

CII Analysis of Board Evaluation Disclosure

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CII has published an [update](#) to its analysis of disclosure on board evaluations in proxy statements, highlighting as “Seven Indicators of Strength” a wish list of information.

The report contains multiple qualifications and statements designed to reassure companies, including that they are not expected to reveal any specific details about the results of the evaluations, but instead the disclosure should focus on the process for continued improvement. In addition, the seven benchmarks selected in the report are not intended to be prescriptive, as they are observations of what CII believes investors find to be useful information based on CII's review of the proxy statements of more than “100 prominent companies”.

Ten companies are specifically identified in the report as examples, and again, CII is careful to note that these companies are not being singled out as part of a “top 10” list or intended to mean that they are the only companies that have comprehensive disclosure, but rather, the examples should serve as a point of reference.

Evaluation of board, committees and individual directors indicate multiple levels of review. Disclosure could convey that that the process may be different across the levels. For example, board and committee evaluations could involve questionnaires, while individual reviews may be conducted by interviews.

Peer review. Peer reviews as part of individual director assessments should at least be considered, even if ultimately not incorporated into the process.

Timing and Format. Disclosure is expected to include how the board sets the timing of evaluations and determine the best format. The timing of evaluations is usually an annual formal process, although informal discussions or feedback from directors may be solicited throughout the year. The format could include written questionnaires, interviews, group discussions or the use of third parties.

Follow-Through. Disclosure of examples of specific actions taken and changes made internally in response to evaluations, without revealing any confidential or proprietary information, is considered helpful. For example, the responses to a board evaluation may enhance the processes around board materials.

Succession planning for the board. The evaluation process should include discussions of the ongoing attention to board composition, whether director skill sets continue to meet established board criteria and board refreshment and recruitment processes.

Independent director leadership. Explain how the board leaders, whether an executive chair, independent chair or lead independent director and the committee chairs help facilitate board, committee and individual director evaluations. For example, the chair of the nominating and governance committee may play a role in structuring the process or the lead independent director may solicit individual director feedback.

Use of third parties and technology. CII recognizes that the use of third parties may not be appropriate for every company, especially every year, but believes disclosure should indicate whether boards considered the benefits of using third parties or technology platforms to improve the process.

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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