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The Board's Oversight of Racial & Ethnic Diversity, Equity, and Inclusion

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What motivates board oversight of racial equity: The following risks and opportunities motivated directors' increased focus on racial and ethnic diversity, equity, & inclusion (DE&I): reputation, strategy, financing, regulatory and compliance, and human capital. Directors did not cite the potential economic impact of racial inequity as a key motivator.

- **Oversight in practice:** Directors referenced one or more of the three major committees—audit, compensation, and nominations and governance—as having explicit oversight of racial and ethnic DE&I. Most boards

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undertake a hybrid approach to oversight—discussing the issue in committee, but also making it a full-board topic. The full-board discussions often center on the interplay between DE&I and strategy and on DE&I as a component of corporate culture.

- **Where boards are focusing their attention:** Directors indicated a heightened focus on racial and ethnic diversity as it relates to workforce diversity and representation; inclusion and belonging; retention, promotion and succession planning; and engagement on social and political issues. Few directors spoke about oversight of the potential impacts of their company's products, services or operations on communities of color.

- **Metrics and performance management:** Directors—especially those who sit on the compensation committee—seek to identify the proper metrics to measure progress on DE&I and then to link executive compensation to performance against those goals. Directors also described the challenge of getting good data and interpreting it correctly.

- **Challenges in a global context:** Multinational corporations face a particular challenge when it comes to overseeing racial and ethnic diversity. Different regions and countries define and collect data on diversity in different ways. It is important to obtain the right data and to interpret it correctly.

- **Guidance:** Our conversations with directors led to the development of "10 Responsibilities of Boards in the Effective Board Oversight of Racial and Ethnic Diversity," a roadmap for boards that wish to elevate their focus on DE&I. We fully recognize that boards need to incorporate this guidance into their oversight practices in a way that is tailored to their particular company's context:

  1. Ensure the CEO and board chair have the capacity and commitment to drive the organization's racial equity efforts long-term

  2. Build a board whose directors are racially and ethnically diverse and have experience with oversight of DE&I

  3. Make racial equity an active part of the business strategy and work toward clear and quantitative key performance indicators

  4. Make racial and ethnic diversity, equity, and inclusion both a committee and full-board responsibility

  5. Regularly evaluate the potential impacts of the company's operations on communities of color, embracing relevant opportunities and mitigating relevant risks

  6. Facilitate boardroom discussions that are thoughtful, balanced, and intentional, and build a culture where directors are empowered to challenge ideas

  7. Include the perspectives of stakeholders (including employees) in board discussions

  8. Create a structured onboarding and ongoing training process that prepares all directors for effective oversight of DE&I

  9. Build a coalition, share best practices, and learn from peers and experts

  10. Realize this is a long journey—be patient and don't give up

What Motivates Board Oversight of Racial Equity

Racial and ethnic diversity "has been on the board agenda" in the past, as one director said, "but it's certainly never had the focus it has now. On one hand, what took so long? On the other hand, at least we can now move the needle." Another director agreed: "It keeps coming up, but in the last 18 months, it has become more of an imperative."

Given State Street Global Advisors' perspective as a long-term investor, and with input from diversity, equity and inclusion (DE&I) experts, our organizations identified six key business risks and opportunities related to racial and ethnic diversity. Our discussions with directors helped us understand which risks and opportunities are motivating their increased attention to the issue of racial diversity, equity and inclusion (they are listed below in descending order based on how often they were raised in our conversations with directors):

- **Reputation:** Brand is a key component of enterprise value and stock price.[1] As highlighted in 2020, companies that genuinely and consistently promote racial and ethnic diversity, equity and inclusion can attract customers and other stakeholders, increasing the value of a firm's brand. Conversely, companies that do not take action on this issue risk damaging their reputation. Almost every director we interviewed spoke to the importance of considering the reputational risks and opportunities related to action on racial equity. Many referenced the murder of George Floyd as an inflection point which motivated companies to start focusing on DE&I or to accelerate their efforts in that area.

- **Strategy:** Companies that prioritize racial and ethnic diversity, equity and inclusion can have a competitive advantage over peers and access new markets, customers and ideas, as well as enhance the long-term viability of their firms.[2] At least half of directors interviewed spoke to the importance of DE&I in driving performance.

  "My view is best-in-class CEOs, even before George Floyd's death, took ownership of this issue, understanding that it's key to competitive advantage in the marketplace," one director said. Another agreed: "It translates to being a more successful company. The literature is clear: Diversity is a business imperative, not a favor the company is doing for its workers of color."

- **Financing:** Investors are increasingly focused on managing portfolio risks related to racial and ethnic diversity, and research suggests that companies with effective environmental, social and governance (ESG) risk management practices benefit from a lower cost of capital.[3] At least half of directors interviewed referenced the role of institutional investors in increasing the board's focus on DE&I.

  While some directors seemed to bristle at the outsized influence of external stakeholders and investors, others were more appreciative: "I'm glad institutional shareholders and Nasdaq are now having an impact on director diversity," said one director. Another remarked that institutional investors "are saying, 'You could end up on a list of companies that we do not invest in because you do not have diversity.' That's been a huge impact. They will be measuring and tracking, and they will make proxy voting decisions based on this."

- **Regulatory and Compliance:** Prioritizing racial and ethnic diversity, equity and inclusion can prevent a company from violating local and federal regulations and laws and protect it from litigation being filed by employees, investors and other stakeholders. One third of directors interviewed said that this has motivated their board's oversight of DE&I, especially in markets outside the US.

  One director who has served on both US and European boards noted that the increase in diversity regulations has led to an uptick in board discussions about the topic. "The primary conversation in Europe over the last several years had been more about gender diversity, given EU requirements and the push by Angela Merkel," they said. In the US, given California's legislative requirements on board diversity, "the NomCo and full board are now spending more time on this. I certainly don't think anyone believes this issue will live and die in California. It will happen in other states, and it will be on the national agenda, so boards are trying to get ahead of it."

- **Human Capital:** Companies that build a diverse, inclusive and equitable workforce can have an advantage in recruiting and retaining talent of all backgrounds, particularly younger professionals. Research indicates that companies that build diverse workforces and inclusive cultures are more likely to generate above average revenue, earnings and market share growth.[4]

  One third of directors interviewed pointed to the importance of managing risks related to DE&I in order to attract and retain high-quality talent. "'Employee belonging' is very important," Maggie Chan Jones said. "As there are more conversations about race, employees are going to demand better representation in the C-suite and in the boardroom as well" or else leave for more diverse employers. Pressure from the workforce is a growing concern for boards. "In the last 18 months, you've seen the competitiveness for the most marquee potential people of color get really intense, particularly for the board," one director said. "If they don't see people who look like them at the top two levels of the company, it impacts the longevity of diverse talent if they don't see a way to progress in your company."

- **Economic Impact:** Research has demonstrated the impact that racial injustice has imposed upon the broader US economy, leading to trillions of dollars in lost GDP.[5] Even though companies could address these systemic risks by advancing racial justice and preventing negative externalities, this topic rarely came up in discussions. One director speculated that directors "are not there yet and do not yet fully understand" the opportunities companies have to empower communities of color outside their firm.

[See appendix for examples of indicators boards can use to assess performance in each of these six areas.]

