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## Diversity

### **To Improve Boards' Gender Diversity, Experts Say Refine Succession Processes**

**A**n increased focus on searching for independent directors with industry expertise can lead to more diversity on boards, according to academics and practitioners interviewed by Bloomberg BNA.

Ann C. Mulé, associate director for the University of Delaware's John L. Weinberg Center for Corporate Governance, told BBNA that nominating committees historically have asked search firms to find candidates who are current or former CEOs, which creates a much narrower pool of candidates with fewer women.

One of the consequences of focusing on deep industry expertise as opposed to more traditional factors is that it will broaden the pool of potential candidates, she said.

Professor Charles Elson, director of the Weinberg Center, added that if you look below the C-suite level, companies will find a lot of qualified individuals with specialized experience.

A lack of gender diversity at the C-suite level has been a persistent source of criticism in the U.S. (12 CARE 1030, 9/5/14), among other countries (12 CARE 1516, 11/14/14). Even though percentages are at historically high levels, women still only comprised an average of 18.7 percent of S&P 500 boards in 2014 (12 CARE 1220, 9/26/14).

Securities and Exchange Commission Chairman Mary Jo White is among the high-profile officials who have asked for broad-based change at public companies to address the gender gap on corporate boards (12 CARE 1159, 9/19/14). These calls have grown particularly strong in light of research showing that companies have more economic success with women in the boardroom (12 CARE 123, 1/31/14).

Mulé, Elson and other experts said that a broader, more-coordinated approach to boardroom succession planning, in addition to potential reforms such as term limits, external pressure from investors and sociological developments, should lead to a less-glacial rise in boardroom diversity in the future.

**Broadening Pools.** Recently, Mulé and Elson co-authored an article about the dangers of searching for director candidates who have C-suite experience without regard to whether they have knowledge of the company's business or industry.

They found that one of the consequences of this approach is the possibility of having a "management knowledge-captured board"—where the board is com-

promised of independent outside directors who may be inadvertently and unknowingly deferring to the chief executive officer, particularly on decisions that require industry knowledge.

In terms of board composition, Mulé said it is critical that companies focus on the skill sets of the individual directors so the overall board has the skills its needs to effectively oversee the company.

One of the benefits of this best practice is that it allows boards and governance committees to broaden the pool of prospective director candidates beyond historical levels.

**No Need for C-Suite Experience.** One of the biggest obstacles to greater gender diversity on public boards is "this prevailing and ill-conceived notion" that a director must have CEO experience, according to Roberta D. Liebenberg, a senior partner at Fine Kaplan and Black and co-founder and chairwoman of DirectWomen, an organization that identifies and supports highly qualified and experienced women attorneys for service on the boards of public companies.

This prerequisite disadvantages women because fewer than 5 percent of Fortune 500 CEOs are women, she said.

Liebenberg said that studies have shown that adding directors with particular skill sets and deep industry knowledge will enhance the board and company performance, noting that she liked the notion that you can achieve director independence when you have directors with deep, specific industry knowledge.

Christina L. Martini, a partner at DLA Piper who recently led the firm's Global Leadership Summit, said in an e-mail to BBNA that she also agreed with Mulé and Elson's views about best practices for board succession planning.

"While having individuals with C- and executive-level experience is clearly a plus, I also think it is important to be open-minded in one's approach about which professional experiences are truly necessary for a successful board member to have, and what a successful board truly needs to look like vs. what they have historically looked like," she said.

Martini additionally noted that potential board candidates can find many ways to obtain the experience needed to understand how a board should operate.

**Refreshing Boards.** Another primary factor for the lack of progress in achieving greater gender diversity is the lack of turnover of board seats, said Liebenberg.

"Even when there is recognition of a need to increase board diversity, there is often insufficient turnover among existing boards to enable a relatively quick,

## Improving Gender Diversity On Public Company Boards

According to practitioners and academics, companies should:

- focus on skill sets and industry expertise tailored to the company's needs;
- revisit standards for evaluating board candidates;
- make diversity a consideration when developing CEO succession plans;
- avoid overemphasis on historical factors and networks that disadvantage women and minorities, such as prior C-suite experience; and
- consider board term limits or shorter terms

meaningful improvement in the numbers,” said Martini.

A push for term limits can also broaden the pool of board applicants, said Elson.

Term limits are not the only way to refresh boards, according to Mulé. Another strategy is to be clear up front that board positions are not lifetime appointments, she said. If a director is being brought on because of a particular skill set he or she possesses, the company should be able to replace them when that skill set is no longer needed.

**Succession Planning.** In September, U.S. Secretary of Commerce Penny Pritzker said at the Global Conference on Women in the Boardroom that as part of the private sector taking ownership of the lack diversity on boards, “boards should develop deliberate strategies for recruitment.” She added that “[t]his can be done by making diversity one of the considerations to fill board vacancies and taking gender diversity into account in succession planning.”

Professor Elson stated that board and nominating committees should lay out the skill sets needed for the seats that will open up as time develops. He noted that as a company changes its business approach, the skill sets may change, but the key is to prepare in advance of vacancies.

