Pearl Meyer

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Navigating 11th Hour Guidance on Board DE&I

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Over the past few weeks, the landscape of board diversity, equity, and inclusion (DE&I) has been in a state of flux, driven by evolving expectations from proxy advisors and institutional investors that appear to be driven by the deluge of new Executive Orders, legal challenges to those Executive Orders, and shifting rules from the Department of Justice (DOJ). Here, we focus on proxy advisor and institutional investor policy changes and examine their implications for corporate governance and related disclosures in the immediate proxy season.

Changing Expectations from Proxy Advisors: Institutional Shareholder Services (ISS) and Glass Lewis (GL) Split on Positions

Proxy advisors, such as ISS and Glass Lewis, play a critical role in shaping corporate governance by providing voting recommendations to shareholders. In the past few years, their stance on board diversity had become increasingly stringent.

Previously, ISS generally recommended:

- Voting against the nominating committee chair (and possibly other directors) of a board with no women members; and
- Voting against the nominating committee chair (and possibly other directors) of a Russell 3000 or S&P 1500 board with no apparent racially or ethnically diverse members.

On February 11, 2025, ISS announced that for proxies filed on or after February 25th, it would 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.

Leading up to 2025, GL had similarly provided multiple pages of commentary on board diversity in its US Policies Guidelines. Positions included (subject to state law):

- For Russell 3000 companies, generally recommend against the chair of the nominating committee of a board that is not at least 30% gender-diverse or all members of the nominating committee with no gender-diverse directors;
- For non-Russell 3000 companies, generally recommend against the nominating committee chair with no gender-diverse directors; and
- For Russell 1000 companies, generally recommend against the chair of the nominating committee of a board with fewer than one director from an underrepresented community.

On February 19, 2025, GL sent a memo to clients indicating that while it believes that diversity contributes to improved company performance and long-term shareholder value, given the position of the current US Administration, it could change course. GL punted any concrete guidance pending review of new Department of Justice guidance. In a somewhat surprising move, on March 4 GL released a statement that it would largely revert to its original policies on diversity guidance with the nuance that when it recommends a vote against a director related to diversity it will also flag information that could support an alternative vote by the client.

Institutional Investors' Influence

Highly influential institutional investors, including BlackRock, Vanguard, and State Street Global Advisors, also wield considerable impact over corporate policies due to their substantial shareholdings. Again, leading up to this year, these investors had heightened their focus on board diversity, recognizing its correlation with improved financial performance and better decision-making. In 2025, all three organizations softened their DE&I language and removed objective thresholds.

BlackRock's Investment Stewardship for 2025 removed fixed diversity targets (e.g., 30% of directors being diverse with at least two female directors and one director from an unrepresented group) and prior disclosure-based voting policy (e.g., BlackRock previously would consider taking voting action if a company did not adequately explain its approach to board diversity). Instead, the 2025 policy now offers more abstract guidance: BlackRock may vote on a case-by-case basis against members of the nominating/governance committee of an S&P 500 company if the board is an outlier relative to market norms. No definition of "outlier" is provided, although the commentary states that 98% of S&P 500 companies have boards with at least 30% diversity.

State Street's Global Proxy Voting and Engagement Policy for 2025 follows similar suit. In previous years, State Street had expected boards of companies in Russell 3000 to be 30% female and S&P 500 companies to have at least one racial or ethnic minority director. It also provided for potential negative votes against all nominating committee members of a board that has had no women directors for three consecutive years. In the newly-updated policy, these targets are no longer included. The 2025 policy now offers high level position statements indicating State Street's preference for a diversity of backgrounds, experiences, and perspectives, which may include a range of characteristics such as skills, gender, race, ethnicity, and age. It also seems to defer to nominating committees to be in the best place to make this determination.

Vanguard's Proxy Voting Policy for 2025 also removed more concrete diversity targets. The policy now emphasizes 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. The 2025 policy does suggest a negative vote against the nomination/governance committee chair if, based on research and/or engagement, a company's board composition and/or related disclosure is inconsistent with relevant market-specific governance frameworks or market norms.

Conclusion

The pursuit of board diversity has been an evolving, complex, and dynamic endeavor, influenced by myriad factors including proxy advisors' guidelines, institutional investors' expectations, recent Executive Orders and evolving positions of the Department of Justice, and legal actions.

While legal compliance is paramount, boards should continue to ask questions as to the most effective composition of their boards for the future. They should also be carefully reviewing disclosure around the level of detail provided with respect to board diversity. These actions should be carefully considered on a strategic level regardless of proxy advisor and institutional investor guidance.

About the Author

Deborah Lifshey is a managing director at Pearl Meyer, where she specializes in advising clients on compensation matters from a legal perspective including securities disclosure, taxation and corporate governance issues, negotiation contracts, and reasonableness opinion letters.

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