Oversight in Practice

As with other dimensions of corporate governance, the board must decide who has responsibility for the oversight of racial and ethnic diversity: the full board or a specific committee? And if a committee, which one? Answers varied among the directors we interviewed. Only a few boards addressed the issue solely in full-board meetings. Each of the major board committees was mentioned as having relevant responsibility for issues related to the oversight of racial and ethnic diversity:

- **Nomination and Governance Committee:** Due to the direct relationship between DE&I and director and executive recruiting, compensation decisions, and succession planning, the nominations and governance committee often has responsibility for oversight of DE&I. Similarly, these committees are also often responsible for external and reputational risk, which can be a key driver of the board's focus on DE&I and ESG. A recent Russell Reynolds Associates survey of nominations and governance committee (NomCo) chairs shows they are engaging on this topic, with 91 percent indicating a focus on increasing diverse skill sets and backgrounds in management.

- **Compensation Committee:** Compensation committees often maintain responsibility for the oversight of racial and ethnic diversity, given their focus on human capital management and talent development more broadly. Some committees are also tasked with incorporating diversity-related performance metrics into executive compensation plans. It is worth noting that the UK Governance Code explicitly requires the compensation committee and other directors to engage with the wider workforce, which can give them valuable insight into DE&I issues in the business.

- **Audit Committee:** While a limited number of directors reference DE&I as part of the audit committee's remit, one director noted that "the audit committee has to reconcile issues which are internal audit matters, including issues raised by employees" related to DE&I. Similarly, a few boards address the topic in the audit committee because it is seen as being directly related to risk management or corporate social responsibility, both of which are often captured within the audit committee's charter.

In a recent survey of NomCo chairs, when asked to identify the top three most important organizational efforts the NomCo was involved with:[6]

- 91% identified balancing the board's level of management experience with the need for diverse skill sets and backgrounds
- 84% identified increasing diversity of slates for CEO role and other senior executive leaders
- 78% named addressing gender equity and gender bias

Several directors indicated that corporate social responsibility, public policy or similar committees have responsibility for DE&I, but these board committees are less common given that only the three aforementioned committees are required by most exchanges.

While the discussion often starts in one committee, it rarely stays there. One director noted that "While each committee is seeing a piece of it, it bubbles up to discussion at the full board because it is coming from several committees." Discussions at the full-board level can also advance a more coordinated approach to DE&I: "What we want to see is a concerted, integrated, comprehensive strategy to address inclusion and diversity across the company."

The oversight of corporate culture seems to be one of the driving forces behind these discussions. Corporate culture is increasingly recognized as one of the intangible value drivers affecting a company's ability to execute its long-term strategy.[7] "If you look at companies that have had the biggest problems recently, it is always about the culture," one director said. "The culture conversation is a lot more subtle and nuanced and is the responsibility of the full board."

Where Boards Are Focusing Their Attention

While every board has a unique set of priorities, there are a number of common areas that most, if not all, directors reported focusing upon:

- **Workforce Diversity and Representation:** "The most important topic was gender balance until 2020," Jackson Tai said. "Then it moved to addressing racial imbalance. Now we're looking at racial, ethnic, gender and diversity statistics for board as well as for senior management and middle management ranks."

  Many directors spoke about similar shifts. "The quality of the conversation is evolving to really understand the impact on the shareholder, which is our job," one director said. "It started much more focused on the NomCo and about representation on the board and has become about representation at every level, including on the board. Do your workforce and board represent the diversity of the customer base, of your future growth, the communities you serve, your customers?"

- **Inclusion and Belonging:** Many boards go beyond diversity to focus on inclusion and belonging within the organization. "It's not just a numbers game, having a certain number of people of color in ranks; it is more about creating a sense of belonging for employees, unlocking the talent that's inherent in every person," one director said.

  Companies take various approaches to measuring inclusion and belonging, from pulse surveys to discussions with employees to formal inclusion indexing tools, the results of which are shared with the board. One director shared that "We have an inclusion index which measures inclusion for every team of more than six people. […] Inclusion for us, in terms of representational diversity, is one element, but we look at many other elements such as: Is it safe to speak up? Do you have the tools to be able to do your job very well? We think about inclusion in its broadest sense."

- **Retention, Promotion, and Succession Planning:** Boards are increasingly aware of the challenges associated with retaining diverse employees and are expecting action from senior management to improve. "Where you see diverse employees leaving is after the first promotion," one director said. "You have to say, 'This is where we can't lose people.' We have to understand this problem, set the metrics to keep them, keep them productive, keep them moving forward."

  Gaining this level of insight requires something more detailed than high-level statistics, which can paint a misleading picture of the state of DE&I in the enterprise. "Historically, the numbers, to the extent they have been reported to boards at all, are done so in aggregate," one director told us. "It's easy to pat yourself on the back for your aggregate numbers relative to your peers', but things get pretty appalling when disaggregated." Directors noted the importance of setting the strategy, getting the right data and focusing on the desired outcomes.

- **Engagement on Social and Political Issues:** Several directors also described an increase in conversations about the company's political positions and activities. This is an especially complex issue for board leaders and is an area where directors must have "courage to challenge, to be curious and to be prepared to do things that are maybe not fully embraced by shareholders," as one director told us. Picking where and when to engage requires thoughtfulness.

  One board leader pointed out that "Some social issues affect how your company goes to market [or] have a reputational impact. Often these are intangibles and are difficult to measure, at least in the immediate term." One clear lesson from 2020 is the importance of having a process for sorting through those issues before they arise: "You have to think about this framework ahead of time."

Addressing Racial Equity: A Stakeholder Perspective

Directors might consider the priorities articulated by PolicyLink, FSG, and JUST Capital in their "2021 CEO Blueprint for Racial Equity:"

- Embed accountability within corporate governance and leadership performance;
- Design HR policies and practices that are actively antiracist;
- Expand worker power and voice;
- Design products, services, operations and supply chain to center on racially equitable outcomes;
- Invest directly in low-income communities of color; and
- Advocate for local and federal policies that address structural inequities.[1]

Beyond these topics, issues as wide-ranging as board diversity, pay equity, supplier diversity and corporate philanthropy were all raised during our discussions, highlighting the myriad issues directors are facing, the complexity of the topic and the depth of the board's role.

Despite an awareness of reputational and other risks associated with a lack of attention to racial justice, very few directors spoke about oversight of the potential impacts of their company's products, services or operations on communities of color. "I had a conversation, literally on a board call, where I was explaining equity and equality," one director said. "Part of it has been getting people to understand the difference, prioritizing and elevating voices and communities that have been ignored in the past. You've got to figure out a way to get them more equity, to give up capital so they can become owners with you."

Metrics and Performance Measurement

In a recent global survey of executives, CEOs and other C-level executives at companies with over $1B in annual revenue reported a link between compensation and major corporate goals:[9]

Setting goals is essential to directing a company's DE&I strategy and holding management accountable for progress. "We set targets for how you move along the D&I journey," one director said, "and those should be stretch goals so people can feel they have something to reach for but that they're not out of reach. We set goals for increasing diversity in the organization at different levels and across different areas."

A number of directors indicated not only a willingness to tie executive compensation directly to DE&I, but a belief that it is a critical step to bringing about positive change. "Things moved when you tied compensation to it," Tom Baltimore told us. "Compensation is always important; it gets measured, and people are held accountable—executives will respond" to the goals the board established.

Analysis by RRA shows that while a sizable minority of CEOs in the US (43 percent) have their compensation tied to ESG goals, it is relatively uncommon for CEOs in the US or the UK to have their compensation clearly connected specifically to DE&I outcomes—only 29 percent of US CEOs and 25 percent of UK CEOs surveyed indicated their compensation was tied to DE&I outcomes.

