable to Discuss the OSC Staff Consultation Paper 58-401 Disclosure Requirements Regarding Women on Boards and in Senior Management*, Timely Disclosure (Sept. 23, 2013), *available at* http://www.timelydisclosure.com/2013/09/23/the-osc-announced-a-wednesday-october-16-2013-roundtable-to-discuss-the-osc-staff-consultation-paper-58-401-disclosure-requirements-regarding-women-on-boards-and-in-senior-management/ (last visited Aug. 21, 2014) (referencing roundtable discussion held by OSC in October 2013).

4 *Id.*

5 OSC, News Release: OSC Proposes Rule Amendments Regarding Disclosure of Women on Boards and in Senior Management (Jan. 16, 2014), *available at* http://www.osc.gov.on.ca/en/NewsEvents_nr_20140116_osc-amd-wob.htm (last visited Aug. 21, 2014).

6 *Id.* at 8.

7 TMX Group Limited, *Re: request for Comment—Proposed Amendments to Form 58-101F1 Corporate Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices* (Apr. 16, 2014), *available at* http://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20140416_58-101_tmx-group-ltd.pdf.

8 *Id.*

9 Catalyst Canada, *Comment on Proposed Amendments to Form 58-101F1 Corporate Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices* (Apr. 16, 2014), *available at* https://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20140416_58-101_catalyst-canada.pdf.

Within 60 days after the OSC delivers a proposed rule to the Minister of Finance, the Minister may approve or reject a proposed rule or return it to the OSC for further consideration.[10]

Stock Exchange Listing Requirements

None of Canada's stock exchanges include gender-related provisions in their respective listing requirements, much like their counterparts in the United States. For example, a company listed on the TSX is only required to have two independent directors[11] and to comply with the OSC's rules on Disclosure of Corporate Governance Practices.[12] While, as noted above, these disclosure requirements are in the process of being amended to include disclosures related to gender diversity, the TSX itself has no specific listing requirements related to diversity, gender, or otherwise.

The lack of gender diversity on corporate boards continues to be an ongoing conversation in Canada, with little results. However, the lack of progress has attracted the attention of regulators.

Public Interest Groups

A number of public interest groups have advocated to increase gender equality on corporate boards. One group, the Canadian Board Diversity Council, hosts a number of events to increase awareness and also offers training programs. In addition, the Council has collaborated with a number of corporate entities to create a database of diverse candidates who are board-ready.

Another advocacy group, Catalyst, has approached the issue in a slightly different manner. Catalyst created a gender diversity pledge for Canadian corporations and has been targeting corporations individually to get them to sign.[13] The campaign began in 2013 and in the first year they received commitments from 26 companies to have at least 25% of director seats on their respective boards be held by women by 2017.

Conclusion

The lack of gender diversity on corporate boards continues to be an ongoing conversation in Canada, with little results. However, the lack of progress has attracted the attention of regulators. Should the amendments proposed by the OSC be adopted, TSX-listed issuers will be required to disclose their policies regarding representation of women on boards of directors or explain why they have not adopted such a policy. Interested parties should closely monitor continued developments in the OSC rulemaking process and, if adopted, the impact the proposed amendments have on the diversity of boards of TSX-listed issuers.

10 *See* OSC, *Proposed Instruments, Rules & Policies*, *available at* http://www.osc.gov.on.ca/en/SecuritiesLaw_proposed_index.htm#review (last visited Aug. 21, 2014) (describing overview of current activities related to rulemaking and policy development).

11 *A Capital Opportunity: Guide to Listing*, TMX Group (2014), http://www.tmx.com/en/pdf/Guide_to_Listing.pdf.

12 *TSX Company Manual*, TMX Group Sec. 472 (2014), http://tmx.complinet.com/en/display/display_main.html?rbid=2072&element_id=256.

13 *Catalyst Accord: Women on Corporate Boards In Canada*, Catalyst (last accessed July 14, 2014), http://catalyst.org/catalyst-accord-women-corporate-boards-canada.

European Union

European Union

Joanne Joseph, Associate
Paul Hastings (Washington, DC)

Gender equality is a founding principle of the European Union (EU) and is reflected in a number of its directives and recommendations.[1] However, it was not until recently that the EU made serious strides toward gender equality on corporate boards of companies listed on stock exchanges.

In September 2010, the European Commission issued the "Strategy for Equality between Women and Men 2010-2015," calling on publicly listed companies in the EU to introduce specific measures to enhance representation of women on their boards.[2] In April 2011, the European Commission issued a Green Paper on Corporate Governance (the "Green Paper") that invited the views of interested parties on a number of items concerning corporate governance, including whether listed companies should disclose their diversity policies and whether the Commission should introduce specific targets to ensure gender balance on boards of public companies.[3]

Following this public consultation, the European Commission issued its Work Program for 2012,[4] which stated that it was considering a legislative initiative in the form of a recommendation to improve gender balance on the boards of publicly listed companies. As the Green Paper consultation was underway, EU Justice Commissioner Viviane Reding issued a press release calling on publicly listed companies within the EU to increase the presence of women on corporate boards of public companies up to 30% by 2015 and 40% by 2020.[5]

One year later, in March 2012, Commissioner Reding released "Women in Economic Decision-making in the EU" (the "Progress Report"),[6] which demonstrated the limits of a wholly voluntary approach. The Progress Report showed that in that year only 24 public companies in the EU signed the pledge and voluntarily adopted measures to increase gender balance in their corporations. The report concluded that progress of publicly listed companies in 2012 was still far behind the minimum target of 30% and noted that at this rate it would take approximately 40 years to achieve the target of 40% by 2020.

Recent Directives

Although the EU has not taken direct action with the stock exchanges to include provisions related to gender diversity on boards of listed companies, the European Commission has proposed two significant pieces of legislation for listed companies in the EU Member States.

In April 2014, the European Parliament adopted a Directive that amends European accounting legislation to require large companies, including listed companies, with over 500 employees to disclose non-financial and diversity information.[7] With regard to transparency on boardroom diversity, these companies would be required to provide information on their diversity policy– addressing age, gender, geographical diversity, and educational and professional background.[8] Disclosures would set out the objectives of the policy, how it has been implemented, and results.[9]

The Directive's approach to diversity is flexible. Companies are not obligated to enact a diversity policy, but their corporate governance statements should include a clear explanation as to why a company does not have a diversity policy.[10] As such, the Directive would implement a "comply or explain" requirement regarding diversity policies.

This approach is in line with the general EU corporate governance framework.[11] The European Commission voted to require the disclosure of such non-financial and diversity information after recognizing the limits of a wholly voluntary approach.[12] The Directive first requires approval by the member states in the European Council and then must be implemented by the member states as national laws to become effective.[13] Although not specifically tailored for listed companies on stock exchanges, the Directive does apply to them.

