

Boardroom Perspectives™

August 31, 2018 | 2374

Gender Diversity in Boardrooms Gains Momentum

Taking steps to address board composition for the long term.

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The movement toward greater diversity in the boardroom continues to gain momentum as market and legal forces drive boards to increase their gender and ethnic diversity. Companies are taking steps to address their board composition for the long term.

California proposes mandatory quotas

Proposed legislation in California (SB 826) would institute gender quotas at public companies headquartered in the state. If enacted, the legislative proposal would require each California-headquartered public company to include:

- At least one female director on its board of directors by December 31, 2019
- At least two female directors if the board has five directors, and three female directors for boards of six or more by December 31, 2021

Noncompliance would result in a fine of US\$100,000 in the first year of violation and US\$300,000 each year thereafter until corrected, with a separate US\$100,000 fine for failing to provide required information to the state.

California's proposed legislation may not become law and, even if enacted, may not be enforceable against companies that are not incorporated in California. However, the proposal highlights an international trend that has taken hold among US investors and which has also gained the attention of US boards of directors.

US investors endorse growing global trend

A number of non-US jurisdictions have instituted gender quotas for corporate boards over the last decade. For example, Norway mandates that women generally hold 40% of board seats. Spain, Belgium, France, Italy, and the Netherlands have similar laws. In 2016, Germany — the largest economy to adopt such a requirement — set a 30% quota for women on boards. The UK has adopted non-binding targets, currently set at 33%, for women on boards of directors at FTSE 100 and FTSE 350 companies. India requires public company boards to include at least one woman.

Recently, some US institutional investors have urged greater gender diversity in the boardroom. Last year, State Street Global Advisors adopted a policy to vote against nominating committee chairs of companies whose boards have no female directors and fail to take corrective steps (400 companies in 2017). BlackRock expects, as stated in its proxy voting guidelines, “at least two women directors on every board.” Similarly, CalPERS and CalSTRS advocate for gender and other diversity on boards.

Gender diversity correlates with better performance

Gender diversity correlates with improved corporate performance, according to studies. Companies with three or more women directors in at least four out of five years outperformed those without any women directors in at least four out of five years, with 84% higher return on sales, 60% higher return on invested capital, and 46% higher return on equity. A greater number of women on boards and in senior management roles correlates with higher earnings, higher total shareholder return, and higher excess return. Additionally, boards with a greater number of women had superior valuations on average.*

How are boards improving diversity?

1. Recruiting director candidates using broader networks

Boards are increasingly involving outside search firms to extend their search for new directors, rather than relying on incumbent directors and their existing networks.

2. Expanding board member search criteria

Boards are enlarging their search criteria to ensure a wide pool of women candidates. Searches can include management personnel at smaller or private companies from other complementary industries and from a variety of roles, including finance, law, marketing, product management, or operations.

3. Thinking longer term about board composition and vacancies

Boards are developing forward-thinking plans to address upcoming vacancies that will arise and the skills that the board will require in the medium to long term. Nominating committees are increasingly beginning their search process earlier to find a larger and more diverse pool of talent.

4. Increasing diversity across the enterprise

Boards are focused not only on their own diversity, but also diversity in senior management positions and at every level of the enterprise, reflecting an increased emphasis on the value of gender diversity.

5. Communicating with investors

Boards are communicating to investors about these efforts in their publicity materials, proxy statements, websites, and other media, recognizing the importance that investors and other stakeholders accord to a company's commitment to diversity.

6. Engaging diverse candidates

Above all, boards are increasingly recognizing the need to facilitate meaningful diversity by including women and other diverse directors who are fully engaged and involved as members of the board and the board's committees.



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* Nancy M. Carter and Harvey M. Wagner, "The Bottom Line: Corporate Performance and Women's Representation on Boards (2004–2008)," Catalyst, March 2011, p. 1, www.catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards-20042008.

McKinsey & Company, "Diversity Matters," February 2015, <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>.

Catalyst, "The Bottom Line: Connecting Corporate Performance and Gender Diversity," January 2004, p. 5, <http://www.catalyst.org/knowledge/bottom-line-connecting-corporate-performance-and-gender-diversity>.

Credit Suisse. "The CS Gender 3000: Women in Senior Management." September 2014, p. 5, publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=8128F3C0-99BC-22E6-838E2A5B1E4366DF.

MSCI, "Women on Boards: Global Trends in Gender Diversity on Corporate Boards," November 2015, p. 4, www.msci.com/documents/10199/04b6f646-d638-4878-9c61-4eb91748a82b.