Directors at companies with DE&I-related compensation plans acknowledged that there was often concern with how executives would be measured, what data would be used and whether the executives were being set up for success. "It was difficult. There was lots of pushback," one told us. "It's difficult to have that conversation, but that's where, if you agree on the goals that affect compensation, it's easy for the CEO to charge HR and the executive team to come back with an appropriate team and proposal that makes it happen. They have to sell it, and the executives have to buy it." Another director agreed, but noted that some topics—like having an inclusive culture or ensuring employee safety—should be table stakes for leadership, not something that in and of itself is rewarded with more compensation.

	CEOs	C-suite	CEOs	C-suite
Have compensation tied to DE&I outcomes	25%	47%	29%	21%
Have compensation tied to ESG goals and metrics	25%	47%	43%	3%

Several directors cited data quality and availability as an ongoing challenge. "The more data you have, the more you're able to do something about it," one director said. But quantitative employee demographic data can be hard to come by—and easily misunderstood. Employee surveys also present their own challenges. "Longitudinal satisfaction surveys are important, but they're often too high level," one director said. Another admitted that "with the surveys we do of employees, we are still grappling with how to understand the feedback."

Challenges in a Global Context

The oversight of racial and ethnic diversity is challenging when operating within a single country—it gets significantly more complex in a multinational organization. "It is not one size fits all," one director told us. "Diversity has a different meaning in India, in the Middle East and in the United Kingdom. It's not the same as in the United States. Things are not quite so clear when you're looking across international borders."

Access to data is one hurdle boards must overcome. While companies in the United States can use the federal government's EEO-1 data to get a view of workforce demographics, a director pointed out that "in some countries in Europe, it's illegal to ask for diversity data—and that makes it even trickier."

Companies also risk having robust data but reaching incorrect conclusions. "As you can imagine, it is actually very important to track someone's ethnicity as it relates to the market," a director said. "If you look at the number of senior Black leaders we have in our company, it's a pretty high number. That's because all of our senior leaders across each one of our African markets is Black, and we are in every market in Africa. So, for us not to track just Black ethnicity, but specifically British or American Black people as well, is a very important distinction." Compounding all of this is a risk that international diversity and racial and ethnic diversity can be confused. "Adding an African is not the same as adding an African American," one US director said. "We have to do both."

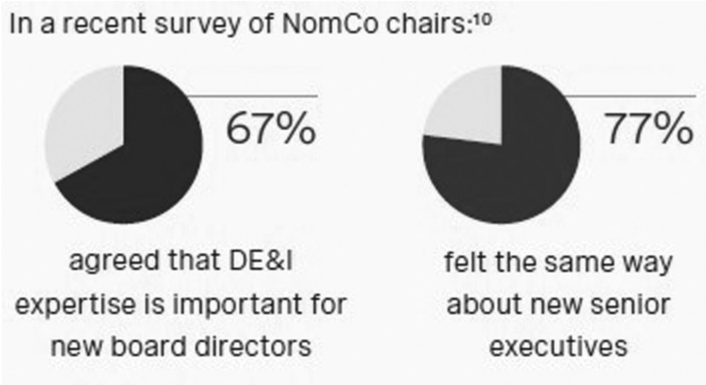
Another part of the challenge is directors' mindsets. "I think a lot of US-centric executives haven't been exposed to global issues, and they try to impose US diversity thinking onto an international population, which I don't think is appropriate or helpful," one director said. "There are real diversity issues around the world, and US solutions are not necessarily the right solutions elsewhere. I think the issues we talk about in global companies are far different from what most US-centric companies talk about."

The same is true for US-based companies with non-US directors. Conversations about DE&I differ so significantly across countries and regions that directors need specific education from each board they sit on regarding DE&I in that particular context, including available data and applicable laws. It is also important for directors of global companies to consider their shareholders and to be prepared to discuss DE&I with US- and UK-based investors.

Guidance

Our conversations with directors led to the development of "10 Responsibilities of Boards in the Effective Board Oversight of Racial and Ethnic Diversity," a roadmap for boards that want to elevate their focus on DE&I. We encourage boards to consider integrating these recommendations into their oversight practices in a manner tailored to their organization's culture and governance frameworks.

- **Ensure the CEO and board chair have the capacity and commitment to drive the organization's racial equity efforts long term.** "Everything flows from the tone at the top," one director reminded us. The best-intentioned board will struggle to catalyze change



if the board chair and CEO are not committed to the effort. "Companies that do this well are those that don't see it as a check-the-box initiative," another director said, "but rather as a part of their corporate purpose in serving the community and unlocking potential in the employee base. Once you get over that, and get aligned, things change. You must have a CEO who is willing to do it, because purpose is driven at the highest level of the company."

- **Build a board whose directors are racially and ethnically diverse and have experience with oversight of DE&I.** Boards must prioritize DE&I in their director recruitment efforts, both to improve the diversity of the board itself and to recruit directors who understand the importance of overseeing DE&I within the business (including HR and DE&I professionals). A recent RRA survey of NomCo chairs indicates that 67 percent felt DE&I expertise is important for new board directors (77 percent said the same about new senior executives). Directors from underrepresented communities can play an active role in helping recruit other directors of color.

  It is important that boards create an environment where directors of color are not expected to speak on behalf of every person who shares their identity. As boards are regularly refreshed, recruiting directors who value diverse perspectives is essential. One director we interviewed, who serves as a nominating and governance committee chair, asks director candidates "how they advance greater D&I in their various walks of life. […] If they say it can't be done, that is concerning. A fatalistic response is sure death. They won't be helpful and may be obstructionist. So, they're a burden not worth putting on the board."

- **Make racial equity an active part of the business strategy and work toward clear and quantitative key performance indicators.** As one director said, "You need to get the board to treat DE&I like any other important part of the strategy—we shouldn't be treating this any differently than any other business process we oversee."

  Integrating DE&I into the business strategy requires boards to regularly review performance against specific metrics and KPIs related to DE&I. "Be sure that as you define issues, you also develop metrics to use to determine if you are meeting or exceeding what you are trying to do," one director said. "Lay them out and own them. Own the bad news if you are intending to change it and resolve it." This effort can involve publicly setting targets related to the diversity of board and staff and being open about progress. Executives should be tasked with identifying and addressing inequality in the organization and held to account for their performance, including through their variable compensation.

- **Make racial and ethnic diversity, equity and inclusion both a committee and a full-board responsibility.** Acknowledging the complexity of DE&I and its relevance across board committees is important. Boards should address racial DE&I "at the full board as a strategic conversation," one director said, but also in committees "at a tactical level." Tom Baltimore agreed: "A lot of the initial work may be in NomCo, around director selection, or comp committee, because you want to look at the data and facts, and the reality is that what gets measured gets focused on," but ultimately, "at most companies that do this well, it's a board discussion." Details about oversight practices (*e.g.*, frequency of discussions, specific risks addressed, committee responsibilities, etc.) should be addressed in public governance documents and in engagements with stakeholders.

- **Regularly evaluate the potential impacts of the company's operations on communities of color, embracing relevant opportunities and mitigating relevant risks.** Few directors were focused on the potential negative externalities of their business on communities of color. Similarly, few focused on the opportunities presented by serving diverse communities. "I never thought that it was reasonable to try to govern a company without understanding that you are in a community and a society and using resources," one director said.