In the second proposed legislation, the European Parliament voted to approve a proposal aimed at increasing women's presence on corporate boards of listed companies to 40% by 2020.[14] This target applies only to companies listed on stock exchanges in EU Member States,[15] but excludes all small- and medium-sized companies with less than 250 employees and revenue below EUR 50 million, even if such companies are listed.[16] In setting this percentage-point objective, the European Commission recognized that the example set by countries such as Belgium, France, and Italy clearly demonstrate that time-limited regulatory intervention can make a significant difference.[17]

The 40% target is not a mandatory quota, but if a company does not reach this threshold it will have to apply clear and gender-neutral selection criteria in the hiring process.[18]

Although the EU has not taken direct action with the stock exchanges to include provisions related to gender diversity on boards of listed companies, the European Commission has proposed two significant pieces of legislation for listed companies in the EU Member States.

1 In particular, Article 2 of the European Union Treaty affirming the prevalence of *inter alia*, the recognition of equality between women and men in European society; Article 23 of the Charter of Fundamental Rights of the European Union; and Article 57 of the Treaty on the Functioning of the European Union.

2 Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "*Strategy for equality between women and men 2010-2015*," COM(2010).

3 *See* Section 1.1.3 of the Green Paper at http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf.

4 COM(2011) 777 final, vol. 2 at http://ec.europa.eu/atwork/programmes/docs/cwp2012_annex_en.pdf.

5 The press release is available at http://ec.europa.eu/commission_2010-2014/reding/women-pledge/index_en.htm. During her speech, Commissioner Viviane Reding stated that "For the next 12 months, I want to give self-regulation a last chance . . . . If [self-regulatory initiatives have] not happened, you can count on my regulatory creativity."

6 European Commission, *Women in economic decision-making in the EU: A Europe 2020 initiative* (2012), http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf.

7 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups (Apr. 16, 2013), http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0207; European Commission, *Non-Financial Reporting* (last updated: May 14, 2014), http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm. Pursuant to the Directive, covered companies will need to disclose information on any companies' policies and results regarding non-financial issues, including environmental issues to the diversity on their boards of directors.

8 Press Release, European Commission, *Commission moves to enhance business transparency on social and environmental matters* (Apr. 16, 2013), http://europa.eu/rapid/press-release_IP-13-330_en.htm.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Proposal on increasing Gender Equality in the Boardrooms of Listed Companies*, EUBusiness, (Nov. 21, 2013) http://www.eubusiness.com/topics/employment/women-boards.

13 Joy Chen et al., *European Parliament Adopts Broad New Compliance and Sustainability Reporting Requirements*, Gibson Dunn (Apr. 29, 2014), http://www.gibsondunn.com/publications/pages/European-Parliament-Adopts-Broad-New-Compliance-and-Sustainability-Reporting-Requirements.aspx.

14 Press Release, European Commission, *Cracking Europe's Glass Ceiling: European Parliament backs Commission's Women on Boards proposal* , Nov. 20, 2013, http://europa.eu/rapid/press-release_IP-13-1118_en.htm.

15 This Directive applies to "listed companies irrespective of whether they are privately or publicly owned." *Id.*

16 European Commission, *Women on Boards: Commission proposes 40% objective* (Nov. 14, 2012), http://ec.europa.eu/justice/newsroom/gender-equality/news/121114_en.htm.

17 European Commission, *Women on Boards: Commission proposes 40% objective* (Nov. 14, 2012), http://ec.europa.eu/justice/newsroom/gender-equality/news/121114_en.htm.

18 European Commission, *Gender balance on corporate boards: Europe is cracking the glass ceiling* (Mar. 2014), 3, http://ec.europa.eu/justice/gender-equality/files/documents/140303_factsheet_wob_en.pdf.

Companies cannot positively discriminate in favor of women, but in the case of two candidates with equal qualifications, priority must be given to the female candidate.[19] Under this framework, qualification and merit remain as the central hiring criteria.

Further, publicly listed companies must publish targets for female representation among executive directors to be met by 2020, but the proposal does not set a minimum objective for executive directors.[20] Companies will have to report on an annual basis the gender composition of boards and the measures taken to reach the objectives.[21] Companies that do not reach the objectives will have to report specifically on the reasons and on the steps they intend to take to achieve progress.[22] This proposal enhances fairness and transparency by compelling publicly listed companies to consider a broader base of candidates.

Conclusion

Since 2010, the European Union and, in particular, the European Commission have prioritized the issue of gender inequality on corporate boards of European listed companies. Although the European Union has not directed exchanges to include provisions in listing requirements, it has recently proposed broader diversity-related legislation. In issuing these Directives, the EU has recognized the ineffectiveness of a voluntary approach and has adopted more formal and quantifiable recommendations for large listed companies. These Directives, if implemented, will move the European Union one step closer to breaking the glass ceiling on an aggressive timetable.

19 *Id.*

20 Press Release, European Commission, *Cracking Europe's Glass Ceiling: European Parliament backs Commission's Women on Boards proposal* (Nov. 20, 2013), http://europa.eu/rapid/press-release_IP-13-1118_en.htm.

21 European Commission, *Proposal for a Directive: Improving the gender balance in company boardrooms factsheet* (June 2014), 2, http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/boardroom_factsheet_en.pdf.

22 *Id.*

Hong Kong

Hong Kong

Hong Kong Exchanges and Clearing Limited

Katie Croghan, Associate
Paul Hastings (Washington, DC)

Although Hong Kong outperforms most countries in Asia with regard to boardroom gender diversity, it still lags behind many of its counterparts around the world. The GMI Ratings' 2013 Women on Boards global survey, which included 98 large- and mid-cap companies in Hong Kong, found that women represent only 9.5% of the directors on boards surveyed in Hong Kong and only 63.3% of surveyed Hong Kong companies had more than one female director.[1] Further, the survey found that female participation on boards of directors dropped precipitously when surveying those with more than three female directors—only 11.2% of surveyed companies reported such levels of participation.[2] Companies in Hong Kong, however, still perform far better than many other countries in Asia, such as China, Japan, Malaysia, and Singapore.[3] For example, in contrast to 63.3% of Hong Kong companies' reporting at least one female director, only 12.1% of Japanese companies surveyed reported at least one female director.[4] Moreover, Hong Kong has made great strides in increased participation by women on corporate boards, and recent additions to the Hong Kong Corporate Governance Code and Corporate Governance Report appear poised to increase participation further.

