

CII Focuses on Director Tenure and Universal Proxy Ballots

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Director tenure has come under increasing focus, as indicated by CII's new policies focused on board evaluation of tenure. There is no presumption that any specific term length is problematic or that there should be a stated term limit, but rather, CII encourages boards to weigh whether "a seasoned director should no longer be considered independent." Twenty-six percent of directors at Russell 3000 companies have more than 10 years of service and 14% have more than 15 years.

CII notes that a nonbinding approach is used in Europe, where the European Commission advises that nonexecutive directors serve no more than 12 years and directors with more than 9 years of service in the U.K. are deemed nonindependent, unless the company can explain otherwise.

In addition, the organization believes that extended tenure results in less turnover and opportunity for "fresh perspectives." They cite to a recent study that found that S&P 500 boards acquired fewer new directors in 2012 than in any year since 2001, and a corporate director survey in which more than half indicated their boards had no new directors in the last year.

CII's new policies also endorse universal proxy ballots for proxy contests which would allow shareholders to "mix and match" the company's nominees and the dissident's nominees on one ballot without attending the annual meeting or making arrangements through a vote processor. They acknowledge that SEC rules would need to be changed before such a concept could be implemented.

In July, the SEC's Investor Advisory Committee adopted recommendations that the Commission explore relaxing the bona fide nominee rule to provide proxy contestants with the option to use universal ballots in connection with short slate nominations.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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