Cooley

Board Diversity: Policy Updates and Considerations for Proxy Season

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Public companies find themselves rethinking disclosures relating to the diversity of their board and their director recruitment practices as they head into proxy season, given recent developments – including the US Court of Appeals for the Fifth Circuit's decision striking down Nasdaq's board diversity rules, the current administration's presidential executive orders on diversity, equity and inclusion (DEI) initiatives, and changes to proxy advisor and institutional investor policies on board diversity.

Companies will need to make decisions about proxy statement disclosures amid ongoing uncertainty (see, e.g., this **February 25, 2025, Cooley alert** discussing the US District Court for the District of Maryland pausing the enforcement of certain key provisions of the DEI executive orders) and while balancing competing stakeholder priorities. Political and legal developments, including executive orders, litigation and activist pressure campaigns have been consequential, and this environment has resulted in changes to proxy advisor and some institutional investor policies. This alert aims to provide an overview of updated board diversity voting policies of proxy advisory firms and key institutional investors and offer guidance to companies as they review their board diversity disclosures and practices in the current environment.

> As a sign of the quick pace of developments in this space, following the initial publication of this alert, on February 28, State Street Global Advisors published its updated Global Proxy Voting and Engagement Policy, which removes prior quantitative diversity requirements from its board composition policy. In addition, as previewed, on March 4, Glass Lewis also published new guidance on the application of its policies. This alert has been updated to reflect these changes.

Proxy advisory firms' policies

Institutional Shareholder Services (ISS)

On February 11, 2025, **ISS announced** that, for shareholder meeting reports published on or after February 25, 2025, it will no longer consider board gender and racial and/or ethnic diversity when making vote recommendations with respect to the election or re-election of directors at US companies under its benchmark and specialty policies. Before this policy change, ISS generally recommended voting against the nominating committee chair of a board with no women members or a Russell 3000 or S&P 1500 board with no apparent racially or ethnically diverse members.

Glass Lewis

On March 4, 2025, Glass Lewis sent a memo to clients providing an update on its diversity-related proxy voting policies. While an earlier Glass Lewis memo from February 19 previewed that Glass Lewis was considering implementing changes to its director diversity guidelines, the new memo provides that Glass Lewis will continue to apply its existing policies for the 2025 proxy season. However, Glass Lewis will now provide a "For Your Attention" flag on any proxy report with a negative diversity-related director recommendation, "pointing clients to a supporting rationale they can leverage if their preference is to vote differently from the recommendation." Under Glass Lewis's existing board diversity policies:

- For Russell 3000 companies, Glass Lewis generally recommends voting against the nominating committee chair of a board that is not at least 30% gender diverse or all nominating committee members of a board with no gender diverse directors. For companies outside of the Russell 3000 index, Glass Lewis will recommend voting against the nominating committee chair if there are no gender diverse directors.
- For Russell 1000 companies, Glass Lewis generally recommends voting against the nominating committee chair of a board with fewer than one director from an underrepresented community.

Major institutional investors' policies

BlackRock

BlackRock's updated policy for 2025 removes previous numerical diversity targets (boards should aspire to at least 30% diversity of membership, and S&P 500 boards should have at least two women directors and a director from an underrepresented group). The 2025 policy also removes BlackRock's prior disclosure-based voting policy (i.e., BlackRock previously would consider taking voting action if a company did not adequately explain its approach to board diversity). Nonetheless, the 2025 policy provides that BlackRock may still consider taking voting action if an S&P 500 board is an outlier relative to market norms, noting that 98% of S&P 500 companies have boards with at least 30% diversity.

Vanguard

Similarly, Vanguard's updated policy for 2025 includes a significant rewording and softening of policies on board composition and diversity. The 2025 policy removes prior language providing for negative votes against nominating committee chairs for insufficient action to achieve "appropriately representative" board composition, as well as language stating that boards should, "at a minimum, represent a diversity of personal characteristics, inclusive of at least diversity in gender, race, and ethnicity on the board." Nonetheless, the 2025 policy continues to emphasize the importance of "cognitive diversity" to effective boards, resulting from an appropriate breadth of skills and experience, as well as a diversity of personal characteristics, such as age, gender or race/ethnicity. In addition, the 2025 policy provides for potential negative votes against nominating committee chairs if board composition or related disclosure is inconsistent with relevant "market-specific governance frameworks or market norms.