Corporate Governance Code and Corporate Governance Report

In September 2012, the Hong Kong Exchanges and Clearing Limited (HKEx) published a consultation paper requesting comments on potential amendments to the exchange's Corporate Governance Code and Corporate Governance Report (the "Consultation Paper").[5] While the Consultation Paper included two proposed rules that would set requirements for board diversity policies, it noted that while the aim of the listed amendments was to promote diversity, the provisions were not meant to provide a specific requirement for a type of diversity.[6] Rather, diversity would be "defined broadly, and [the exchange would not] propose to prescribe the criteria for considering diversity."[7] Nevertheless, increased participation by women in the boardroom was listed as a goal.[8] The amendments were intended to be applied equally to the GEM (Growth Enterprise Market) listing rules.[9]

Although Hong Kong outperforms most countries in Asia with regard to boardroom diversity, it still lags behind many of its counterparts around the world.

In September 2013, the HKEx added two provisions discussed in the 2012 Consultation Paper to its corporate governance code noting "overwhelming market support for the Exchange to promote board diversity . . . ."[10] The Code operates on a "comply or explain" policy and, thus, the incorporation of these new provisions will require companies to implement policies that will encourage greater diversity on their boards of directors or else face scrutiny as to the policies' absence.[11] The text of the recent additions follows below.

Provisions added to HKEx's Corporate Governance Code and Corporate Governance Report

> **Principle A.3 Board Composition**—The board should have a balance of skills, experience, and diversity of perspectives appropriate to the requirements of the issuer's business. It should ensure that changes to its composition can be managed without undue disruption. It should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgment. Non-executive directors should be of sufficient caliber and number for their views to carry weight.
>
> **Principle A.5.6 Nominating Committee**—The nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report.
>
> **Note**: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rational for the factors it uses for this purpose.

Conclusion

While new additions to the HKEx's Corporate Governance Code appear likely to aid in women's representation on boards, it is important to note that these provisions do not specifically reference gender. Rather, as was discussed in the Consultation Paper prior to the implementation of the rules, diversity is generally described with references to skills and experience. The rules can be read to accept policies that focus on age, experience, and education in addition to gender. Nevertheless, many expect that the practical outcome of the new requirements—as the Consultation Paper suggested was a partial goal of the new amendments—will be increased participation by women on corporate boards.[12]

1 Kimberly Gladman and Michelle Lamb, GMI Ratings' 2013 Women on Boards Survey, *available at* http://www.catalyst.org/knowledge/women-boards.

2 Kimberly Gladman and Michelle Lamb, GMI Ratings' 2013 Women on Boards Survey, *available at* http://www.catalyst.org/knowledge/women-boards.

3 Women on Boards, Catalyst (March 2, 2013) *available at* http://www.catalyst.org/knowledge/women-boards.

4 Kimberly Gladman and Michelle Lamb, GMI Ratings' 2013 Women on Boards Survey, *available at* http://www.catalyst.org/knowledge/women-boards.

5 Consultation Paper, Board Diversity, Hong Kong Exchanges and Clearing Limited, p. 2 (Sept. 2012), *available at* http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209.pdf.

6 *Id.*

7 *Id.*

8 Consultation Paper, Board Diversity, Hong Kong Exchanges and Clearing Limited, p. 2, 6, 10 (Sept. 2012), *available at* http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209.pdf.

9 Consultation Paper, Board Diversity, Hong Kong Exchanges and Clearing Limited, p. 2 (Sept. 2012), *available at* http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209.pdf.

10 Exchange Publishes Consultation Conclusions on Board Diversity. HKEx News Release, (Dec. 13, 2012), *available at* http://www.hkex.com.hk/eng/newsconsul/hkexnews/2012/121213news.htm.

11 See Presentation by Ellie Pang, Listing Division, HKEx, Corporate Governance Code and Rule Amendments. (Nov.-Dec. 2011), *available at* https://www.hkex.com.hk/eng/rulesreg/listrules/listpresent/Documents/cgcra_201112.pdf; *see also* Sammy Li et al., New Listing Rules Amendments on Corporate Governance, Paul Hastings Stay Current (Nov. 2011), *available at* http://www.paulhastings.com/assets/publications/2044.pdf.

12 Angela Tan, HK Gets Firmer On Boardroom Diversity, The Business Times (Nov. 26, 2013), *available at* http://bschool.nus.edu/LinkClick.aspx?fileticket=MtOxVctVmQo%3D&tabid=1771&mid=5732.

Italy

Italy

Borsa Italiana S.p.A.

Aaron Ver, Associate
Paul Hastings (Washington, D.C.)

The Italian government is one of the few European countries to adopt a gender quota mandate for publicly traded companies. In 2011, Italy adopted Law 120 requiring publicly traded companies on the Borsa Italiana S.p.A. stock exchange (the "Borsa"), Italian companies listed on EU stock market exchanges, and Italian state-owned-enterprises to have at least 33% of their board and statutory auditor positions filled by women within three corporate board terms.[1]

To fulfill the mandate, Italy's financial regulatory guidelines now require publicly traded companies formally to designate processes to reach the gender quota. In 2012, Consob,[2] the authority responsible for regulating the Italian securities market, amended the regulations that govern the articles of incorporation for publicly traded companies. Resolution 18098 directs publicly traded companies to (i) designate a method or methods that will highlight gender when a company formally composes a list of candidates for its corporate board of directors, (ii) designate a process to consider the board's gender balance when a board member vacates their seat mid-term, and (iii) designate the methods by which board appointment rights may be exercised in conjunction with the gender quota mandate. Companies that fail to amend their articles of incorporation may face sanctions.

Corporate Governance Code

In response to the passage of Law 120, the Borsa amended its guidelines for companies listed on its exchange. In December 2011, the Borsa's corporate governance committee, composed of directors from some of the largest Italian corporations, amended the Borsa's corporate governance code to suggest that companies adopt explicit gender considerations. The governance code, voluntary for Borsa-listed companies, suggests that a corporate board consider its gender composition and the gender of candidates for open board seats. The code instructs a company's board of directors to provide an annual performance evaluation that considers the gender composition of the overall board.[3] Article 2 of the code instructs shareholders to consider the gender of candidates for board of director elections, noting that members with varying levels of seniority, age, and gender may benefit a corporation.[4]

The Italian government is one of the few European countries to adopt a gender quota mandate for publicly traded companies.

The Borsa's corporate governance committee noted that achieving the mandated gender quota was a slow moving process. In its 2013 annual report,[5] the committee noted that Italian companies have not made significant advancements in achieving gender diversity, with the industrial sector being the poorest adapter.[6] The committee also noted that, in 2012, the European Commission adopted a proposal for a directive to promote gender balance on boards of listed companies in Europe. The EU proposal requires listed companies to adopt measures that will enable the achievement of 40% of board seats to be occupied by women by 2020.

