

## The Next Wave in Board Diversity Disclosures?

As announced in this [November 15th press release](#), the Russell 3000 Board Diversity Disclosure Initiative recently sent letters to Russell 3000 companies urging them to report the race, ethnicity, and gender of each individual director on their boards. The press release acknowledges that 63% of companies disclose board diversity information on an aggregated basis, such as Nasdaq-listed companies that provide board diversity information in the Nasdaq board diversity matrix.

But the press release—and the [letters](#) sent to companies disclosing on an aggregated basis, as well as [those letters sent](#) to companies that have not disclosed any board diversity data—argues that the lack of individualized racial and ethnic information "creates unnecessary barriers to investment analysis and academic study."

Companies receiving the letters are facing the questions of whether to respond and, if so, how. Here are three things to consider:

**1. The letters are framed as a request for disclosure, not as a proposal, demand, or new voting policy.** The letters refer to voting policies of organizations included in the initiative, such as versions of "vote against" policies for companies with no board diversity and/or no board diversity disclosures.

They note that some member organizations are considering strengthening board diversity voting policies and expanding engagement on this topic. We are not aware of any announced voting policies that would penalize a company that reports board diversity information on an aggregate, rather than individual, basis. In light of this framing, many companies may decide that no direct response is needed at this time.

**2. The gap between the requested disclosure and the Nasdaq board diversity matrix is not clearly articulated.** It is worth noting that the Nasdaq matrix is intended to provide decision-useful diversity disclosures that are comparable across companies. The Nasdaq matrix requires disclosure of specified racial and ethnic characteristics, disaggregated by gender. The press release and letters from the initiative call for individualized disclosure, but do not explain why investors need individual, rather than aggregate, diversity data.

Currently, large institutional investor and proxy advisor policies addressing board diversity disclosures generally accept either individual or aggregated diversity information. If a company does decide to engage with investors involved in this initiative, it might consider seeking clarity on why individualized disclosures are important.

**3. Some directors may have privacy concerns about individualized disclosures.** As acknowledged in Corp Fin's Regulation S-K CDIs 116.11 and 133.13, as well as Nasdaq's board diversity rules, companies need the consent of directors to disclose personal, self-identified diversity characteristics.

Not all directors are willing to have their diversity characteristics disclosed on an individualized basis, and companies may face more pushback on disclosure when disclosure is made on an individual, rather than aggregate, basis. Before committing to a new disclosure regime requested by investors, companies should consider these potential privacy concerns.

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