  Boards could consider their company's efforts to engage diverse suppliers, tap into new customer segments, provide charitable contributions to racial justice organizations and enable economic growth and development through the use of corporate resources, etc. They should also make sure to avoid offering products and services that disadvantage communities of color.

- **Facilitate boardroom discussions that are thoughtful, balanced and intentional, and build a culture where directors are empowered to challenge ideas.** Numerous directors agreed that "the role of the chair is absolutely key" to creating an inclusive boardroom culture that welcomes diverse directors and effectively oversees DE&I. Board leaders should be proactive on racial equity and embrace uncomfortable conversations. The role of the chair in building an inclusive board culture is critical and takes intentional leadership: Research on board culture has shown that highly effective boards of high-performing companies have chairs who are 17 percentage points (pp) more likely to foster and facilitate high-quality debates, 17 pp more likely to actively seek different points of view and 13 pp more likely to draw out the relevant experience of directors compared to all boards.[11]

  One director, who is a woman of color, spoke highly of her board chair and noted: "He has done a phenomenal job to ensure that when we have too many people speaking on the same topic, he will always create room for me to speak or amplify something that I'm saying."

- **Include the perspectives of stakeholders (including employees) in board discussions.** One director reflected on the importance of engaging with employees and understanding their experiences: "You've got to talk to people in the organization. You can't just parachute in a half dozen times a year for a board meeting and really understand internal dynamics. If you really believe that D&I is key to unlocking shareholder value, then you have an obligation as a director to understand whether the company is doing well or not. You must have conversations with people. I want to meet with African American employees at the company, where I'm the first African American chair, because I want to understand how people feel about how they're being treated and what opportunities they have for advancement, but I want to do it without excluding people. It goes beyond pulse surveys. It's a hard thing to do, but you have to get out there and talk to folks." It's also important to include impacted stakeholders from outside the organization who can speak to the role the company plays in the communities where it operates.

- **Create a structured onboarding and ongoing training process that prepares all directors for effective oversight of DE&I.** One director reflected, "When you don't have the opportunity to share different views, you don't come to good conclusions. A good board is collective wisdom, and the best boards are demonstrations of that, with no towering figure and a willingness and respectfulness to listen to other points of view. That's the value a board gets from diversity." The value of having the right board cannot be overstated. "At the end of the day, you must have the right board," a director said. "I believe that's true and there has never been a more important time to have the right board than today. The CEO needs it, the company deserves it, but you can't change it overnight."

  However, very few directors interviewed have onboarding or training processes related to DE&I and thus might miss out on the full potential of having a diverse board. "I know when I came onto the board, and it wasn't that long ago, there wasn't really any formal introduction to the topic" of DE&I, one director told us. "It came up in the natural order of conversations, presentations at committee or the full board as part of talent development discussions, but it wasn't highlighted."

- **Build a coalition, share best practices and learn from peers and experts.** "If you look at the issue of 95 percent of mergers and acquisitions failing, there's a bible on that, examining the 5 percent who succeed, what they did and what we can learn from it," one director said. The relative lack of resources for directors seeking to elevate their oversight of DE&I was part of the catalyst for this study and related guidance.

  However, there are people who have gone through it already and who can talk about their experience. One director said the most important thing is to "get help. Having real conversations with people is something leaders need. They get some of it, but they often don't truly understand because of their worldview. There are organizations and individuals that can help educate them and their organization about the pitfalls and tips and tricks. … There is strength in numbers."

- **Realize this is a long journey—be patient and don't give up.** "This is a long game, and you must have short- and long-term goals to meet it," one director said. Given the scale of change required, the journey toward diversity, equity and inclusion can be challenging, especially at the start. "Any company that's reporting or intends to report, they're going to report some gloomy numbers at the outset," one director told us. "It's not pretty. You have to have the conversation about what you're going to report, own up to failures or lack of movement, but have a plan of action to improve things." Another agreed: "This is a long journey—be ready for that."

The increased risks and opportunities associated with racial and ethnic diversity, equity, and inclusion necessitate a sharper focus on this topic from boards. We hope that directors will internalize the insights from this paper, generating more value for investors, employees, and other stakeholders.

Appendix: Key Risks, Opportunities, and Examples of Indicators for the Board

Scope	Key Risk or Opportunity	Example Indicators (might not apply to all companies/industries)
Overall	Strategy Reputation Financing	• Ongoing board and management engagement with racial and ethnic diversity, equity and justice versus a reactive crisis management approach • Specific and timebound racial and ethnic diversity, equity and inclusion goals and progress against relevant metrics • Executive team focused on advancing racial and ethnic diversity, equity and inclusion that reports to CEO • Disclosures aligned with State Street Global Advisors' expectations
Human Capital Management	Strategy Human Capital Compliance Economic Reputation Financing	• Racial diversity of workforce and leadership reflects racial diversity of the country or countries in which operations are based • High levels of inclusion and engagement • Promotion, advancement and low turnover of employees from underrepresented communities • Equitable representation across job levels • Pay equity across salary, bonus and stock options • Effective mechanisms to amplify employee voices • Nondiscrimination policy and equitable process for resolution of harassment and discrimination claims • Living wage and benefits, including emergency financial support and opportunities to invest and save for retirement • Access to training, education and professional development to reduce turnover and increase opportunities for employees to advance • Employee health and safety across all communities • Employees are incentivized to advance racial and ethnic diversity through their compensation and performance plans
Board	Strategy Reputation Financing	• Diverse representation • Formal and publicly disclosed board oversight for racial and ethnic diversity
Products and Services	Reputation Economy Compliance	• Products and services do not disproportionately harm people of color • Diverse teams designing and marketing products to ensure they resonate with diverse consumers • Clients share a commitment to racial equity and will use products and services in alignment with these values
Operations	Reputation Economy	• Diverse suppliers and vendors (both minority-owned businesses and businesses that have a credible commitment to diversity, equity and inclusion) • Positive impact on local community, environment and economy
Lobbying and Political or Charitable Contributions	Reputation Economy Compliance	• Transparent lobbying practices and political contributions advance (rather than undermine) commitment to racial justice • Charitable contributions address the root causes of racial inequity

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Key Themes from 2021 Proxy Season: The Zeitgeist Shifts

By Jessica Wirth Strine, Robert Main, Marc Lindsday, and Amy Hernandez Slowik

Given the multi-year growth in investor focus on ESG—accelerated further by the confluence of a global pandemic, social unrest, and political change—it is no surprise that the 2021 proxy season was unlike any other. For many companies, this year's annual meetings marked full shareholder revolts, as environmental and social shareholder proposals received record support levels, votes against directors became a "normal" practice, and a number of high-profile companies failed Say-on-Pay.

- An **unprecedented 35 E&S proposals passed** with more than half of the vote, **and *average* support level across all environmental proposals was above 50%.**[1]

- Perhaps more notable for the future, **many large shareholders began to channel their displeasure with companies' ESG practices into votes against individual directors**. Policy updates from large institutional investors indicate an increased willingness to withhold director votes when ESG practices are seen as lacking, such as in instances of limited board diversity or perceived failure to oversee climate risk.