Publicly Traded Italian Corporate Boards

In 2011, women held only 7.4% of all corporate director seats.[7] In June 2013, women held 17.1% of total board seats. Even after the passage of the gender diversity law, Italy still trails many of its peers. Five of Italy's European counterparts have female board participation rates at or above 25%: Finland, France, Latvia, Sweden, and the Netherlands.[8] However, since the passage of the law and the Borsa's adoption of the listing requirements mandating gender considerations, Italy has made strides. From October 2010 to October 2013, Italy has seen the third largest percentage increase in female board representation—a 10.4% increase over the three-year period, trailing only France (17.4%) and Slovenia (11.8%) in the European market. At least one research organization believes that the gender quotas are the primary driver for such increases.[9]

Conclusion

Challenges remain and significant hurdles still exist. Although 198 Italian companies have at least one female board director, 49 companies employ no female corporate board members. Italy still ranks near the bottom of EU countries in placing women on the corporate boards of banks.[10] Has the Italian government and the Borsa done enough to crack the glass ceiling? As one might say, "solo il tempo dirà."

1 Act No. 120 of 12 July 2011, published in Official Journal No. 174 of 28 July 2011 (Legge 12 luglio 2011, n. 120 Modifiche al testo unico delle disposizioni in materia di intermediazione finanziaria, di cui al decreto legislativo 24 febbraio 1998, n. 58, concernenti la parità di accesso agli organi di amministrazione e di controllo delle società quotate in mercati regolamentati, GU n. 174 del 28-7-2011) available at http://www.senato.it/leg/16/BGT/Schede/Ddliter/34572.htm.

2 The Italian Commissione Nazionale per le Società e la Borsa ("Consob"). Consob is the public authority responsible for regulating the Italian securities market.

3 Borsa Italiana Corporate Governance Code Section 1.C.1(g), available at http://www.borsaitaliana.it/borsaitaliana/regolamenti/corporategovernance/corporategovdec2011.en_pdf.htm.

4 *See supra* note 3, Committee's comment to Article 2.

5 Available at http://www.borsaitaliana.it/comitato-corporate-governance/documenti/docenglish/annualreport2013.en.pdf.

6 *See supra* note 5 at 2.1.3, p.13.

7 2013 Report on corporate governance of Italian listed companies, pp.16-17, CONSOB, November 2013 available at http://www.consob.it/documenti/Pubblicazioni/Rapporto_cg/rcg2013.pdf.

8 Gender balance on corporate boards, EU Commission, March 2014 report, available at http://ec.europa.eu/justice/gender-equality/files/documents/140303_factsheet_wob_en.pdf.

9 Catalyst, a research organization dedicated to expanding female involvement in business, is a strong proponent of effective gender quotas.

10 Women on Italian Bank Boards: Are they "Gold Dust"? Silvia Del Prete and Maria Lucia Stefani, Banca D'Italia Eurosistema No. 175, June 2013, available at http://www.bancaditalia.it/pubblicazioni/econo/quest_ecofin_2/qef175/QEF_175.pdf.

Malaysia

Malaysia

Bursa Malaysia (f/k/a Kuala Lumpur Stock Exchange)

Katie Delsandro, Associate
Paul Hastings (Washington, DC)

Although the government of Malaysia has made steady strides toward putting women in positions of leadership, the private sector has struggled to keep pace. Throughout the country, women continue to experience discrimination in access to employment.[1]

In 2004, the Cabinet approved a policy requiring that women comprise at least 30% of those in decision-making positions in civil sector employment.[2] By the following year, women in public sector leadership positions had gone up from 18.8% in 2004 to 32.3% in 2005.[3] Following the success of this initiative, the Cabinet approved an additional policy requiring a similar 30% representation of female leaders in the private sector. Companies were given five years to meet the requirement, but in 2011 the deadline was pushed back to 2016.[4]

At present, despite the fact that women outnumber men at universities, there is nowhere near equal representation in the board room.[5] Although the government continues to support initiatives geared toward increasing female board participation, private companies have yet to demonstrate significant representation, and influential entities, such as the Bursa Malaysia, also have not implemented significant diversity requirements beyond disclosure of diversity-related policies.

Private and Public Sector Groups Support

Although the goal of 30% female board representation has not yet been reached in Malaysia, the private sector has shown some growth in female leadership. This has been achieved in part through cooperation with governmental agencies and private organizations such as the Malaysian Alliance of Corporate Directors and the Malaysian Directors Academy, which provide training programs to prepare females with potential for board of director positions.[6]

The NAM Institute for the Empowerment of Women Malaysia (NIEW) is an organization established by the Malaysian government to focus on issues pertaining to women's empowerment, both in Malaysia and internationally.[7] It was established in July 2006 and is maintained under the purview of Malaysia's Ministry of Women, Family and Community Development. One stated mission of the organization is to achieve the Cabinet policy of 30% female representation, in decision-making positions, in publicly listed companies in Malaysia by 2016.[8] NIEW conducts various training programs to this end, including a March 2014 onboarding program for female directors with three primary objectives: 1) providing women appointed to boards with necessary technical skills and knowledge; 2) enhancing cooperation among women in leadership roles; and 3) creating a database of promising female leaders who may be appointed to boards of

1 The UN Development Program Country report for Malaysia (2013-2015) noted participation in the labor market for women was 46.1% compared to 78.7% for men. *See* Bureau of Democracy, Human Rights and Labor, United States Department of State, *Malaysia Country Report on Human Rights Practices for 2013*, available at http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper (last visited July 17, 2014) (hereinafter Human Rights Report).

2 *See* Mazwin Nok Anis, *PM: 30% of corporate decision-makers must be women*, The Star Online (June 27, 2011), *available at http://www.thestar.com.my/story.aspx/?file=%2f2011%2f6%2f27%2fnation%2f20110627131533&sec=nation* (last visited July 16, 2014) (hereinafter *Corporate Decision-Makers*).

3 *Id.*

4 *Id.*

5 *See* Human Rights Report.

6 *See Corporate Decision-Makers*.

7 *See* NAM Institute for the Empowerment of Women Malaysia, http://www.niew.gov.my/index.php (last visited July 16, 2014).

8 *Id.*

directors.[9] Participation in the training requires an online assessment to ensure the appropriate level of qualification.[10] The organization seeks to train 1,000 women.[11]

Exchange Listing Requirements

Though the Bursa Malaysia stock exchange listing requirements do not contain explicit provisions mandating specific levels of female participation on boards of directors, the exchange's listing requirements (regarding Corporate Governance) states as follows:

> **Chapter 15.08A(3)—**The listed issuer must provide, in its annual report, a statement about the activities of the nominating committee in the discharge of its duties for the financial year. Such statement must include…the following information:
>
> > (a) the policy on board composition having regard to the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the listed issuer.[12]

This rule was updated as of June 1, 2013. Though commentary on the rule is quite limited, when read in conjunction with the Cabinet policy passed in 2005, it seems to indicate that listed issuers must address their efforts to reach the 30% leadership goal promulgated by the Cabinet. Some groups have noted, however, that female participation on boards of directors still lags significantly behind that of males.[13] Groups have also criticized government-led efforts, like those of NIEW, which have led to the training of over 700 potential female board members, while only 115 women are currently in leadership positions in listed companies.[14]

At present, despite the fact that women outnumber men at universities, there is nowhere near equal representation in the board room.

