

QUORUM

Out Leadership's LGBT+ Board Diversity and Disclosure Guidelines

About Quorum

Quorum, an initiative of Out Leadership, is dedicated to increasing LGBT+ representation and inclusion at the corporate board level.

Only nine Fortune 500 companies include sexual orientation and/or gender identity as diversity criteria in their nomination and governance policies, and less than 0.3% of Fortune 500 board directors are openly LGBT+. Quorum is taking strides to drive forward this conversation. We've built a network of over 900 LGBT+ leaders interested in board leadership, created the first-ever white paper to encourage companies to amend their governance guidelines to include LGBT+ diversity, and engaged with policy leaders across the country to help foster change.

About Out Leadership

Out Leadership is the most influential global network of LGBT+ business leaders and major companies. We convene leadership summits, direct talent initiatives, and provide advisory solutions that champion the positive business impact of LGBT+ inclusion.

We create a Return on Equality™ by helping out leaders and companies realize the economic growth and talent dividend derived from inclusive business.

About the Diverse Corporate Directors Coalition

Quorum is a founding member of the Diverse Corporate Directors Coalition, which brings together associations whose memberships are composed of corporate directors representing the nation's major diverse population segments. Coalition members include Ascend Pinnacle (Pan-Asian directors), the Black Corporate Directors Conference, the Latino Corporate Directors Association, Quorum, and the WomenCorporateDirectors Foundation. Our groups represent some of the most respected and accomplished business leaders at the pinnacle of corporate governance. We are working collectively and leveraging the strengths of our individual organizations to amplify awareness, advocate, and work with stakeholders to advance diversity and inclusion on corporate boards as an integral component of board effectiveness and competitive business advantage.

Board Diversity and Disclosure Guidelines: The Business Case

Boardroom diversity is a topic that has gained significant traction – with institutional investors, among good governance proponents, and in the general and business media. The conversations have touched on various aspects of diversity, including gender, race/ethnicity, age, industry, and expertise. LGBT+ diversity, however, has until recently largely been left out of the conversation.

As noted in the Commonsense Principles of Governance, developed by business leaders including Warren Buffett and Jamie Dimon of J.P. Morgan, “Diversity along multiple dimensions is critical to a high-functioning board”. This is consistent with the numerous studies showing a correlation between gender diversity on the board and corporate performance. Large institutional investors, such as BlackRock and State Street, have made board diversity a priority as a matter of their fiduciary duty to act in the interests of their investors.

Given the larger sample size and greater availability of data, studies assessing the correlation between board diversity and corporate performance have tended to focus on gender. While the precise reason for the positive correlation between gender diversity and better corporate performance is unknown, many of the reasons that gender diversity is considered beneficial are also applicable to LGBT+ diversity. LGBT+ diversity in the boardroom may create a dynamic that enables better decision-making, and it brings to the boardroom the perspective of a community that is a critical component of the company’s consumer population and organizational talent.

Boards are, at their core, teams. Research comparing decision-making between diverse and non-diverse groups clearly indicates that diverse groups make better decisions.¹ Indeed, one prominent study found that non-diverse groups made wrong decisions more often than diverse groups, and were more confident in those decisions. There is a healthy tension that develops when a diverse member joins a group, which leads to more careful information processing and the generation of new ideas. While the studies were performed using gender diversity, it is not much of a leap to assume that LGBT+ diversity would have at least the same effect.

Boards that lack a LGBT+ lens on their business may overlook important risks and opportunities. According to a recent Credit Suisse study, an index of LGBT+ inclusive companies outperformed the broader MSCI ACWI index by an average of 3.0% per annum.² The LGBT+ consumer and talent markets are also becoming increasingly important. The purchasing power of the LGBT+ community in the U.S. is estimated to be \$917 billion,³ with global purchasing power standing at \$5.7 trillion.⁴ Per a recent Harris Poll, 20% of respondents aged 18-34 (Millennials) identified as LGBT+.⁵ Companies cannot afford to ignore this cohort as it enters the labor force and consumer market. And they cannot afford to ignore the value of a LGBT+ diverse board – both from the perspective that is added to the boardroom discussion and the message that it sends about the company to current and prospective employees and consumers.

¹ https://insight.kellogg.northwestern.edu/article/better_decisions_through_diversity

² Credit Suisse Securities Research & Analytics, “LGBT: the value of diversity,” April 15, 2016.

³ Jeff Green, “LGBT Purchasing Power Near \$1 Trillion Rivals Other Minorities,” Bloomberg Businessweek, July 20, 2016.

⁴ LGBT Capital, “Estimated LGBT Purchasing Power,” May 2016.

⁵ GLAAD and Harris Poll, “Accelerating Acceptance 2017,” March 20, 2017.