- Investors' **ESG focus also factored into the most-followed proxy contest of the season**—perhaps the most-followed in the history of proxy contests—when at ExxonMobil, a newly-formed activist hedge fund holding 0.02% of its outstanding shares secured three seats on the $270B company's board. Notably, the activist's criticisms were focused not only on the company's underperforming stock but equally on perceived weaknesses in climate strategy, board composition, and corporate culture. Leveling these ESG critiques, the activists gained the advance support of influential investors such as CalSTRS, CalPERS, and New York State Common, and ultimately the votes of the world's largest asset managers. Perhaps the safest prediction for 2022 is that other **activists will increasingly use E&S issues as the "tip of the spear"** for their campaigns.

- While the *average* Say-on-Pay support level remained generally flat compared to 2020, there was a **31% increase in the number of Say-on-Pay proposals that failed to receive majority support**—and more of these proposals were at "blue chip" companies versus

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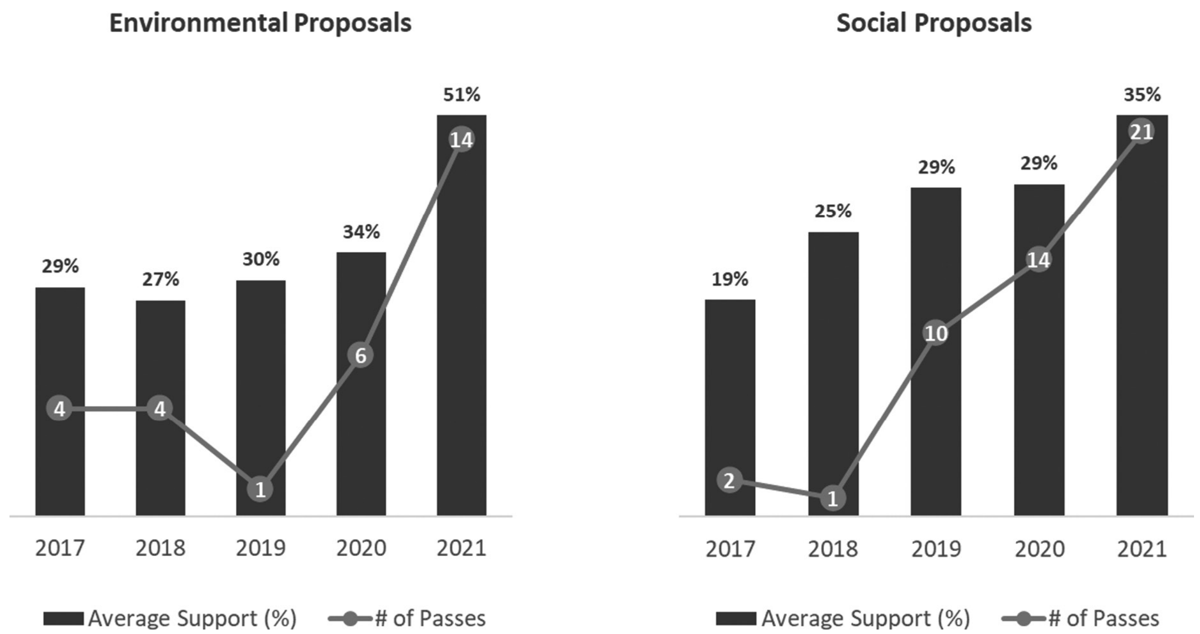


Source: ISS Corporate Solutions, Inc.

years prior. Investors increasingly questioned the magnitude of payouts and rigor of targets—particularly against the backdrop of the pandemic.

In our view, **2021 was not an anomaly**, and we expect that investor pressure on companies—and expectations for Board oversight of ESG practices—will continue to grow in future years. To that end, we offer some thoughts to help public companies navigate this new Age of ESG.

Why Did This Happen?

- ***Changes at the Big 3 … and the Big 2 in particular.*** The world's largest asset managers, BlackRock, Vanguard, and State Street Global Advisors continue to accumulate market share, and now control over 40% of the fund industry's U.S. equity assets. They are now among the top shareholders of nearly every U.S. public company. In years past, BlackRock and Vanguard have also been among the least likely institutional investors to support E&S shareholder proposals (6% and 9%, respectively, in 2020) and withhold support from directors (5% and 4%, respectively, in 2020).

  Over the past 12 months, we have seen **a more aggressive shift in the voting patterns at Vanguard and BlackRock.** This follows new leadership for each firm's Stewardship team, which—along with growing pressure from clients, advocacy groups, public protests, and shifting political winds in Washington—**have driven significant revisions to each firm's proxy voting approach**. In BlackRock's words, their Stewardship team would be "more likely to support a shareholder proposal without waiting" to see the results of engagement. While the Big 2's full voting record will not be available until August, their public disclosures and market intelligence indicates that BlackRock and Vanguard supported a wide range of E&S proposals in 2021—often for the first time *(see sidebar)*. **These voting trends are unlikely to abate.**

- ***Mainstreaming of shareholder proposals, and proponents.*** In the not-so-distant past, many proposal proponents were widely viewed as fringe groups implementing political or faith-based agendas through corporate advocacy. **Now, many E&S proposals are linked, directly or indirectly, to large investor coalitions with the backing of many 'mainstream' asset managers**, such as Climate Action 100+[2]. These asset managers increasingly recognize the economic link between certain E&S issues and long-term stock performance, and are engaging with ESG "activists" and even adopting these groups' views as their own. Moreover, **the language of many E&S proposals has been refined** to focus on disclosure—*not prescriptive action*—and long-term financial value—*not political or moral values*, thereby avoiding hurdles that prevented many institutional shareholders from supporting those proposals in the past.

This "mainstreaming" is reflected not only in the increase in passing proposals, but also in actual support levels reaching new heights: among the 31 passing proposals that lacked management support, three received support levels in the 70s, eight in the 80s, and two in the 90s.

- ***Rising expectations for directors.*** A key theme in investor engagements—as well as in the ExxonMobil proxy fight—is that directors are expected to possess or build the skills and knowledge required to oversee relevant E&S issues. Rather than advocate narrowly for a single "ESG expert" on the board, most investors expect that the full board builds its ESG fluency through exposure to these issues, engagements with experts and outside stakeholders, and integration of ESG issues into the board's strategic oversight.

  Investors are increasingly willing to act against directors where they do not see these practices. As a prime example, BlackRock has been actively voting against directors at companies that lack sufficient climate disclosure or a "credible plan" to transition their business model to a low-carbon economy. The firm has also developed a "focus universe" of companies under evaluation for their climate risk oversight. This list contained 440 companies in 2020, and more than 1,000 companies in 2021. These heightened expectations for directors—and the understanding that they require more time and focus from directors—are also driving many investors' increasingly stringent "overboarding" policies.

"Big 2" Vote Highlights

GHG Reduction Targets (including Scope 3)

Each of BlackRock and Vanguard voted for proposals seeking reductions targets for greenhouse gas (GHG) emissions across both companies' operations *and* the use of their products, or "Scope 3" emissions (*e.g.*, end users' combustion of oil & gas). BlackRock made clear that it expects companies to assume responsibility for their "complete emissions profile"—despite that this is a "relatively nascent practice, especially in the U.S.", and Vanguard expects to "hear more … about investments in emerging and renewable technologies."

Political Activity Disclosure

BlackRock and Vanguard, for the first time, supported proposals asking for additional disclosure of political activity. These include proposals seeking more information on climate-related lobbying as well as broader political activity given that "recent events in the U.S. corporate and political landscape have enhanced the risk profile of corporate political activity."

What Do I Do Now?

- ***Solidify your foundation on key issues.*** Well-prepared companies will take the coming weeks to closely analyze the results of the 2021 season, identify potential vulnerabilities, and develop action plans—focused around robust governance, strategy, investor engagement, and disclosure—for those proposal

Vote Highlights cont.