Conclusion

Although the Malaysian government has made significant strides toward the appointment of women to boards of directors, there is still a long way to go. Despite Cabinet regulations, the private sector continues to lag behind the public sector in appointing women to leadership positions. The goal of achieving 30% female leadership by 2016 is still attainable, but conditions in the country do not demonstrate that the goal is likely to be achieved without a more tangible stock exchange listing requirement.

9 *Id.*

10 *See* Emily Chow, *Putting More Women in the Boardroom*, The Edge (June 19, 2013), *available at* http://www.theedgemalaysia.com/features/241454-putting-more-women-in-the-boardroom.html (last visited July 18, 2014).

11 *Id.*

12 *See Bursa Malaysia Main Market Listing Requirements*: Chapter 15.08A(3), *available at* http://www.bursamalaysia.com/misc/system/assets/5957/regulation_rules_main_market_bm_mainchapter15.pdf (last visited July 18, 2014).

13 According to at least one source, women hold fewer than 10% of private sector board positions as of the summer of 2014. *See* Vanitha Nadaraj, *It's a Struggle to Get Women on Corporate Boards in Malaysia*, The Establishment Post (July 9, 2014), *available at* http://www.establishmentpost.com/struggle-get-women-boards-malaysia/ (last visited July 18, 2014).

14 *Id.*

New Zealand

New Zealand

NZX Limited

Laura Bain, Associate
Paul Hastings (Washington, DC)

Despite being the first country to grant women the right to vote, New Zealand has made middling progress toward gender equality in the boardroom. As reported in the New Zealand Census of Women's Participation 2012, women hold only 14.75% of board seats at the top 100 New Zealand companies by market capitalization. This encompasses 90 directorships that are held by 69 different women in 55 companies. Although these figures reflect an increase from the 58 directorships that were held by 45 different women at 43 companies in 2010, 45 of the top 100 New Zealand companies still lack a woman member of the board of directors, including two of the top ten companies.[1]

In recent years, a number of women's groups and business organizations have embarked on global campaigns to raise awareness and improve women's representation in the boardroom.[2] For example, a global campaign called Women's Empowerment Principles asks the CEOs of major companies to advance gender equality by publicizing their companies' polices and plans for increasing gender equality, establishing benchmarks for women's inclusion, and reporting on progress. As of August 2013, 28 New Zealand CEOs had signed.[3]

Although gender diversity on boards has increased over the last two years, the New Zealand Census of Women's Participation 2012 notes that at the current rate of progress "it will be another 35 years before boardroom equality is achieved."

New Zealand Stock Exchange Listing Requirements

In 2012, the New Zealand Stock Exchange, or NZX Limited, adopted the Diversity Listing Rule, which amended the NZSX/NZDX Listing Rules[4] to require listed companies to disclose the gender composition of their boards of directors and officership, and to self-evaluate their performance with respect to their own diversity policies. Prior to its adoption, the NZX sought submissions on its proposed Diversity Listing Rule, which revealed broad support.[5] The Diversity Listing Rule was adopted out of a desire to promote board diversity, based on the rationale that ensuring disclosure of gender diversity to shareholders and market participants might encourage companies to increase diversity.[6] The Diversity Listing Rule became effective on December 31, 2012.

Specifically, the Diversity Listing Rule requires that a company listed on the NZSX or NZDX provide the following information in its annual report:

> **Rule 10.4.5(j)**—a quantitative breakdown, as to the gender composition of the Issuer's Directors and Officers as at the Issuer's balance date and including comparative figures for the prior balance date of the Issuer. Comparative figures are not required to be provided in respect of balance dates falling in periods before the effective date of this Rule; and
>
> **Rule 10.4.5(k)**—a statement from the Board of the Issuer providing its evaluation of the Issuer's performance with respect to its diversity policy (if applicable).[7]

1 New Zealand Census of Women's Participation 2012.

2 New Zealand Census of Women's Participation 2012. "These include Global Women, The New Zealand group of the United Nations Women's Empowerment Principles, the 25% Group, Women on Boards NZ, the New Zealand chapter of the International Women Corporate Directors network, among others." New Zealand Census of Women's Participation 2012." *See id.*

3 New Zealand Federation of Business and Professional Women – *Women's Empowerment Principles (WEPS).*

4 The NZSX refers to the New Zealand Stock Exchange's Main Board, and the NZDX refers to the New Zealand Stock Exchange's Debt Market.

5 NZX Limited – *NZX Diversity Rule and Its Implementation* – July 4, 2012.

6 *Id.*

7 NZX Limited – Main Board/Debt Market Listing Rules – October 30, 2013; NZX Limited – *NZX Diversity Rule and Its Implementation* – July 4, 2012.

It is important to note that the Diversity Listing Rule only requires disclosure of the number of women on the board, it does not set aspirational or mandatory targets for women's representation or require a company to explain its progress (or lack thereof) toward greater diversity. Moreover, the requirement that a company evaluate its progress with respect to its diversity policy only applies to companies that already have diversity policies. The Diversity Listing Rule imposes no new requirement that companies develop a diversity policy. In this sense, it is limited.

Many criticize the rule as weak and not doing enough to promote gender equality in the boardroom.[8] The Human Rights Commission, for example, stated that for the Diversity Listing Rule to improve transparency effectively it would need to require all companies to establish diversity policies, disclose those policies, and set measurable objectives.[9]

While New Zealand's Diversity Listing Rule represents a positive step toward improving gender equality in the boardroom, it is a small step.

Conclusion

While New Zealand's Diversity Listing Rule represents a positive step toward improving gender equality in the boardroom, it is a small step. Transparency is expected to positively affect women's representation on corporate boards, but by how much remains to be seen.

8 New Zealand Census of Women's Participation 2012.

9 *Id.*

United Kingdom

United Kingdom

London Stock Exchange

Michael London, Associate
Paul Hastings (Washington, DC)

In the United Kingdom there has been a significant push to increase the number of women on corporate boards of directors. In 2010, the newly formed UK coalition government pledged to promote gender equality on corporate boards.[1] To fulfill this promise, the UK Business Minister and Minister for Women asked Lord Davies, the former chairman of Standard Charter Bank, to issue a report providing his recommendations on how to increase the representation of women on corporate boards. The Davies report recommended that the FTSE 100[2] increase female board representation to 25% by 2015[3] and that the Financial Reporting Council (FRC) require disclosure of boardroom diversity policies. Following the report, both the British Government and the FRC have undertaken significant efforts to increase gender diversity on boards.