Evaluation and Implementation: Recommendations

U.S. public companies typically review criteria for board composition annually, in a process led by the Nominating and Governance Committee and supported by the company's internal and/or external legal counsel. However, without an internal request for change or an external catalyst such as communication from an institutional investor or a proxy proposal by an activist, board composition guidelines often remain unchanged from year to year.

As a consequence, leadership by champions and stakeholders will be important to catalyze discussion and action. Champions may include the CEO, a Board member, the company's General Counsel or Corporate Secretary, or outside counsel. The company's statements on diversity and inclusion for employees may provide a useful model; at most companies, these statements now include diversity of sexual orientation and gender identity.

Board composition, including diversity of board membership, is typically disclosed in companies' proxy statements, and sometimes also on the governance sections of company websites. Companies use various formats including tables, graphs, and text descriptions.



Board Diversity Guidelines: Recommendations

Recommended board diversity language

Our Nominating and Governance Committee seeks to develop a Board that reflects diverse backgrounds, experiences, expertise, skill sets and viewpoints. We actively seek director candidates who bring diversity of age, gender, nationality, race, ethnicity, sexual orientation and gender identity.

Current examples

1. As specified in our Corporate Governance Guidelines, members of our Board should be persons with broad experience in areas important to the operation and long-term success of our company. These include areas such as business, science, medicine, finance/accounting, law, business strategy, crisis management, corporate governance, education or government. Board members should possess qualities reflecting integrity, independence, leadership, good business judgment, wisdom, an inquiring mind, vision, a proven record of accomplishment and an ability to work well with others. The Corporate Governance Guidelines also express the Board's belief that its membership should continue to reflect a diversity of gender, race, ethnicity, age, sexual orientation and gender identity.⁷
2. Our Governance Committee considers a number of demographics including race, gender, ethnicity, sexual orientation, culture and nationality, seeking to develop a Board that, as a whole, reflects diverse viewpoints, backgrounds, skills, experiences and expertise. Among the factors that the Nominating and Governance Committee considers in identifying and evaluating a potential director candidate is the extent to which the candidate would add to the diversity of our Board. The Committee considers the same factors in determining whether to re-nominate an incumbent director. Diversity is also considered as part of the annual Board evaluation.⁸
3. The Board's policy is to seek the most qualified candidates without regard to race, gender, national origin, religion, disability, age or sexual orientation. However, in evaluating candidates the Committee will consider these diversity criteria. The Board seeks to maintain a balance of perspectives, qualities and skills on the Board to obtain a diversity of viewpoints to better understand the technical, economic, political and social environments in which the Company operates. Existing Board members and outside agencies recommend candidates to further these policy objectives. The Board's success on these objectives is measured by the range of viewpoints represented on the Board.⁹

⁷ Bristol-Myers Squibb Company proxy, March 22, 2018, p. 9

⁸ Goldman Sachs Group proxy, March 23, 2018, p. 16

⁹ Emerson Electric Co. proxy, December 14, 2018, p. 13

4. In addition to experience and expertise, the GCN and Board consider several additional factors in assessing Board composition and director nominees:

- Diversity of backgrounds, experience and thought is important in ensuring effective risk oversight
- Ethnicity, gender, age, disability, veteran status, sexual orientation, race, national origin, color, religion, creed, geographic representation, education and personality are considered¹⁰

¹⁰ Xcel Energy Inc. proxy, April 3, 2018, p. 16



Board Diversity Disclosure: Recommendations

Institutional investors and other corporate stakeholders value diversity, but information about the diversity of Board members has been difficult to obtain. Stakeholders have resorted to searching director biographies for pronouns to determine gender, or scrutinizing photographs to assess race. "Invisible" diversity such as sexual orientation is obviously difficult to assess.

Fortunately, companies are increasingly using proxy and website disclosures to describe the composition of their Boards along various dimensions of diversity. We applaud this trend, and encourage more companies to undertake such disclosures.

For example, Prudential Financial's 2018 proxy statement includes a Board Diversity section, and provides information such as:

- 80% of our non-employee directors are diverse
- 2 director nominees are Hispanic, and
- 1 director nominee is LGBT¹¹

A matrix format to describe Board capabilities, experience and demographics is another approach. For example, the New York City Comptroller and the New York City Pension Funds have published a template board matrix that summarizes the board tenure, sexual orientation, gender, age and race/ethnicity of directors.¹²

¹¹ Prudential Financial, Inc. proxy March 22, 2018, p. 10

¹² "Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign — Version 2.0", September 8, 2017

FAQs

Won't it be difficult to identify and recruit qualified LGBT+ director candidates?