Workforce Diversity

Each of the Big 2 also supported proposals seeking additional information regarding companies' diversity, equity and inclusion (DEI) efforts, including disclosure of the workforce's diversity make-up. Vanguard noted that companies should disclose "relevant processes, programs, and metrics used to measure a company's DEI programs over time" and BlackRock explained that it aims to understand the "effectiveness of a company's board and management in supporting the needs and meeting the expectations of its workforce."

Proxy Fights

In the Exxon Mobil proxy fight, BlackRock supported three activist nominees (out of four) and Vanguard supported two. BlackRock highlighted its view that "Exxon and its Board need to further assess the company's strategy and board expertise against the possibility that demand for fossil fuels may decline rapidly in the coming decades," and that the activist's nominees would:

> *"bring the fresh perspectives and relevant transformative energy experience to the Board that will help the company position itself competitively in … the energy transition."*

Vanguard explained that "Exxon's insular culture may have contributed to these areas of underperformance in the past", and that the fresh perspective of the activist's nominees would "benefit the company's efforts to assess strategic options and mitigate risks connected to the energy transition."

Sources: Voting bulletins published by BlackRock & Vanguard

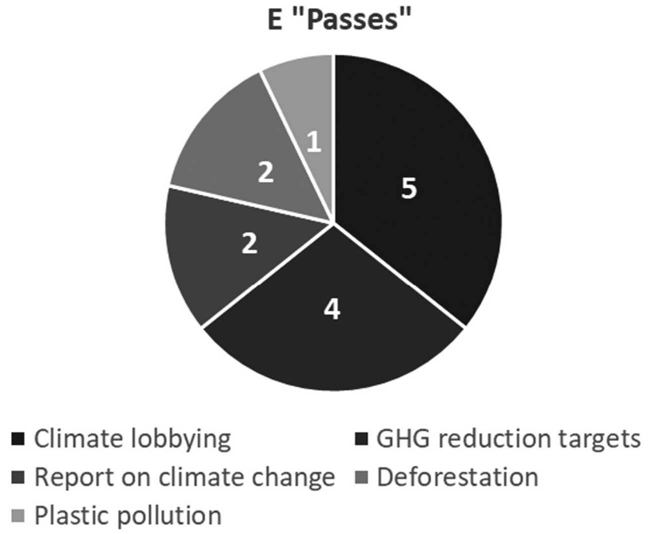
topics that received the greatest levels of shareholder support.

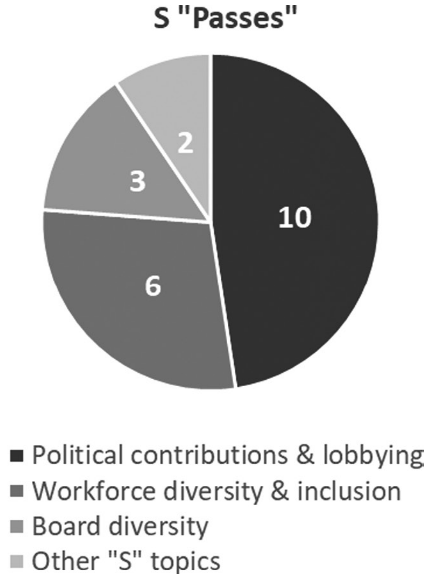
This analysis should cover not only proposals that went to a vote, but also those that were "settled" in advance of the meeting by companies anticipating significant shareholder backing.[3]

In addition, this post-season analysis should identify which proposal topics have the most momentum; for example, "repeat" proposals seeking disclosure of corporate political activity saw significant jumps in shareholder support from 2020 to 2021.

Finally, this analysis should also look around the corner for future focus areas for investors. For example, with the UN Principles for Responsible Investment (PRI) issuing recommendations to accelerate the implementation of ESG metrics in executive compensation, expect more investor focus on this issue from PRI's 3,000+ investors with $100 trillion+ in AUM.

- ***Embrace the importance of "off-season" engagement … and the diminishing effectiveness of last-second outreach.*** The importance of having direct ESG conversations with a company's largest shareholders has become well-established in recent years, as has the value in engaging outside of proxy season to address a broad range of issues and build longer-term relationships with shareholders. As investors' proxy voting functions and ESG policies become more refined, calls to investors right before the annual meeting have been less successful in securing support than in prior years. Accordingly, knowing that companies are unlikely to have more than 1–2 conversations with the Big 3 each year, we encourage clients to re-double their focus on these off-season engagements, and ensure that they:
    - Choose the right people, including directors, to join the conversation;





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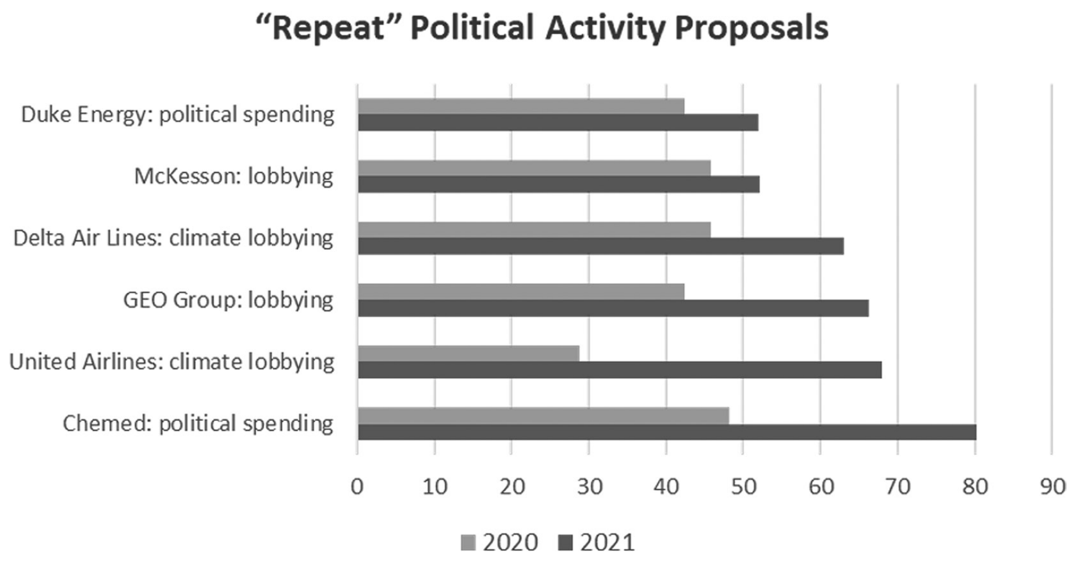

Source: ISS Corporate Solutions, Inc.

- Be knowledgeable about each investor's individual priorities;
- Focus the agenda, while also building on prior conversations;
- Ask questions, listen, and engage in a true dialogue; and
- Be responsive on issues of investor concern.

Finally, as advocacy groups and other stakeholders continue to gain influence with the largest institutional investors, companies should ensure that their engagement program also includes the most influential among these groups. We have found that, in these engagements, there are often important areas of alignment between an advocacy group and the company. Where misalignment exists, companies are better positioned, after such an engagement, to provide disclosure on their preferred strategy.