These efforts have had a significant impact on corporate board diversity. In 2011, women held only 12.5% of seats on FTSE 100 boards.[4] Today, women make up 20%. Additionally, the number of all-male FTSE 100 boards has dropped from 21 in 2011 to 2 today. Though these statistics show significant improvement, the United Kingdom has a long way to go to meet the British Government's goal of having 25% of board seats filled by women in 2015.[5] Furthermore, only one FTSE 100 company has a woman as the chair of its board of directors.

Financial Reporting Council Requirements

In the UK, the FRC is tasked with auditing financial reporting and corporate governance standards for UK corporations.[6] It is unique in that some of its regulations are backed by law and therefore are mandatory, while others are purely voluntary.[7] For example, the FRC has the power under UK law to regulate and register third country auditors. However, the FRC has no statutory authority for regulating corporate governance.

Despite its lack of formal statutory authority, the FRC does maintain the UK Corporate Governance Code[8]. And although voluntary, compliance is viewed as a mark of good governance. In 2011, the FRC amended the UK Corporate Governance Code following the recommendations of Lord Davies.[9] It adopted a "comply or explain" requirement for the use of diversity in the board of director nomination process. Specifically, it requires corporations to disclose their nomination committee practices, a description of the board's policy on diversity (including gender), any measurable objectives it set for implementing the policy, and progress on achieving the objectives. These requirements went into effect in 2012.

1 United Kingdom Department for Business, Innovation and skills, *Women on Boards* (2011), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf [hereinafter "Davies Report 2011"].

2 The FTSE 100 are the 100 largest companies by market capitalization listed on the London Stock Exchange. It is often viewed as a benchmark in the UK, much as the Dow Jones Industrial Average is viewed as a benchmark in the United States.

3 Davies Report 2011.

4 United Kingdom Department for Business, Innovation and Skills, *Women on boards: Davies Review Annual Report 2014* (2014), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320000/bis-women-on-boards-2014.pdf [hereinafter "Davies Report 2014"].

5 Davies Report 2014.

6 *About the FRC*, Financial Reporting Council (last accessed July 22, 2014), https://www.frc.org.uk/About-the-FRC.aspx.

7 *The FRC and its Regulatory Approach*, Financial Reporting Council Appendix A (2014), *available at* https://www.frc.org.uk/Our-Work/Publications/FRC-Board/The-FRC-and-its-Regulatory-Approach.pdf.

8 *The UK Corporate Governance Code*, Financial Reporting Council (Sept. 2014), *available at* https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf [hereinafter UK Corporate Governance Code].

9 *Feedback Statement: Gender Diversity on Boards*, Financial Reporting Council (Oct. 2011), *available at* https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/Feedback-Statement-Gender-Diversity-on-Boards.pdf.

London Stock Exchange

Although the London Stock Exchange (LSE) does not require a boardroom diversity policy to qualify for listing, it does encourage boardroom diversity through informal guidance and listing incentives.[10] On an informal level, the LSE publishes a report on corporate best practices, which includes a section on recommended practices for corporate boards.[11] The report notes that "diversity is now commonly agreed to be a characteristic of effective boards" and recommends that companies should appoint at least two female directors.[12] While these recommendations are not required for listing, the LSE encourages companies to follow them.

The LSE also indirectly incentivizes compliance with the FRC's comply or explain boardroom policies. It requires companies interested in issuing equity shares to satisfy "Premium Listing" requirements.[13] This listing is only available to equity shares issued by trading companies and closed and open-ended investment entities. Companies are expected to meet the UK's highest standards of regulation and corporate governance—and as a consequence may enjoy a lower cost of capital through greater transparency and through building investor confidence. To qualify for a Premium Listing, a company must comply with all of the FRC's corporate governance policies, including the gender diversity disclosures, or explain its failure to comply. Though this is not a direct requirement for all companies listing on the LSE, nor is it a direct endorsement of gender diversity in board rooms, it does provide additional pressure to increase diversity in the board room.

Public Interest Groups

Numerous public interest groups have aided the UK's efforts to increase the number of women on corporate boards. Professional Boards Forum, one of the first groups established to promote gender diversity on corporate boards, has been actively pushing to increase the number of women directors since 2002.[14] The Forum conducts an annual diversity survey of corporate boards, BoardWatch, and hosts numerous events to connect qualified women with CEOs and directors of corporations.

Another group, the 30% Club, has been actively seeking to increase gender diversity on corporate boards since 2009. Their goal is to have women hold at least 30% of seats on FTSE 100 boards by 2015. To achieve this the Club hosts events and conferences, and also teaches seminars at London business schools to educate the next generation of corporate leaders on the importance of gender diversity.[15]

Conclusion

In general, the UK has made steady progress toward increased gender diversity in the boardroom. The British Government made a commitment to increasing the number of women on corporate boards and devoted significant resources toward achieving their goal. Though entities with significant authority to compel corporate governance practices, such as the LSE, have encouraged gender diversity, they have not taken any steps to mandate diversity as a requirement for listing. As the UK continues to implement the Davies Report's recommendations, it remains to be seen if it will reach its diversity goal by 2015.

10 London Stock Exchange, *Admission and Disclosure Standards* (2013), *available at* http://www.londonstockexchange.com/companies-and-advisors/main-market/documents/brochures/admission-and-disclosure-standards.pdf.

11 *See* London Stock Exchange, *Corporate Governance: For Main Market and AIM Companies* 65 (2012).

12 *Id.* at 66.

13 *See Super Equivalent Obligations*, London Stock Exchange (last accessed July 14, 2014), http://www.londonstockexchange.com/companies-and-advisors/main-market/rules/super/equivalent.htm.

14 *Team*, Professional Boards Forum (last accessed July 22, 2014), http://www.boardsforum.co.uk/team.html#.

15 *History*, 30 Percent Club (last accessed July 22, 2014), http://30percentclub.org/history/.

United States

United States

NASDAQ and New York Stock Exchange

Michael London, Associate
Paul Hastings (Washington, DC)

Women still are greatly underrepresented on corporate boards in the United States. Although this issue continues to receive significant public attention, there have been limited efforts to increase gender diversity, with most pressure coming from the Securities and Exchange Commission (SEC) and public interest groups.