Adding specificity to the diversity categories in director selection criteria will stimulate Board conversations regarding, and identification of, diverse Board candidates. Nominating and Governance Committees may find the following approaches helpful in generating more diverse pools of potential directors:

- Ask current directors to identify and recommend diverse candidates from their own professional networks
- Direct search firms to ensure that pools of potential directors represent a range of diverse candidates, including those who bring diversity of sexual orientation and gender identity
- Engage companies' LGBT+ employee affinity groups in identifying potential candidates from among their executive networks
- Access specialized resources, such as Out Leadership's Quorum database of qualified LGBT+ director candidates

What are the benefits of including reference to sexual orientation in Board diversity language?

Companies that have updated their Board diversity language cite a number of motivations, including:

- Ensuring that the company attracts and evaluates a broad range of qualified Board candidates
- Communicating to key stakeholders, including investors, employees and customers, the company's commitment to diversity, including at the Board level

In addition, a growing body of research is demonstrating the value of heterogeneous groups in decision-making. Inclusion of sexual orientation in these discussions may be viewed as a logical extension of current efforts to promote gender and other dimensions of board diversity.

Some companies already include language to the effect that candidates will not be excluded from the board on the basis of sexual orientation. Going beyond this and including sexual orientation as a positive attribute in director selection criteria may also serve to catalyze Board and C-suite discussions of diversity, raise awareness of the low number of openly LGBT+ directors on corporate boards, and spur boards to actively seek and nominate more diverse directors.

Why now?

There have been significant advances for LGBT+ people across a range of business and social settings in recent years, but progress in representation on U.S. corporate boards has been limited.

With discussions about the importance of diversity on corporate Boards gaining significant traction with institutional investors, in good governance discussions, and increasingly in the business and general media, the time is right to add LGBT+ diversity.

What are investors' perspectives on LGBT+ Board diversity?

Building on efforts to increase gender and racial/ethnic diversity on corporate Boards in connection with their focus on diversity as important to board effectiveness and long-term value creation, institutional investors have begun to focus on LGBT+ diversity. Recent initiatives have included:

- CalPERS¹³, CalSTRS¹⁴ and New York City pension funds^{15,16} have corporate governance policies and proxy voting guidelines that encourage companies to recruit diverse Boards and explicitly include the LGBT+ community in their definition of diversity.
- In February 2018, Amalgamated Bank announced that it will be the first nongovernmental institutional investor to expand the definition of corporate board diversity in its proxy and investment guidelines to include LGBTQ directors.¹⁷
- In May 2016, New York City Comptroller Scott Stringer and California State Controller Betty Yee sent a joint letter to fiduciaries of 19 public pension funds to embrace policies and practices that promote Board diversity inclusive of sexual orientation, gender and race.¹⁸
- In May 2016, a coalition of insurance commissioners from 6 states initiated the Multistate Insurance Diversity Survey that collected information from over 600 insurance companies regarding their Board and supplier diversity, including LGBT+, minorities and women.¹⁹

What are the data on inclusion of sexual orientation in Board diversity guidelines?

A 2018 survey by Out Leadership found inclusion of sexual orientation as a desired component of Board diversity lags far behind other historically under-represented groups. Only nine companies in the Fortune 500 report that they consider diversity of sexual orientation and/or gender identity in selecting director candidates.²⁰ No data are available for the full set of US publicly-traded and large private companies.

The nine companies that are currently inclusive of sexual orientation and/or gender identity diversity in their board diversity statements are:

- | | |
|-------------------------------|-----------------|
| • Altria | • Goldman Sachs |
| • BNY Mellon | • Mastercard |
| • Bristol-Myers Squibb | • Progressive |
| • Emerson Electric | • Xcel Energy |
| • Fidelity National Financial | |

¹³ "Global Governance Principles," California Public Employees' Retirement System (CalPERS), March 14, 2016, p. 19.

¹⁴ "Corporate Governance Principles," California State Teachers' Retirement System (CalSTRS), July 14, 2016, p. 6.

¹⁵ "Corporate Governance Principles and Proxy Voting Guidelines," New York City Employees' Retirement System et. al., April 2017, p. 11.

¹⁶ "Corporate Governance Principles and Proxy Voting Guidelines," Teachers' Retirement System of the City of New York, April 2017, p. 11.

¹⁷ <https://www.amalgamatedbank.com/news/amalgamated-bank-first-industry-redefine-diversity-leadership>

¹⁸ "LGBT Inclusion in Board Diversity," letter from California State Controller and New York City Comptroller, May 26, 2016.

¹⁹ Multistate Insurance Diversity Survey, May 3, 2017.

²⁰ 2018 Out Leadership review of Fortune 500 Board diversity guidelines.

What are the data on representation of LGBT+ directors on U.S. corporate Boards?

A 2018 survey by Out Leadership identified fewer than 20 openly LGBT+ directors serving on Fortune 500 company Boards, constituting less than 0.3% of directors on those Boards, and significantly under-representative of the approximately 4% of Americans who identify as LGBT+. ²¹ A 2016 review of 600 U.S. insurance companies by the Multistate Insurance Diversity Survey found LGBT+ directors held only 0.5% of seats on their boards. ²² Although no comprehensive studies of LGBT+ membership on Boards of directors of all U.S. companies has been conducted, representation of LGBT+ directors is assumed to be similarly rare.

