

# Director Tip Sheet:

## DISCUSSING BOARDROOM DIVERSITY WITH MAJOR SHAREHOLDERS

One-quarter of mid-cap companies and 29 percent of large-cap companies who had a representative from their board meet with institutional investors in the prior 12 months reported that board composition issues like director skill sets and diversity were discussed in that director-investor meeting, according to the *2017–2018 NACD Public Company Governance Survey*.<sup>1</sup>

Institutional investors' recent signals to boards indicate a stronger-than-ever focus on the issue of boardroom diversity. The largest asset manager in the world, BlackRock Inc., has indicated that it will likely vote against boards that fail to make progress on diversity, if the board doesn't have a "specific and credible explanation" as to why they have failed to make progress.<sup>2</sup> Thomas DiNapoli, comptroller for the state of New York, said in a press release that the state's \$209.1 billion public pension fund will vote against reelection of all directors on boards that have no women and will vote against reelecting governance committee members at companies that have only one woman on the board.<sup>3</sup>

Meanwhile, proxy advisor Institutional Shareholders Services in 2018 updated its Socially Responsible Investing and Catholic Faith-Based policies to recommend voting against incumbent chairs of governance committees whose boards are not at least 30 percent diverse, with at least one ethnic minority and one woman. Just about one-quarter of boards in the Russell 3000 meet that 30 percent target, so there could be a significant uptick in recommendations made against incumbent governance committee chairs.<sup>4</sup> Proxy advisory firm Glass Lewis has also indicated it will generally recommend voting against the nominating committee chair of a board whose members are all men.<sup>5</sup>

(See NACD's *Investor Perspectives on Board Diversity* for more on which major investors and proxy advisory firms have called on boards to prioritize boardroom diversity, and how they expect boards to do so.)

<sup>1</sup> NACD, *2017–2018 NACD Public Company Governance Survey* (Arlington, VA: NACD, 2017), p. 39.

<sup>2</sup> Emily Chasan and David Hellier, "Big Investors Push Harder for More Women Directors," Bloomberg, Apr. 19, 2018.

<sup>3</sup> Office of the New York State Comptroller press release, "DiNapoli: State Pension Fund Will Vote Against Board Members at Corporations with no Women Directors," Mar. 21, 2018.

<sup>4</sup> Davis Polk & Wardwell LLP, Ning Chiu, "More Investors to Vote Against Directors for Lack of Board Diversity, and Specialty ISS Policies Push for 30% Diverse Representation," *Briefing: Governance* (blog), Mar. 21, 2018.

<sup>5</sup> Glass Lewis, *2018 Proxy Paper Guidelines: An Overview of the Glass Lewis Approach to Proxy Advice* (San Francisco, CA: Glass Lewis, 2017), p. 1.

This tip sheet, created with input from the investor community, offers guidance on the following:

- Who an investor representative might contact to discuss boardroom diversity
- The questions investors may discuss with board leadership and/or management related to boardroom diversity
- Tips from NACD and/or the investor community to keep in mind when considering how your board might provide an answer
- A section where you may write your preparation notes prior to your investor-director discussion

## Requested Discussion Participants

**Who might an investor representative contact to discuss boardroom diversity?**

- Whoever developed the proxy statement (usually the in-house counsel or a representative from the company's investor relations department)
- The nominating and governance committee chair
- Another member of the nominating and governance committee who is independent, if the chair of that committee is not an independent director

## Diversity-Related Discussion Topics

### Board's Demographic Information

KEY INVESTOR QUESTION

Does the company disclose demographic attributes of the board (specifically, gender and racial/ethnic background)? If so, how?

**Tip:** A representative from one of the largest public pension funds noted that some companies she had spoken with about board diversity choose to share this demographic information in aggregate, offering the demographic makeup of the board as a whole, rather than listing the gender and racial/ethnic background of each individual director. She noted that the aggregate data were, at the time, deemed sufficient.