Companies should consider “developing board nominating committees to search for women board candidates and implementing formal diversity policies with specific requirements with which their organizations must comply, including term limits and succession planning,” said Martini. “When considering the future leadership of the organization, [companies] need to think about who is most likely to understand the business, and its infrastructure and recipe for success.”

“It is also important to regularly revisit the company’s standards for evaluating board candidates to ensure that they lend themselves to developing a diverse board and that they are revised as needed,” she said. “Bottom line, companies need to see the value of change and diversity of opinions and be willing to embrace them.”

**‘Intentional Approach.’** Although there appears to be some agreement that a broader focus on industry expertise and ongoing boardroom succession planning will lead to more boardroom diversity, some have suggested a more “intentional approach” to searching for qualified women candidates.

At the ABA Business Law Section’s Corporate Governance Roundtable in late November, many of the roundtable participants voiced their agreement with Chris Johnson, retired vice president and general counsel for GM North America, who stated that “in order to achieve diversity, you have to be intentional about it.” He clarified that he was not talking about affirmative action or lowering standards (12 CARE 1596, 12/5/14).

“We definitely need to make sure that CEOs and companies are making gender diversity on their boards a priority and expanding their searches beyond the old boys network,” said Liebenberg. “I think that this is definitely a best practice.”

According to Martini, one of the many best practices companies can employ to better diversify their board is to “take steps to educate themselves regarding the vast number of capable women candidates in the market.”

“They are out there, and there are numerous organizations, including executive search firms, which have created directories of ‘board-ready’ women,” she said.

Although Liebenberg doesn’t believe that the U.S. will ever adopt mandatory quotas to increase female membership on boards, she noted that voluntary and aspirational targets, such as a resolution passed in the California Senate in 2013, are really having an impact on boardroom diversity. Still, according to a Dec. 4 University of California-Davis School of Management study, women hold just 11.5 percent of board seats and the highest-paid executive positions at the 400 largest publicly held corporations headquartered in the state in 2014.

**More Diversity Ahead?** Overall, the percentage of women on U.S. company boards inched up from 16.6 percent in 2013 to 17.7 percent in 2014 for Fortune 1000 Index companies, according to the 2014 Women on Boards Gender Diversity Index. The study noted that the percentage of women on boards of Fortune 1000 companies has increased four years in a row.

Additionally, Institutional Shareholder Services, Inc. released a report in September finding that the proportion of women board nominees for large U.S. companies reached a record high in 2014.

Mulé noted that gender diversity on boards is not a new topic and that discussion has been occurring for decades, but she is optimistic that increased focus by institutional investors will drive more diversity on boards.

F. William McNabb III, Vanguard’s chairman and CEO, said Oct. 30 that appropriate board composition “is the single most important factor in good governance.” He noted that shareholders want to know who directors are and what skill sets they bring to the table.

Moreover, it is not just pension funds that are focusing on diversity, Mulé said. She said these institutional investor trends will lead to greater boardroom diversity in terms of race, as well as gender.

Simply put: Companies are responding to shareholder proposals to increase diversity on boards by putting more women and minorities on boards, said Liebenberg.

**New Generation.** And large institutional investors focusing on best governance practices may not be the only driver of boardroom diversity.

With more “baby boomers” and members of “Generation X” taking on higher roles in organizations, Martini opined that “there will be increased awareness of the need for, and importance of, gender equity.”

She added that these two generations have “significantly contributed to pushing the ball forward over the last several decades” and “will feel strongly about paying it forward so that the gender equity conversation continues in an even more meaningful way in the coming years.”

The rate of increase in boardroom diversity has been so disappointing and glacial, but “I am hopeful with Generations X and Y, we see more attention on this issue,” added Liebenberg.

**Tempered Optimism.** Liebenberg, however, said her optimism is somewhat tempered. It is clear that certain industry sectors and geographic areas appear to be behind, she said.

Liebenberg noted that the information technology industry, which has many younger executives and directors, also generally have fewer women board members.

Additionally, according to the 2020 study, smaller companies continue to lag behind larger companies in the gender composition of their boards.

According to Elson, this may be explained by the fact that many smaller companies have board members that serve longer terms.

“Smaller companies have a few unique challenges when it comes to increasing gender diversity on their boards,” echoed Martini.

“[A] smaller employee base can make the network of viable candidates and referrals more limited,” she added. “Furthermore, these companies often do not have the cache of the Fortune 1000, so their open board seats can be tougher to fill with top-notch candidates. In addition, smaller companies are often not held accountable by third parties in the same way as other organizations.”

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*Mulé and Elson’s article “A New Kind of Captured Board” is available at <http://www.lerner.udel.edu/sites/default/files/WCCG/PDFs/Mule%20Q1%202014%20article.pdf>.*

*The UC Davis study is available at [http://gsm.ucdavis.edu/sites/main/files/file-attachments/ucdaviswomenstudy2014\\_full\\_0.pdf](http://gsm.ucdavis.edu/sites/main/files/file-attachments/ucdaviswomenstudy2014_full_0.pdf).*

*The 2020 study is available at <http://www.2020wob.com/sites/default/files/2020GDI-2014Report.pdf>.*