



## ISS Attempts to Legislate Common Sense: A Targeted Policy Aims to Introduce Gender Diversity to the Last All-Male Public Company Boards

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The Common Sense Policy effectively would legislate a new approach to an existing and ongoing problem that denies single-sex boards the ability to take into account input that a reasonably prudent person would arguably want or need to make an informed decision. By not enlisting the views of any member of the United States population that both grew up as female and makes up 51% of our citizenry, all-male boards arguably risk breaching their fiduciary duty of care on a regular basis, particularly when one takes into account the current cultural, political and economic climate.

The ISS survey asked respondents to identify whether having no female directors serve on a public company board is problematic. Of the respondents, 45% of investors indicated their belief that it is problematic for no female directors to be serving on a public company board and 75% of investors believe that shareholders should consider supporting a shareholder proposal aimed at increasing diversity.

Investors, as well as regulators, clearly are increasingly aware of the disparity, particularly in light of [recent studies](#) linking higher levels of gender diversity to improved results in companies' talent retention, innovation, reputation and financial performance. Indeed, United States regulators have taken a variety of approaches to correcting the gender gap in board representation. The SEC's disclosure-based regime includes a [rule](#) requiring companies to publicly disclose whether they consider diversity in identifying and evaluating director nominees. [California](#) recently joined [Norway](#), [France](#), [Belgium](#) and [Italy](#) in imposing a quota on public companies and levying fines on companies that fail to comply.

Gender diversity inclusiveness has been achieved on many United States company boards, but the movement has not been uniform across industry or market cap. Catalyst reported that women held only 20.2% of board seats of Fortune 500 companies as recently as 2016, in spite of representing 46.8% of the labor force and 51.5% of management, professional and related positions. In 2017, a space between 87% and of the companies in the S&P 1500 and 84% of the Russell 3000 Index had at least one woman on their board.

The Common Sense Policy is designed to further the efforts toward board inclusiveness by holding someone accountable: namely, the chairs of the nominating committees. This targeted approach, which ISS similarly has implemented in the case where a chairman is also the chief executive officer and there is no lead director, may prove to be a useful tool, although in a more perfect world, would be unnecessary.

Alexander Hamilton, in Federalist No. 1, states, among other things: “It is frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.”

Boards would better serve their constituents by reviewing economic and other data that supports gender diversity without the potentially heavy hand of ISS proxy advisory legislation via a Common Sense Policy. However, to date, all too many boards have continued to utilize convenience and continuity of existing membership as an excuse for ignoring what is both ideologically right and statistically best for shareholders.

ISS is currently seeking feedback on the design of its Common Sense Policy. We encourage our clients and readers to consider responding and sharing their own views about the best way to improve diversity among corporate leadership.

## Categories

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