

The New York City Comptroller's Office Continues Focus on Board Matrices and Enhanced Disclosures on Board Recruitment and Board Evaluations

September 5, 2018 | Client Update | 3-minute read

The Office of the New York City Comptroller Scott M. Stringer (NYC Comptroller), as part of the Boardroom Accountability Project 2.0 initiative, has [published examples](#) of “best practices” in board matrices. The matrices include companies that have disclosed, in chart form, individual director qualifications and either (a) individual self-identification of director gender and race/ethnicity or (b) aggregate board self-identification of director gender and race/ethnicity.

These matrices were the outcome of letters sent in September 2017 to more than 150 companies that are part of the “focus list.” NYC Comptroller sought to have companies provide, in a snapshot, not only the skills and attributes of each director, but also information about the board’s gender and racial/ethnic diversity, so that investors would not have to “make assumptions about how their directors self-identify based on photographs or the spelling of their names.” As we [previously reported](#), 80% of companies responded.

Follow-up emails have been sent again to those companies in recent weeks, renewing requests for disclosure of an individual director-specific matrix, including either specifically by director or on a board-aggregate level information about the gender and race/ethnicity composition of the board. NYC Comptroller believes this is important “to easily understand how the attributes fit together to demonstrate how each board feels that it is fully competent to fulfill its oversight responsibilities.”

According to Rhonda Brauer, Director of Corporate Engagement, the latest correspondence sent to the companies from NYC Comptroller reflect a broader interest in board refreshment, as they also include examples of diverse candidate search language, such as commitments to implement the Rooney Rule in director candidate pools or similar endeavors to ensure that women and minorities are considered when adding to director slates. This interest in having companies more clearly disclose their undertakings may be the outgrowth of investor discontent with the fact that, while they continue to hear from companies that they are interested in improving the diversity composition of their boards, the oft-cited [GAO statistics](#) from 2016 show it may take four decades to reach parity at the current rate, and just at the S&P 1500.

The communication from NYC Comptroller also included examples of several companies that have disclosed a willingness to have a “hard conversation” if a board member may no longer have the availability or otherwise to contribute effectively to the board. Brauer acknowledges that this is likely to be a fairly rare occurrence, but may at times be necessary.

While the board matrices have perhaps dominated the public discourse about the Boardroom Accountability Project 2.0, Brauer stated that it is clear that disclosure of pledges to seek diverse candidates and the efforts to make board evaluations more meaningful by including candid feedback on director contributions are just as important to the asset owner.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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