

Focus on Director Tenure Begins to Target Specific Lengths of Service

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Investors have expressed concerns about the length of director tenure for several years, pushing companies to focus on board succession planning and board refreshment processes. There has been, however, a reluctance to draw a hard line in the sand as to how many years of service is too long, until now.

Legal & General Investment Management (LGIM), a European institutional asset manager, developed a [new policy](#) that targets specific years of service. Beginning in 2017, it will vote against the chair of the nominating and governance committee if the average board tenure is 15 years or higher or if no new directors have joined the board in at least five years. LGIM will also vote against key board committee members and/or the lead independent director if they have been serving for 15 years or more. Like many other investors, LGIM's policy concentrates on the mix of tenures among the entire board by examining average board tenure and board turnover. But LGIM also objects to individual directors with perceived long tenures.

CalPERS' most recent [Global Governance Principles](#) take a different approach. In reviewing the facts and circumstances to determine director independence, CalPERS believes that boards should also consider the director's years of service. It calls for companies to evaluate and explain why a director who has served 12 years or more continues to be considered independent, similar to the U.K. Corporate Governance Code, although that Code requires an explanation once a director has been on the board for more than nine years.

According to the Spencer Stuart 2015 Board Index covering S&P 500 companies, questions about board composition and refreshment accounted for 14% of investor inquiries and 13% of those discussions were related to director tenure. The average tenure of S&P 500 boards is 8.5 years, although 21% of boards have an average tenure of 11 or more years.

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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