To date, stock exchanges have taken little action to address the lack of diversity on boards of listed companies. And what actions have been taken by public interest groups and regulators have had minimal impact on the number of women directors. In 2013, women held only 16.9% of board seats for Fortune 500 companies,[1] a slight increase from 2010 where 15.7% of board seats were held by women.[2] Additionally, only 18.5% of Fortune 500 boards of directors had more than a quarter of seats filled by women, and one in ten boards have zero women on their boards of directors.[3]

Federal Regulatory Efforts

In 2010, the SEC amended its corporate governance disclosure rules to require companies to disclose how they incorporate diversity when searching for new board members. Specifically, the SEC requires public companies to disclose if they consider diversity when searching for a new board member, how a company uses diversity when considering candidates, and if they have a policy that specifically addresses the consideration of diversity when searching for board candidates.[4]

It is unclear if the disclosure rule has had any measurable effect on diversity in the boardroom. In theory, failure to disclose any of the required diversity information violates securities law.[5] However, research suggests that companies are failing to abide by the requirements of the disclosure rules, and that the SEC has failed to adequately enforce the disclosure requirements.[6] Beyond the SEC disclosure rule, there are no other federal regulatory or legislative requirements on corporate board room diversity.[7]

Listing Requirements

None of the U.S. stock exchanges require or encourage the disclosure of diversity policies in nominating board members as a requirement of listing on an exchange.[8] In fact, none of the U.S.-based stock exchanges, including the NASDAQ[9] and New York Stock Exchange (NYSE)[10], discuss gender diversity in any of their listing requirements.

Additionally, neither the NYSE nor the NASDAQ has proposed any corporate governance diversity rules, and it is unlikely either exchange will act without a push from regulators. The NYSE listing rules require every company to have a director nominating committee, and each nominating committee to have a charter that identifies nominee qualification criteria. The rules further elaborate on director qualification standards but make no mention of gender diversity.

The NASDAQ listing rules contain similar corporate governance requirements to qualify for listing.[11] The exchange requires independent oversight of director nominations, but makes no reference to diversity. While the NYSE has not commented on recent efforts to increase gender diversity on corporate boards, the NASDAQ has indicated it relies on securities regulators for guidance.[12]

Public Advocacy Efforts

Public advocacy groups have had some success in increasing gender diversity on corporate boards. One such advocacy group, the Thirty Percent Coalition, has a stated goal of filing 30% of corporate director seats with women by 2015.[13] To achieve this goal, the group has pressed its members to file shareholder resolutions. In 2013, their resolution and letter writing campaign resulted in eight companies appointing women board members and 40 others engaging seriously on the issue of gender diversity.[14]

Other advocacy groups have also created campaigns to increase gender diversity. Catalyst, an international organization, uses traditional tools such as conferences to encourage corporate leaders to increase gender diversity.[15] 2020 Women on Boards, which aims to increase the representation of women on corporate boards to 20% by the year 2020,[16] utilizes a different approach. It established a grassroots campaign targeted specifically at middle managers and consumers in an effort to engage constituencies who might not otherwise focus on the issue.

Conclusion

Though there appears to be significant support for diversity initiatives in the United States, these efforts remain voluntary. Initiatives have not taken root to implement quotas or mandatory requirements related to gender diversity on corporate boards of directors. Although voluntary approaches may not have as immediate an impact, they are less controversial than quotas and, as such, may garner broader-based support for encouraging greater gender parity on corporate boards. In recent years, however, voluntary approaches have not led to appreciable improvement. If voluntary initiatives do not begin to show results, there may be increased support for the adoption of mandatory requirements, such as quotas, or enhanced obligations in stock exchange listing requirements to force U.S. corporations to take tangible steps to address gender disparity in corporate America.

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1 Rachel Soares et. al, 2013 Catalyst Census: Fortune 500 Women Board Directors, Catalyst 1 (Dec. 10, 2013), *available at* http://www.catalyst.org/knowledge/2013-catalyst-census-fortune-500-women-board-directors. [hereinafter "Catalyst Census 2013"].

2 Rachel Soares et. al, 2010 Catalyst Census: Fortune 500 Women Board Directors, Catalyst (Dec. 1, 2010), *available at* http://www.catalyst.org/knowledge/2010-catalyst-census-fortune-500-women-board-directors.

3 Catalyst Census 2013 at 2.

4 17 C.F.R. 229.407(c)(2)(vi) (2010).

5 *See* 15 U.S.C. § 78m (2012) (reporting requirements); 15. U.S.C. § 78ff (2012) (penalties for violating § 78m).

6 *See* Tamara S. Smallman, Note, *The Glass Boardroom: The SEC's Role in Cracking the Door Open So Women May Enter*, 2013 Colum. Bus. L. Rev. 801 (2013).

7 David A Katz, *Developments Regarding Gender Diversity on Public Boards*, The Harvard Law School Forum on Corporate Governance and Financial Regulation (Nov. 12, 2013), http://blogs.law.harvard.edu/corpgov/2013/11/12/developments-regarding-gender-diversity-on-public-boards/.

8 The list of exchanges is available on the SEC website, and includes the New York Stock Exchange, the NASDAQ, and the Chicago Stock Exchange. *See Exchanges*, U.S. Securities and Exchange Commission (last visited July 11, 2014), http://www.sec.gov/divisions/marketreg/mrexchanges.shtml.

9 *See NASDAQ Listing Rules*, NASDAQ §5600 (last accessed July 16, 2014), http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_4_2&manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F [hereinafter " NASDAQ Corporate Governance Rules"].

10 *See Corporate Governance Standards*, New York Stock Exchange (last accessed July 16, 2014), http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?selectednode=chp_1_4_3&manual=%2Flcm%2Fsections%2Flcm-sections%2F [hereinafter "NYSE Corporate Governance Rules"].