What are regulatory requirements for companies with regard to Board diversity?

The SEC requires that publicly-listed companies in the U.S. disclose whether, and if so how, a Nominating Committee considers diversity in identifying candidates for director. If the Nominating Committee has a policy with regard to the consideration of diversity in identifying nominees, disclosure of how this policy is implemented is required, as well as how the Committee assesses effectiveness of its policy. The SEC permits companies to define diversity in ways that they consider appropriate, and have not defined diversity in Rule S-K. ²³

Will more specific Board diversity guidelines add to litigation risk for companies?

Our discussions with corporate governance experts at leading law firms have not identified any incremental risk to companies in adopting more expansive and Board diversity guidelines. We encourage companies to consult with their corporate secretary and outside counsel in connection with improving director selection criteria.

Will this change require creating a new policy?

That will depend on how each company documents its Board diversity objectives. Most companies do not have a formal policy; instead, director selection criteria are generally described in proxy statements and/or corporate governance guidelines. In any case, a change can usually be made by a simple resolution of the Board, generally upon the recommendation of the Nominating and Governance Committee. If the board does have a policy, guideline or practice with respect to diversity, simply adding sexual orientation and gender identity to their already-existing diversity considerations is an easy change.

²¹ 2018 Out Leadership review of Fortune 500 Board membership.

²² Multistate Insurance Diversity Survey, May 3, 2017

²³ U.S. Securities and Exchange Commission Regulation S-K, Item 407(c)(2)(iv).

How can General Counsel, Corporate Secretaries and outside law firms help?

Counsel are a vital source of advice for Boards on corporate governance matters. Nominating Committees and Boards will typically look to their legal department leadership and outside law firms for guidance during annual reviews of board diversity guidelines, and often rely on firms' "best practice" language.

We encourage law firms to:

- Review their template language for board diversity to ensure that sexual orientation and gender identity is included, along with gender, race and other categories. This is particularly important for templates used by companies preparing for their initial public offering.
- Discuss with clients the opportunity to add sexual orientation and gender identity to their board diversity guidelines.



How can investors help?

The proxy voting guidelines developed by institutional investors have significant influence over the policies and actions of the companies whose shares they own. Institutional investors can include consideration of sexual orientation diversity in their voting guidelines for company proxies, as investors such as CalPERS, CalSTRS, the New York City Pension Funds, and Amalgamated Bank have done.

Investors can also engage with the management teams and boards of their portfolio companies, asking about LGBT+ diversity on company boards, and encouraging companies to report on the diversity of their boardrooms.

How can LGBT+ employee affinity groups help?

Operating within their companies, LGBT+ employee affinity groups can:

- Review their companies' director selection guidelines, and encourage inclusion of language reflecting diversity including sexual orientation and gender identity.
- Collaborate with other employee affinity groups to encourage recruitment of diverse directors.
- Ask their companies to collect and report on the diversity of their boards, including sexual orientation and gender identity.

How can board diversity advocacy organizations help?

Organizations advocating for other communities of directors, including those focused on diversity of gender, race/ethnicity, and other categories, can partner together to encourage companies to review and expand their director selection guidelines, and to collect and report data on the diversity of their boardrooms.

Doesn't this foster a slippery slope for continually adding diversity categories?

The "slippery slope" argument has been used against historically under-represented minorities for decades. The addition of sexual orientation and gender identity to board diversity language brings Board diversity into alignment with companies' existing employment guidelines, which typically include diversity of sexual orientation, and reflects the greater inclusion of LGBT+ people in American society.

At what point should companies address LGBT+ board diversity?

Companies face unyielding deadlines for completion of their proxy statements in advance of their annual stockholder meetings. As such, it is important to begin discussions about updates to governance guidelines well in advance of the proxy filing, so that the Nominating and Governance Committee and the full Board, respectively, have sufficient time to consider the recommendation and make their decisions.

Appendix

Notes on terminology

The language used to refer to lesbian, gay, bisexual and transgender people can have a powerful impact. Using the right words can convey a positive message about the company and enhance productive discussions, while use of other words can be alienating or create confusion.

Out Leadership uses the term "LGBT+" to describe the community we serve, globally. Many stakeholders in our community describe their identity as something other than Lesbian, Gay, Bisexual or Transgender – including Intersex, Asexual, and Queer – and we wanted to find a new term that would embrace this diversity. We believe that LGBT+ accurately reflects the growing diversity of our community, while remaining simple and clear.

When referring to lesbian, gay and bisexual people, the term "sexual orientation" is preferred over "sexual preference", which has been used to suggest that being gay is a choice and can be changed.



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