Georgeson

BOARD DIVERSITY HEADING INTO 2021

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Board diversity has been an area of investor focus in recent years. In an October 2020 article, Georgeson summarized recent examples of changes to investor views on board diversity.

As we head into 2021 proxy season, board diversity continues to take the spotlight. Recent examples of changes on the 2021 horizon include:

Nasdaq Proposed Listing Rule on Board Diversity

In December 2020, Nasdaq filed a proposal with the SEC to adopt new listing rules. If approved by the SEC, the new listing rules would require all companies listed on Nasdaq's U.S. exchange to publicly disclose board diversity statistics. Further, the rules would require most Nasdaq-listed companies to have at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+ or otherwise explain their non-compliance. The diversity statistics disclosure requirement would go into action one year following the SEC's approval. For meeting the board composition minimums, Nasdaq has set forth a timeframe based on a company's listing tier.

According to Adena Friedman, President and CEO, Nasdaq "Our goal with this proposal is to provide a transparent framework for Nasdaq-listed companies to present their board composition and diversity philosophy effectively to all stakeholders; we believe this listing rule is one step in a broader journey to achieve inclusive representation across corporate America."

Last year, Goldman Sachs adopted a new policy that became effective July 1, 2020 to not take a company public unless it has at least one woman or non-white board member with plans to increase the requirement to two diverse board members starting in June 2021. Nasdaq's proposed new listing rule would add further push to such board diversity efforts. Companies with under-diverse boards would now also face pressure relating to their public listing, in addition to the scrutiny from their investors.

As of publication, Nasdaq's proposal has not been approved.[1]

Vanguard Enhanced Voting Policy on Board Diversity

Boardroom diversity will continue to be a focus for Vanguard in 2021. Beginning this year, Vanguard may vote against directors at companies where progress on board diversity falls behind "market norms and expectations." While the investor did not set forth its expectations on specific quotas, Vanguard noted the greatest board diversity risks to the portfolio in 2021 will be companies with zero board gender diversity, zero board racial or ethnic diversity, or a lack of board diversity disclosure and policy.[2] John Galloway, Vanguard's global head of investment stewardship, said the firm does not "advocate for one-size-fits-all mandates [...]we routinely emphasize the importance of concise, clear disclosures to help a company's shareholders understand its board diversity strategy and progress." Some considerations Vanguard proposed for boards looking to make progress include:

- Long-term planning to consider their board diversity strategy
- Expanded and broad searches to identify board candidates other than current/former CEOs, look at executives that lead integral departments (finance, marketing, audit, etc.)
- Increases to board size to add more diverse members
- Enhanced board cultures that foster "difference and debate"

State Street Global Advisors Enhanced Policy on Racial and Ethnic Diversity

In his January 2021 letter to boards, Cyrus Taraporevala, State Street's CEO, noted that SSGA would focus its stewardship priorities on "the systemic risks associated with climate change and a lack of racial and ethnic diversity."[3] State Street also published a new guidance policy for enhancing racial and ethnic diversity disclosures, in line with the five key areas for diversity disclosure outlined in its August 2020 letter to Board Chairs. This new guidance provides further detail on how State Street will vote on diversity matters in the near future:[4]

- Starting in the 2021, State Street will vote against the chair of the nominating and governance committee if a company in the S&P 500 or FTSE 100 does not disclose the racial and ethnic diversity of its Board
- Starting in the 2022, State Street will vote against certain directors if a company in the S&P 500 or FTSE 100 does not:
  - Disclose its EEO-1 report
  - Have at least one director from an underrepresented community

Glass Lewis Vote Recommendation Policy Updates

In November 2020, Glass Lewis published its updated vote policy guidelines for the 2021 proxy season. One notable change concerns the proxy advisory firm's updated board diversity policy. Beginning in 2022, Glass Lewis will generally recommend against the chair of the nominating committee at companies with fewer than two female directors. The advisory firm will note in a company's Proxy Paper the lack of gender diversity as a concern for meetings held in 2021.[5]

ISS Vote Recommendation Policy Updates

In November 2020, ISS published its updated vote policy guidelines for the 2021 proxy season. Beginning in 2022, ISS will implement a new policy to generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies apparently lacking at least one racially or ethnically diverse director on the company's board. The policy allows for a one-year grace period, becoming effective for meetings on or after Feb. 1, 2022, and will be applicable for companies in the Russell 3000 and the S&P 1500 indices at that time.

For 2021, while ISS will not take action against directors, it will highlight boards of the companies in Russell 3000 and the S&P 1500 indices that lack racial and ethnic diversity in its benchmark reports.

In adopting this policy, ISS noted that while adding racially and ethnically diverse directors to the board is often indicated as a priority by companies, the efforts to recruit minorities have been slow and even declining. According to ISS, close to 200 companies in the S&P 500 index have no Black director.[6]

- 100 does not have at least one director from an underrepresented community

What can you do in advance of the 2021 proxy season?

Be proactive and make sure your board is informed and prepared. The board should know your company's diversity statistics. It should be actively involved in the approval and monitoring of goals relating to workforce diversity, as well as the company's stance on disclosing, or not disclosing, this information. Should your company choose not to disclose information, have a clear explanation for your investors as to why you are not doing so.

Georgeson can help.

Whether it's conducting an audit of your governance practices, providing advice on how to approach board and workforce diversity policies and practices, conducting shareholder research, or developing strategies for "what if" scenarios, Georgeson's team of experts is here to help. Contact us today by email at info@georgeson.com or call 212 440 9800 to learn how Georgeson can help you prepare for all possibilities.

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[1] https://www.nasdaq.com/press-release/nasdaq-to-advance-diversity-through-new-proposed-listing-requirements-2020-12-01

[2] https://corpgov.law.harvard.edu/2020/12/19/a-continued-call-for-boardroom-diversity/#more-135580

[3] https://www.ssga.com/us/en/institutional/ic/insights/ceo-letter-2021-proxy-voting-agenda

[4] https://www.ssga.com/library-content/pdfs/asset-stewardship/racial-diversity-guidance-article.pdf

[5] https://www.georgeson.com/us/glass-lewis-2021-proxy-paper-guidelines-updates-codifications-and-clarifications-for-us-and-esg-initatives

[6] https://www.georgeson.com/us/iss-2021-us-policy-updates