- ***Continue to support directors' ESG fluency as part of building a 'fit for purpose' board.*** Investors expect the board to be ESG competent, and to have the requisite industry expertise to both challenge and support management decisions around risk and strategy—in other words, to serve as the company's "internal activist". In addition, some investors increasingly expect that certain key E&S topics are owned by board committees that can go deeper than the full board, while many investors also believe that certain topics are better overseen by the full board. Companies lacking a methodical, transparent oversight process to oversee ESG should expect, at best, disappointing investor engagements and, at worst, activists using this as a key component of their proxy battle campaign.

The ESG zeitgeist has indeed shifted; as SEC Commissioner Lee recently remarked, "[t]his proxy season is just the latest affirmation of a sea change on climate and ESG." While the specter of increasing shareholder pressure is hardly welcome for most companies, in our view **the Age of ESG provides well-placed companies with the opportunity to differentiate themselves** as responsive to shareholders, committed to enhancing their ESG practices, and focused on building *long-term* value.

Notes

1. All data reflects votes at companies included within the Russell 3000 index during the period from July 1, 2020 through June 30, 2021. E&S proposals included in the data sample *exclude* so-called "counter-proposals" seeking companies to discontinue corporate ESG efforts.

2. Climate Action 100+ is made up of 545 global investors who are responsible for more than $52 trillion in assets under management.

3. Interestingly, while 2021 saw a sizable increase in the number of negotiated withdrawals compared to prior years, many of these settlements related to just a small number of proponent campaigns—such as the New York City Controller's campaign to drive disclosure of companies' annual EEO-1 workforce demographic data. Our market intelligence suggests that most proponents were actually *less* willing to make concessions and negotiate as compared to prior years, and we anticipate many will be similarly emboldened by 2021's spike in support levels.

Director Departures: Getting Out While the Going Is Not Good

By Stewart Landefeld

"I can't sleep at night. I don't agree with much of what is being said and done. I want to be responsible, but I am just not comfortable." Over the years, I've heard this story from a lot of my director clients.

I get asked: "What is my moral obligation to stay on the board?" It's a good question—and good directors should be asking that. Being a "fair weather" board member doesn't sit well with most directors who think of themselves as able to help lead an organization through a challenge.

This dilemma becomes even more acute for those directors who have served on a particular board for only a handful of years. They're worried about what that might signal to the market if they departed the board early. How will that sit with investors and analysts? How would it impact the directors that remain? And what about other boards that might decide not to take a chance adding them to their board because they look like a "jumper"?

It will depend on the circumstances but my guidance is pretty simple: before resigning, take these three steps and you'll feel better and be doing the responsible thing:

1. Assess what's making you uncomfortable.

2. Do all you can to seek to address the issues. That includes the need to create a record (that's important, to come up with some sort of documentation)—that the board has taken all the possible steps to address any improper or possibly illegal actions identified at the company.

   You want to establish a clear record that you—and any fellow resigning directors—have done all you possibly can to address the malfeasance, illegality or impropriety. Then, in anticipation of resignation, circulate to colleagues a draft statement of your reasons, the efforts taken, and how those efforts have either been stonewalled or otherwise failed to make progress.

3. Pass the baton. So then—before you leave remember that your successors on the board will need to grapple with many of the same issues. So do a thorough baton-passing to the directors who are remaining or coming on board.

4 Things to Consider When a Director Mulls Leaving the Board

Let me back up a little and comb through what might go through a director's mind before deciding to leave a board. The director is close to the edge. The crisis is unrelenting. Both mentally and physically. It's taking over from their job and other board service. The director's significant other can't take the complaining anymore. The director thinks a departure is the only way out, but they do feel the pull of that moral obligation.

Here are four things to consider before a director makes that decision to pull the ripcord:

1. ***Illegal or unethical activity happening?***—Is there a reason to believe that anything illegal or unethical is happening? If so, audit committee and board duties of oversight to inquire are triggered. Both counsel and auditors may need to be alerted.

2. ***Disagreements over company strategy?***—If differences stem from a fundamental disagreement on the strategy or future of the company, you

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should constantly weigh: Is it better to stay and be an effective voice on the board? Or do you stop serving the best interests of shareholders by being a constantly dissenting board member?

3. ***Manner of resignation matters***—If—probably with the advice of counsel—you as a director decide that it's in the *company's* best interests to resign, it's best to do so. But in a manner that is clear and amicable.

4. ***Public disclosure for resignations that aren't amicable might be required***—Consider with counsel: Is there any obligation to make public disclosure of the circumstances involving departure from the board?

The "Leaving the Board" Roadmap: What Are My Fiduciary Duties?

Director behavior is at the essence of a director's fiduciary duties. This is what Delaware courts love to write about in their opinions.

That's easy for all the lawyers in the room to understand. But the notion of "fiduciary duties" is not a topic typically foremost on a director's mind. At least not until a corporate crisis comes along. That they want out if they can pull it off.

There is no easy answer for this type of situation. And it's raised more often than you might think. If you sit on a particular board long enough, it's only a matter of time before a crisis makes an appearance. It will just depend then on *whether a director thinks the company is handling the crisis responsibly* and in a way they're comfortable with. Or do the directors need to intervene? If so, what is the path of that intervention?

One of the key considerations here is to spot the issues that arise from a director's behavior in the face of a crisis. Of course, no one knows how a court would ultimately rule upon any given situation—but it's important to know what are the actions and deliberations that a court might wind up being intrigued about.

What might lead a court to find that a director's fiduciary duties have been breached due to their behavior in the wake of a crisis? Here's a roadmap to consider:

1. *Starting Place: The Duty of Oversight*

- Defined as the *Caremark* standard: only "sustained or systematic failure of the board to exercise oversight—such as an utter failure to attempt to assure a reasonable information and reporting system exists—will establish the lack of good faith that is a necessary condition to liability."

- The duty in troubled situation: show good faith in continuing to establish a reporting system, and addressing issues that arise under that system.

- Particularly acute obligation for a committee chair or board chair.

2. *Technical Issues in Charter Documents to Consider*

- Is there anything unusual in the company's policies and procedures regarding director resignations, including any limitations in the company charter and/or bylaws?

- Do the charter, bylaws or corporate governance guidelines make the director entitled to consult independent legal counsel or other advisors at the company's expense, including for advice as to resignation and director's duties, obligations and responsibilities? Often the answer will be "not clearly so" so it may be time to speak to the general counsel or your own outside governance counsel for advice.

3. *Independence Considerations*

Is there any risk that the director could be alleged to be dependent on the income from the directorship? (This is a topic that most of us don't think of—but it happens a surprising number of times with long-serving directors). Could the director's reliance on board compensation compromise independence in decision-making?

There's Illegality? There's Impropriety? "What Now" for a Director

If you counsel directors as I have for many years, you're familiar with that frantic call from a newbie director when they first learn about some illegal—or improper—activity at their company. They're freaked. Justifiably so. After all, we all learn from an early age that "the buck stops here."

The playbook for this is fairly straightforward. Unfortunately, there can be human dynamics that serve as potential obstacles to hewing to the playbook. High emotions. Fast-moving developments. Conflicting—and perhaps even misleading—communications.

First and foremost, you should establish a clear record that you—and any other resigning directors—have done all that you can possibly do to address the malfeasance, illegality or impropriety. This is especially true for an audit committee member.

Under basic *Caremark* duties, and Section 10A of the Securities Exchange Act of 1934, once an independent director suspects—or becomes aware of—corporate malfeasance, the director's duties, obligations, and responsibilities include:

1. First, take reasonable steps to stop any ongoing legal or ethical violations.

2. Consider engaging the board in discussions with attorneys and accountants to uncover the apparent violations and figure out the steps that need to be taken by the company and the board. As these decisions involve legal judgments, directors should have access to expertise of independent counsel in making decisions.