PREPARATION NOTES (click or tap in box to type)

## Board Evaluation Practices

KEY INVESTOR QUESTION

**Are evaluations conducted at the full-board, committee, and individual-director levels?**

**Tip:** Leading practice is to conduct all three of these evaluation types. Data from the *2017–2018 NACD Public Company Governance Survey* show that 95 percent of boards conduct full-board evaluations, 89 percent conduct committee evaluations, and 60 percent conduct individual-director evaluations.<sup>6</sup>

PREPARATION NOTES (click or tap in box to type)

KEY INVESTOR QUESTION

**Are evaluations tied to the director renomination process? If so, how?**

**Tip:** The *Report of the NACD Blue Ribbon Commission on the Strategic-Asset Board* recommends that “director renominations should not be a default decision, but an annual consideration based on a number of factors, including an assessment of current and future skill sets and leadership styles that are needed on the board.”<sup>7</sup>

PREPARATION NOTES (click or tap in box to type)

<sup>6</sup> NACD, *2017–2018 NACD Public Company Governance Survey* (Arlington, VA: NACD, 2017), p. 37.

<sup>7</sup> NACD, *Report of the NACD Blue Ribbon Commission on the Strategic-Asset Board* (Washington, DC: NACD, 2016), p. 14.

KEY INVESTOR QUESTION

**What is the frequency with which these evaluations are conducted?**

**Tip:** Many investors prefer an annual evaluation rhythm for full-board, committee, and individual-director evaluations. Companies listed on the New York Stock Exchange (NYSE) are required to evaluate key committees annually. NYSE also recommends that an evaluation of the full board be conducted “at least annually.” NASDAQ does not have specific requirements related to board or key-committee evaluation frequency. NACD recommends that evaluations of individual directors be conducted at least once every two years, and that a qualified third party be engaged periodically during the evaluation process to provide a neutral perspective.<sup>8</sup>

PREPARATION NOTES (click or tap in box to type)

**Board Skill Set Matrix**

KEY INVESTOR QUESTION

**How do the skills of each director—and the board as a whole—clearly map back to the strategic needs of the company?**

**Tip:** Over the years, the board’s role in strategy development has evolved away from the old review-and-concur mode (in which the board’s role was to be only passively involved in strategy, reviewing and approving management’s strategic plan) to a role of earlier and deeper involvement.<sup>9</sup>

PREPARATION NOTES (click or tap in box to type)

<sup>8</sup> NACD, *Report of the NACD Blue Ribbon Commission on the Strategic-Asset Board* (Washington, DC: NACD, 2016), p. 23.

<sup>9</sup> For more information on the board’s role as it relates to the company’s strategy, review the *Report of the NACD Blue Ribbon Commission on Strategy Development* (Washington, DC: NACD, 2014).

### Matrix for Director-Investor Conversations

The New York City Comptroller's Office—which oversees the New York State Common Retirement Fund, the third-largest public pension fund in the United States, with \$209.1 billion in assets—last year published a [sample board skill set matrix](#) that includes a section in which boards can indicate not only the skills and experiences of directors, but also several demographic attributes:

- Board tenure
- Sexual orientation (voluntary)
- Gender
- Age
- Race/ethnicity

The purpose of the tool, according to the comptroller's office, is to help boards and investors consider the experience and backgrounds of sitting directors and director nominees.<sup>10</sup> (See [page 7](#) for the matrix.)

The comptroller's office also produced a compendium of "best practices" showcasing companies' board matrices that incorporate board demographic diversity: "[Best Practices](#)" in [Board Matrices](#).<sup>11</sup>

### Renomination

#### KEY INVESTOR QUESTION

**Is board leadership and/or the nominating and governance committee chair willing to have difficult conversations with directors whose skills and experiences may no longer be the best match for the needs of the enterprise moving forward, or with those who are no longer capable of and available for board service?**

**Tip:** "On many boards, the nominating and governance committee waits for directors to notify the committee if they plan to leave [before reaching retirement age]," shared one NACD Blue Ribbon commissioner in 2016. "We need to shift the expectation from 'serve as long as you want' to 'serve as long as you are needed.'"<sup>12</sup> This "shift" includes setting appropriate tenure expectations with any directors new to the board, as well as having what can be difficult conversations with longer-tenured directors if their experiences are no longer additive to the board.