11 NASDAQ Corporate Governance Rules at 3600.

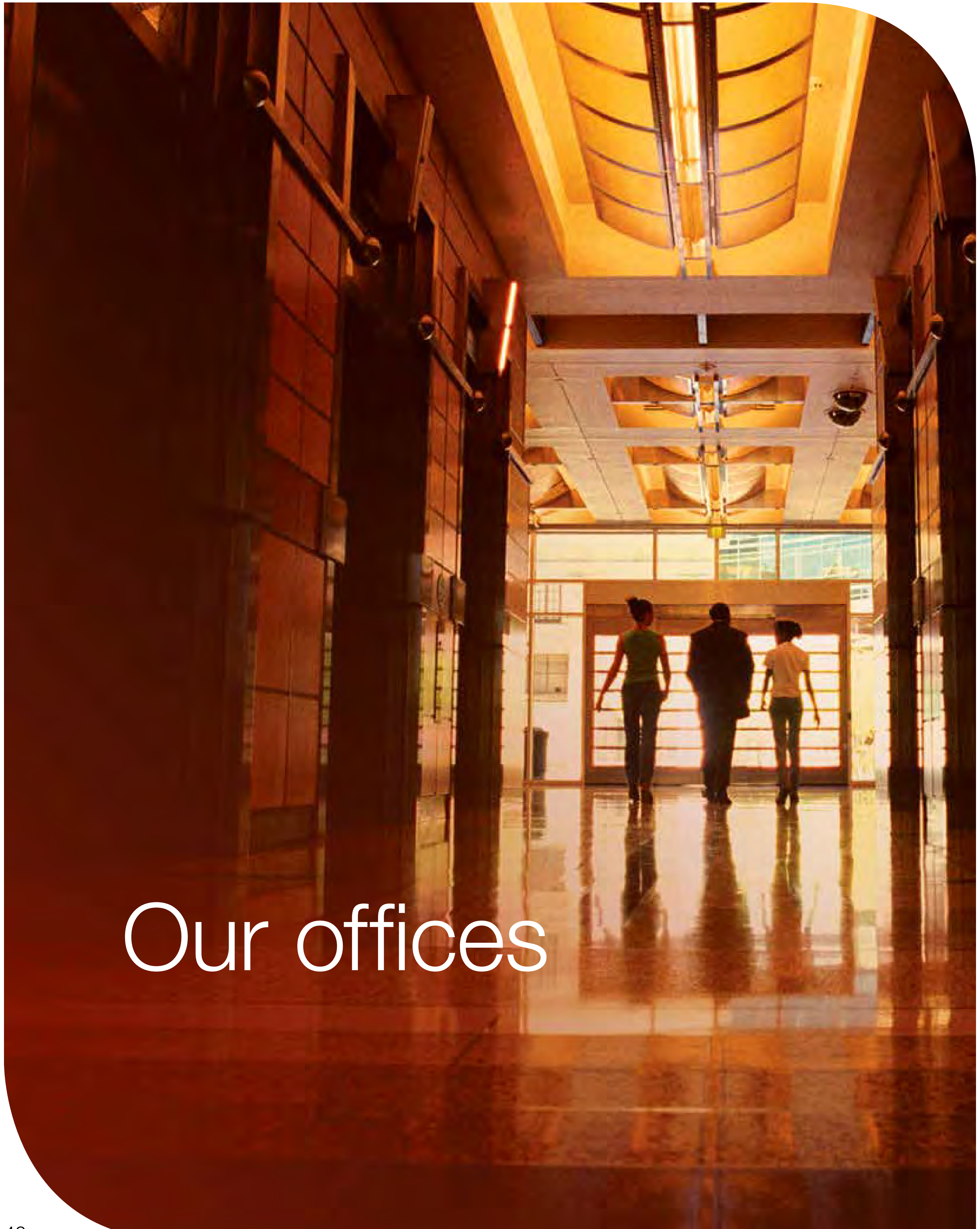
12 Joann S. Lublin and Theo Francis, *Careers: Women Gain Board Seats — Abroad*, The Wall Street Journal, Feb. 5, 2014, at B6.

13 *About*, Thirty Percent Coalition (last visited July 11, 2014), http://www.30percentcoalition.org/about.

14 *Institutional Investors note Progress as Eight Companies appoint Women to their Boards*, Thirty Percent Coalition (last visited July 11, 2014), http://www.30percentcoalition.org/news/99-institutional-investors-note-progress-as-eight-companies-appoint-women-to-their-boards.

15 *United States*, Catalyst (last visited July 11, 2014), http://www.catalyst.org/regions/united-states.

16 *The Idea*, 2020 Women on Boards (last visited July 11, 2014), http://www.2020wob.com/about/idea.



Our offices

North America

Atlanta
1170 Peachtree Street, N.E.
Suite 100
Atlanta, GA 30309
Phone: +1.404.815.2400
Fax: +1.404.815.2424

Chicago
191 North Wacker Drive
Thirtieth Floor
Chicago, IL 60606
Phone: +1.312.499.6000
Fax: +1.312.499.6100

Houston
600 Travis Street
Fifty-Eighth Floor
Houston, TX 77002
Phone: +1.713.860.7300
Fax: +1.713.353.3100

Los Angeles
515 South Flower Street
Twenty-Fifth Floor
Los Angeles, CA 90071
Phone: +1.213.683.6000
Fax: +1.213.627.0705

New York
75 East 55th Street
First Floor
New York, NY 10022
Phone: +1.212.318.6000
Fax: +1.212.319.4090

Orange County
695 Town Center Drive
Seventeenth Floor
Costa Mesa, CA 92626
Phone: +1.714.668.6200
Fax: +1.714.979.1921

Palo Alto
1117 S. California Ave.
Palo Alto, CA 94304
Phone: +1.650.320.1800
Fax: +1.650.320.1900

San Diego
4747 Executive Drive
Twelfth Floor
San Diego, CA 92121
Phone: +1.858.458.3000
Fax: +1.858.458.3005

San Francisco
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105
Phone: +1.415.856.7000
Fax: +1.415.856.7100

Washington, DC
875 15th Street, N.W.
Washington, DC 20005
Phone: +1.202.551.1700
Fax: +1.202.551.1705

Europe

Brussels
Avenue Louise 480-5B
1050 Brussels
Belgium
Phone: +32.2.641.7460
Fax: +32.2.641.7461

Frankfurt
Siesmayerstrasse 21
D-60323 Frankfurt am Main
Germany
Phone: +49.69.907485.0
Fax: +49.69.907485.499

London
Ten Bishops Square
Eighth Floor
London E1 6EG
United Kingdom
Phone: +44.20.3023.5100
Fax: +44.20.3023.5109

Milan
Via Rovello, 1
20121 Milano
Italy
Phone: +39.02.30414.000
Fax: +39.02.30414.005

Paris
96, boulevard Haussmann
75008 Paris
France
Phone: +33.1.42.99.04.50
Fax: +33.1.45.63.91.49

Asia

Beijing
19/F Yintai Center Office Tower
2 Jianguomenwai Avenue
Chaoyang District
Beijing 100022, PRC
Phone: +86.10.8567.5300
Fax: +86.10.8567.5400

Hong Kong
21-22/F Bank of China Tower
1 Garden Road
Central Hong Kong
Phone: +852.2867.1288
Fax: +852.2526.2119

Seoul
33/F West Tower
Mirae Asset Center1
67, Suha-dong, Jung-gu
Seoul, 100-210, Korea
Phone: +82.2.6321.3800
Fax: +82.2.6321.3900

Shanghai
35/F Park Place
1601 Nanjing West Road
Shanghai 200040, PRC
Phone: +86.21.6103.2900
Fax: +86.21.6103.2990

Tokyo
Ark Hills Sengokuyama Mori Tower
40th Floor, 1-9-10 Roppongi
Minato-ku, Tokyo 106-0032
Japan
Phone: +81.3.6229.6100
Fax: +81.3.6229.7100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