State Street

State Street's updated policy for 2025 removes all previous numerical diversity targets from its board composition policy. State Street's prior policy provided for potential negative votes against the nominating committee chair of a Russell 3000 board with less than 30% women directors or an S&P 500 board without at least one director from an underrepresented racial or ethnic community, as well as potential negative votes against all nominating committee members of a board that has had no women directors for three consecutive years. In addition to removing these numerical diversity targets, the 2025 policy goes further than BlackRock and Vanguard by not including explicit language indicating that State Street may still take negative voting action against market outliers. Instead, the 2025 policy provides that nominating committees are best placed to determine the most effective board composition, while still encouraging companies to maintain "sufficient levels" of diverse experiences and perspectives in the boardroom.

To date, among the top 20 institutional investors, as measured by total assets under management,[1] no other US-based institutional investors have published their policies for 2025 or announced anticipated changes to their voting policies on board diversity.[2] However, a few larger non-US institutional investors have actually announced policy changes for 2025 that include more expansive or stringent diversity standards, including Allianz (extending its policy requiring at least 30% gender diversity to small- and mid-cap companies), UBS (now requiring that boards have at least 40% diversity across gender and ethnicity dimensions), and BNP Paribas (increasing its gender diversity requirement to 40% women directors from 35%). Companies should continue to monitor their top investors' voting policies for any relevant updates.

Adapting to the evolving landscape

In response to the changing landscape, companies should consider taking the following actions:

- **Review public disclosure of board diversity data:** Consider whether to continue providing individualized director diversity data in the proxy statement or whether aggregate diversity disclosure is sufficient to satisfy the needs of various stakeholders. Following the Nasdaq decision, the broader political environment, and ISS, BlackRock and Vanguard changes, many companies may feel less compelled to have granular board diversity disclosure in the form of a matrix or otherwise. However, the continued focus on board diversity from some key stakeholders means that aggregate diversity disclosure may make sense for many companies.
- **Review board recruitment processes and update governance documents and disclosures as needed:** Companies and their boards should review the role of race, gender and other demographic criteria in their director recruitment processes, given the broader focus of the current administration on removing diversity-focused initiatives, including recent executive orders, as well as litigation developments and public pressure campaigns. "Rooney Rule" (typically a rule that requires one or more "diverse" candidates are considered on the interview slate) policies especially may draw scrutiny, but so may more general statements regarding the role of race and gender in the director recruitment process depending upon the current administration's interpretation of what constitutes "illegal DEI." Companies and their boards should ensure that they are aligned in terms of risk tolerance with respect to their current practices, and that they describe lawful recruitment practices accurately in their proxy statements, governance documents and other public disclosures. Board dynamics, stakeholder expectations, federal government contractor status and other factors may inform a company's ongoing assessment of risk in this area as events continue to unfold.
- **Stay informed:** Companies should stay updated on ongoing legal challenges and regulatory changes involving diversity programs and initiatives that could impact the board recruitment process, and continue to evaluate current practices and disclosures from both a risk and compliance lens.

Notes

1. This includes the following: **US-based** – Fidelity; J.P. Morgan; Goldman Sachs; Capital Group; BNY Mellon; Invesco; Franklin Templeton; Prudential Financial; T. Rowe Price; Northern Trust; and Morgan Stanley. **Non-US-based** – UBS; Allianz; Amundi; Legal & General; BNP Paribas; and Natixis.
2. Notably, however, in February 2025, as a result of legal developments related to board diversity requirements, Goldman Sachs cancelled its four-year-old formal board diversity policy, which required initial public offering (IPO) clients to have at least two diverse board members.

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