PREPARATION NOTES (click or tap in box to type)

<sup>10</sup> New York City Comptroller's Office press release, "[Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign—Version 2.0](#)," Sept. 8, 2017.

<sup>11</sup> New York City Comptroller's Office, "[Best Practices](#)" in [Board Matrices](#) (New York, NY: New York City Comptroller's Office, 2018).

<sup>12</sup> NACD, [Report of the NACD Blue Ribbon Commission on the Strategic-Asset Board](#) (Washington, DC: NACD, 2016), p. 14.

## New Director Recruitment

### KEY INVESTOR QUESTION

Has the board incorporated—or committed to incorporating—into its new-director-search process any tactics for identifying and/or interviewing women and/or people of diverse racial or ethnic backgrounds? If so, how has the board made that commitment explicit in its proxy disclosures?

**Tip:** The Midwest Investors Diversity Initiative—a coalition of institutional investors with approximately \$300 billion worth of assets in management<sup>13</sup> and a dedication to increasing diversity on corporate boards—offers a set of examples of search-policy language that boards have adopted to demonstrate a commitment to boardroom diversity. Much of the guidance included in the coalition’s *Examples of Diverse Candidate Search Language*<sup>14</sup> document draws from principles laid out in the National Football League’s Rooney Rule, which requires the sports league to interview minority candidates for each coach or top manager job that becomes available.

PREPARATION NOTES (click or tap in box to type)

<sup>13</sup> Midwest Investors Diversity Initiative, *Diverse Search Company Toolkit*, p. 9.

<sup>14</sup> Midwest Investors Diversity Initiative, *Examples of Diverse Candidate Search Language* (Detroit, MI: MIDI, 2018).

## Sample Board Skill Set Matrix Incorporating Demographic Information

[Insert Your Organization Name]

### Board Matrix

This sample matrix can help boards and investors assess the level of experience each company director/nominee has in various areas, as well as in the areas of gender, sexual orientation and racial/ethnic diversity, age and tenure.

	Board of Directors							
	Name 1	Name 2	Name 3	Name 4	Name 5	Name 6	Name 7	Name 8
<b>Skills &amp; Experience</b>								
Board of Directors Experience	X			X				
[Specific] Industry Experience		X					X	
CEO/Business Head	X			X				
International	X					X	X	
Human Capital Management/Compensation			X				X	
Finance/Capital Allocation		X			X		X	
Financial literacy/Accounting (Audit Committee Financial Expert or "ACFE")			X			X		
Government/Public Policy	X			X				
Marketing/Sales			X		X			
Environmental Science/Policy/Regulation						X		
Academia/Education								
Risk Management				X				
Corporate Governance		X						X
Technology/Systems					X			X
Business Ethics			X			X		X
Real Estate		X			X			X
[Custom 1]								
<b>Demographic Background</b>								
<b>Board Tenure</b>								
Years	15	15	10	8	7	7	4	1
<b>Sexual Orientation (voluntary)</b>								
LGBTQ	X							
<b>Gender</b>								
Male		X	X	X	X	X		X
Female	X						X	
Non-Binary								
<b>Age</b>								
Years old	60	63	65	62	60	67	55	47
<b>Race/Ethnicity</b>								
African American/Black	X							
Asian, Hawaiian, or Pacific Islander								
White/Caucasian		X	X	X		X	X	X
Hispanic/Latino					X			
Native American								
Other								

SOURCE: New York City Comptroller's Office press release, "Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign—Version 2.0," Sept. 8, 2017. Used with permission.



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NACD, in collaboration with Deloitte, has created NACD NXT, a multiyear initiative focused on helping directors and boards understand how to leverage the power of diversity and inclusion to create long-term value.

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