

State Street Urges Companies to Focus on Independent Board Leadership and Provides Detailed Guidelines on Structure and Responsibilities

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Strong independent leadership will be a key focus of State Street's 2016 corporate governance engagement program, according to [a letter](#) that the investor sent to board members.

All companies do not need to divide the CEO and Chair roles to obtain independent board leadership, State Street noted, since separating the positions does not always guarantee independence but rather, “[a]s is often the case with simple solutions, it may make some investors feel better.”

But the investor is concerned that 23% of S&P 500 companies and 34% of the Russell 3000 do not have either an independent chair or an independent lead director. It is looking to confirm that company guidelines and procedures are in place to ensure such leadership, with a clear articulation of the roles and responsibilities for the independent board leader.

The letter includes a set of detailed guidelines, based on its own engagement with over 100 independent chairs and/or lead directors in the past two years, about the attributes for effective independent board leadership. The guidelines are expected to be part of the “robust engagement” between independent board leaders and their investors, and will in turn inform State Street’s voting decisions. If efforts to engage with companies fail to turn into corporate action, in addition to voting in favor of proposals to separate chairs and CEO positions, State Street will also vote against the re-election of long-tenured directors.

Some of the notable structures that State Street is seeking, which may not exist even at many companies that already have independent board leaders, include: (a) having a clear process for selecting the independent board leader with specifically defined skills and characteristics; (b) ensuring at a minimum a three year tenure with additional terms based on performance; (c) regular evaluation by other independent board members of the performance of the board leader; and (d) planning for orderly succession.

In its view, an effective board leader should have relevant industry expertise in order to act as a good sounding board to CEOs and be able to devote sufficient time to the position. In discussions with directors, State Street found that the time commitment can range from one day a month to 2 days a week, although 300 to 400 hours a year seems to be average.

The guidelines also outline an extensive list of the key functions and responsibilities for independent board leaders. While most appear to be consistent with existing market practice, a few may be viewed as unusual or simply not articulated as clearly in public disclosures, such as having the board leader oversee conflicts of interests of all directors (including the CEO), authorizing the retention of all outside advisers who report directly to the board and establishing codes of conduct for directors.

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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