3. Take steps to provide that the board's discoveries and actions are accurately and appropriately recorded in minutes of the audit committee and the board. Try to have any director concerns recorded consistently as the matter unfolds, to avoid any retrospective appearance that the director, or all independent directors, or all audit committee members, or the board as a whole, might have acted inappropriately once the issue was discovered.

4. Consider if the audit committee can rely on corporate counsel or should consider retaining its own counsel. Could, in this case, corporate counsel or his or her boss be so implicated in the issues as to not be able to be sufficiently independent to provide the service that the board needs?

I'm a Director and We Need to Fix This. But What If Other Directors Stonewall?

Perhaps the most painful scenario for a director who wants to do the right thing is one in which they find themselves very lonely. On an island. No one else on the board shares their views. Or at least, they're not willing to voice support and take action.

When a director's efforts to cause the board to take actions to fix a situation are resisted—and perhaps even blocked—the director might be forced into considering resigning as their ability to effect change has been compromised.

In that case, the departing director should seek independent counsel to help reduce any risk that regulators or a court could see the director as being drawn into the company's wrongdoing. This is true because directors bear responsibility for their own actions and those of the board until their resignation takes effect.

These matters tend to have a "long fuse" that extends back and starts in an innocent way. You might not realize it at first. Your board departure might just be the beginning of a long and agonizing farewell if things hit the fan.

Your lawyer should remind you that your resignation should be in writing—perhaps in draft form—and it then goes to the board chair, with instructions for it to be circulated to the full board. You should also consider if the resignation goes to shareholders as well.

And if you resign in protest, any resignation letter to the company will be public as it will be required to be filed as an exhibit to the company's Form 8-K announcing the resignation. That should be borne in mind as you put pen to paper.

Business and Politics: When Should Companies Take a Public Position?

By Thomas A. Cole

Those of us who lived through the 1960s hear a loud echo of those turbulent times in the challenges of the current decade.

The ’60s were a time of war and protests, assassinations, racial discrimination, and the fight for civil rights and against environmental pollution. The decade began and ended with recessions. Many of our current challenges are, unfortunately, the same—with some new complexities, such as gun violence, the climate crisis, and (of course) the pandemic. On top of that, social media and a far more polarized political discourse have heightened emotions and detracted from the quality of debate.

Another difference between the ’60s and today is the greater prominence and power of corporations, with businesses now viewed as more competent and ethical than both governments and the media. Employees and consumers are paying more attention to corporations’ policies and practices when deciding where to work and what to buy.[1] And corporate social responsibility is broadly accepted as a legitimate pursuit of public companies, at least so long as there is a reasonable nexus to long-term shareholder value.

All of this raises several questions in the minds of those who think about corporate governance: What does this sea change mean for organizational leaders in terms of addressing social issues, particularly political ones? And what are the best practices for companies considering taking a stand?

Should Organizations and Their Leaders Generally Take a Public Stand?

Given the factors described above, it is becoming something of an expectation for CEOs to issue personal statements or for their companies to issue statements and take action on social, environmental, and political issues. For example, a stunning number of corporations, executives, and others signed the “We Stand for Democracy” statement that appeared on April 14 as double full-page ads in *The New York Times* and *The Wall Street Journal*.[2]

Taking positions on political issues has generated more pushback than position-taking by corporations on social or environmental issues. However, some argue that in an age when every subject is politicized (think of mask-wearing), it is hard to say what is not “political.” Correspondingly, in these fraught times, silence is often construed as a statement. And then there are the more broad-brush assertions—that democracy is good for business and even necessary to preserve capitalism; thus, taking political positions that support democracy is good for corporations and their stakeholders.

There are also some assertions against taking a stand on political issues. “[A]nnouncements on purely political issues will alienate many… employees and customers,” argued Harvey Golub, former American Express Co. chair and CEO, in a *Wall Street Journal* opinion piece.[3] He also believes that there is “no limiting principle” when CEOs comment on issues unrelated to their businesses; when CEOs comment on one

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concern, they open the door to being called on to comment on all social concerns.

And as Home Depot co-founder Ken Langone said in support of the company's cautious statement on voting rights, "If America is about as evenly divided as it appears it is, you're going to piss off one side or the other [of] your customers."[4] (Interestingly, Arthur Blank, another Home Depot co-founder, was a signatory of "We Stand for Democracy.") It is notable that many who oppose CEO and corporate political speech do not seem to oppose corporate political contributions or CEOs publicly endorsing and raising funds for individual candidates for office.

How Can Boards and CEOs Decide Whether Their Organizations Should Speak Out on Specific Issues?

Board members, CEOs, and other company leaders may see key opportunities—or imperatives—to speak out on political and social issues in the coming months and beyond. Board members should help CEOs understand that they should expect to have a discussion with, at least, the leadership of the board before either the CEO or the corporation takes a position on a controversial political issue. That discussion might start with weighing the above arguments for and against taking a position and deciding which they find to be most compelling.

If the company or individual is still considering taking a position after this, the board and CEO might engage in a traditional corporate social responsibility analysis to reach a rational business judgment about whether taking a particular position is to the long-term benefit of shareholders. For controversial issues (political or otherwise), this means netting the costs of blowback against the benefits of speaking out.

Benefits can include positive reactions from important constituencies, such as employees and customers, and avoiding negative reactions that might result from silence. Speaking out responsibly can also burnish a corporation's general reputation. On the other hand, not all constituencies will have the same reactions, and the implications of that should be considered.

To help guide this decision, boards and CEOs would also benefit from a thoughtful consideration of the following questions:

- Is silence a real alternative? That is, will the CEO be asked for his or her view on an analyst call, in an employee town hall meeting or otherwise, and if so, is a "no comment" response viable?
- Can a statement be crafted to take a responsible position in a non-incendiary fashion? (This was the path taken by corporations arguing for voting rights without making a specific attack on the new Georgia voting-related legislation.)
- Is joining a statement by an ad hoc group of companies or a business organization (such as the Business Roundtable) a preferable and feasible alternative to having the company speak out alone?
- What are the plans for the release of the statement both internally and externally? So that the company may speak with one voice and do so effectively, have individuals been designated as the only people authorized to respond to questions and concerns, and are these individuals well prepared to do so?
- If the statement is critical of a specific piece of legislation or articulated governmental policy, does it fairly represent the substance of that legislation or policy?
- Is a statement, without additional action on the issue, going to be enough—or will it expose the company to assertions that it is "all talk"? Are there actions the company can take or existing efforts it can highlight in support of the issue?
- Does the proposed position align with the company's expressed values and culture?

- Are other actions by the company going to be viewed as inconsistent with the statement, exposing the company to being challenged as hypocritical?

- If it is determined that it is not in shareholders' long-term interests for the company to take a position, can the CEO nevertheless speak out personally?

Not every CEO or board will conclude that their corporation should take positions on controversial political issues or other social topics. For those that do, following good governance practices will help ensure that taking a position can be defended as an exercise in appropriate corporate social responsibility.

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1. *https://www.edelman.com/sites/g/files/aatuss191/files/2021-0½021-edelman-trust-barometer.pdf*.

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4. *https://www.wsj.com/articles/with-georgia-voting-law-the-business-of-business-becomes-politics-11618027250*.

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