Akin

Top 10 Topics for Directors in 2017: Board Composition

Jan 12, 2017

Reading Time : **2 min**

By: Kerry E. Berchem

Focused reassessment of the underlying composition and skills of the board, including review and analysis of board tenure and diversity of personal and educational background, career expertise, gender, age, race, political affiliation and otherwise, is paramount to the promotion of fresh, dynamic and engaged perspectives in the boardroom. In addition, continuity of successful board dynamics must be considered as well. Arbitrary and inflexible term and age limits are not perfect solutions to stave off stagnation, as they can force the retirement of valuable directors and inadvertently negatively disrupt board dynamics.

However, given that in 2015, the average age of all S&P 500 independent directors was 63.1, with nearly half of all S&P 500 boards having an average age between 60 and 63 and average tenures of 8.5 years, it is no wonder that board refreshment is a hot topic, particularly when one considers that the average age of top hedge fund managers is 51.

Companies are turning to more robust director evaluations and nomination processes and adding more language to proxies that include skills matrices, but are these processes sufficient to detect problems or implement corrective action, if deemed necessary? Skin can be thin, and asking a board member to step down can be a difficult conversation. If not handled with care and strength, it can do more harm than good to the working dynamics and collegiality of the board.

Notably, neither Institutional Shareholder Services nor Glass Lewis has adopted favorable stances on term limits. Indeed, Glass Lewis, in its 2016 proxy guidelines, states that there is no evidence of a connection “between either length of tenure or age and director performance.” However, certain institutional investors, evidently concerned with the question of whether board members are adequately monitoring themselves, either through adoption of hard-and-fast tenure rules or through an effective evaluation process, have adopted their own explicit director tenure and succession requirements that, if not satisfied, may result in votes against long-tenured directors and/ or governance committees. Therefore, it is important for boards and their counsel to know who the company's significant investors are, determine the import of such investor proposals and proactively address any deviations from such policies, either through compliance conducted by the alteration of board composition or explanation in the proxy. A well-thought-out "comply-or-explain" approach may assist in avoiding votes against not only long-tenured or mature directors, but also the governance committee chair and lead director. Directors and counsel who ignore the movement toward refreshment do so at their own peril.

Each individual who sits on a board owes it to the shareholders for whom he or she works to make refreshment and diversity part of an ongoing discussion, where issues relating to tenure and diversity of perspective are raised and addressed not less than annually and where hurt feelings, if not eliminated, are, at least, mitigated and not disruptive. Active and engaged boards reassess and scrutinize strategic plans year after year. No good strategic plan remains stagnant, nor should any board.

View the full report here.

Categories

Corporate Governance

Shareholder Activism

Board Governance

Compliance

York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.