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Public Chatter

Ways to Overcome Practical Obstacles to Achieving Board Diversity

Following up on **Evelyn Cruz Sroufe's blog** about four rebuttals to the opposition against Nasdaq's board diversity rules, despite positive measures such as Nasdaq's adoption of board diversity rules, increasing diversity on corporate boards has been painfully slow and still faces institutional headwinds. These include low board turnover, which reduces the opportunities for boards to select diverse replacement directors, recycling the same diverse directors by "overboarding" them (selecting them to serve on multiple corporate boards) thereby denying other qualified diverse candidates the opportunity to fill vacancies, and continuing to look at a too-narrow pool of largely non-diverse candidates for board vacancies. In 2021, the U.S. Spencer Stuart Board Index tracked director diversity in all S&P 500 companies based on their proxy statement disclosures. They found that "193 companies (39%) . . . included a statement in their proxy committing to diverse slates when considering new directors, up from 24% last year." Based on this report, there is clearly room for improvement. Boards must be intentional if they truly seek to increase the diversity of their members. To do so, Stewart Landefeld, Evelyn Cruz Sroufe and I believe boards should consider the following measures. 1. Consider either increasing board size or adopting robust board refreshment practices to increase board turnover: Boardroom turnover rates are low for both S&P 500 and S&P Midcap 400 boards. In 2020, new independent directors represented 8-9% of all directors. Board refreshment mechanisms may include age and term limits, but depending on the board, these may not be enough. In addition, while age limits have been adopted by many U.S. companies, term limits have not been as popular. One alternative is to develop and maintain an effective board evaluation process, which should set expectations for directors' continuing contributions to board effectiveness. The process should include candid evaluations of director performance against those expectations, coupled with the willingness to 'counsel' underperforming directors off the board. Another alternative is to increase the size of the Board, creating more vacancies for diverse directors. 2. Maintain a dynamic matrix to identify needed director attributes: The board skills matrix should reflect the specific needs of the company's business, which the board should regularly assess and factor into the matrix to be certain that it reflects the company's changing business environment. The matrix should also reflect the important objective of adding gender, racial, and ethnic diversity to the board. 3. Broaden the search process for new directors: During the 2021 proxy season, 39% of Fortune 500 boards reported having a policy to include diverse individuals in the candidate pool for board vacancies. Beyond such formal policies, board nominating and governance committees should actively seek out and build relationships with potential board candidates from business, academia, or other areas to expand the pool of directors beyond those historically overrepresented on corporate boards. Consider also utilizing regional resources, such as **OnBoarding Women** and the **Black Boardroom Initiative**, as well as national resources, such as the **Get on Board! Workshops** sponsored by 50/50 Women on Boards, that are dedicated to identifying and developing potential corporate directors to create a board-ready pool of candidates for corporate boards. In addition, the Athena Alliance provides recruiting services for women and the National Association of Corporate Directors not only provides training and certification for board aspirants, but also offers a board recruiting service. And companies that qualify should certainly avail themselves of the new board recruiting service to be offered by Nasdaq. 4. Look beyond the CEO position in seeking diverse board candidates: Based on the 2020 Spencer Stuart U.S. Board Index, 37% of non-first-time directors were current or former CEOs of companies, 12% were functional and other line leaders and 15% were financial executives or CFOs. In contrast, for first-time directors added to boards in 2020, CEOs represented only 9%, with 25% coming from functional and other line leaders. Going deeper into organizations to seek out potential board candidates creates more opportunities for diverse candidates in those ranks. 5. Be more open to first-time public company directors: Many diverse director candidates will have excellent strategic and operational skills, but may not have served on a public company board before. Choosing director candidates who have not previously served on public company boards can add needed skills to the board, as well as providing a broader pool of diverse directors.

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