THE WOMAN UP PROJECT

Gender Diversity in Boardrooms Gains Momentum

By Cathy Birkeland

California recently became the first state in the country requiring that women be included on companies' boards of directors when Gov. Jerry Brown signed into law Senate Bill 826, which requires that all public companies headquartered in California have at least one female director on their boards by Dec. 31, 2019. By Dec. 31, 2021, SB 826 requires that California corporations with five directors must have at least two female directors, and corporations with six or more directors will be required to have at least three female directors. While SB 826 may ultimately not be enforceable against companies that are not headquartered in California, it highlights an international trend that has taken hold among U.S. investors and which has also gained the attention of U.S. boards of directors.

A number of non-U.S. jurisdictions have instituted gender quotas for corporate boards over the last decade. For example, Norway mandates that women generally hold 40 percent 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 percent quota for women on boards. The UK has adopted non-binding targets, currently set at 33 percent, 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 U.S. 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."

Results of Institutional Shareholder Services' (ISS) 2018 Governance Principles Survey showed that investors who found the gender diversity issue problematic grew to 80 percent in 2018, up from 69 percent in 2017. The survey results also found that "a higher number of both investors and non-investors responded that a lack of gender diversity on corporate boards would indicate a problem in the board recruitment process."

In response to shareholders' growing concerns, ISS has proposed policy changes stating that for companies in the Russell 3000 and S&P 1500, effective for meetings on or after Feb. 1, 2020, ISS would generally recommend voting against nominating or governance committee chairs at companies where there are no female directors on the board. The ISS proposal states that there may be some mitigating factors, including: a firm commitment stated in the proxy statement and/or other SEC filings to appoint at least one female director in the near-term and before the next annual meeting; the presence of at least one female director on the board at the immediate preceding annual meeting; and/or any other compelling factors considered relevant on a case-by-case basis.

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 percent higher return on sales, 60 percent higher return on invested capital, and 46 percent 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.*

Women hold approximately 20 percent of the board seats of the nearly 150 publicly-traded companies based in the Chicago area, and approximately 13 percent of those companies do not have a female board member. Studies predict that it will take 40 or 50 years to achieve gender parity if something is not done proactively.

Companies increasing the diversity of their boards will be better prepared to respond to the demands of their investors, shareholders, and constituents. Given these trends, companies may consider taking the following steps now to address their board composition for the long term:

• Recruit director candidates using broader networks. Consider working with search agencies that cast a broad net.

• Expand board member search criteria. For example, consider individuals in management roles at private or smaller public companies and consider individuals in a variety of roles, including finance, law, marketing, product management, or operations, as well as in complementary industries.

• Rather than considering candidates for board vacancies as they arise, develop long-term plans regarding the next few vacancies that will arise and what skills the board will need in the medium to long term.

• Increase female representation not only on the board, but throughout the organization, including in senior management positions, to increase the appreciation for gender diversity at all levels of the organization.

• Communicate to investors the company's efforts to enhance diversity on its board and within its organization through publicity materials, proxy statements, websites and other media.

• Ensure that diverse candidates are fully engaged and involved in the board and committee process in order to elicit the greatest benefit from diverse views.

Cathy Birkeland is the Office Managing Partner of Latham & Watkins in Chicago and former Global Co-Chair of the firm's Capital Markets Practice. Her practice focuses on capital markets transactions, public company representation, corporate governance, and advising boards of directors on corporate matters. She has served on Latham's Global Diversity Leadership Committee and is a founding partner of the firm's annual Women's Leadership Academy.

* 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.