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Proven Guidance for C-Suite Action



CEOs Want Quick Action on Board Diversity and the GC Can Move the Needle

by Laura Cohn

with contributor Drew Tanenbaum

Legal leaders tell us their CEOs want quick action on bringing historically underrepresented groups into the boardroom. As a spate of activity in the U.S. builds on a push that's been underway in Europe for years, companies look to the general counsel (GC) to help make room for and seek out directors who bring new perspectives to the table.

In fact, 75% percent of U.S.-based corporate secretaries and in-house legal teams are reexamining director recruitment and succession planning to make sure those projects take diversity into account, according to a survey by Deloitte and the Society for Corporate Governance.¹ The other 25% plan to do so in the future. In September 2020 alone, 56 global organizations agreed on metrics for tracking board diversity, while 17 other companies pledged to nominate a Black director by the end of 2021.^{2,3}

Behind the urgency is a clamor for change from employees, the markets and governments. Nearly half of the 600 U.S. employees we surveyed in June 2020 said they want their companies to do more to promote diversity and inclusion. In December, Nasdaq asked the U.S. Securities and Exchange Commission to let it require listed companies to have at least one woman and one self-identified minority on their boards — a mandate similar to a new California law.^{4,5} Investors use board diversity as a metric to track an organization's environmental, social

and governance credentials. A legal leader and a recruiter told us investors have asked companies to adapt U.S. football's "Rooney rule" to find board members (i.e., when National Football League teams fill coaching positions, they must interview candidates from underrepresented groups).

The general counsel must step forward. As board secretary, the GC is in a position to coordinate a director diversity initiative with the CEO and chief human resources officer (CHRO). In addition, the GC must keep the board informed about national or state legislation that affects reporting requirements. The chief legal executive often supports the nominating and governance committee, which is tasked with board composition.

Because a limited number of board seats open up each year, it is important to plan ahead. "When organizations have been intentional and focused, they have moved the needle," according to Lyndon Taylor, who leads the global diversity and inclusion practice at the executive recruiting firm Heidrick & Struggles.



Lyndon Taylor

Global Diversity and Inclusion Practice Lead, Heidrick & Struggles

Being intentional means taking steps to widen the aperture — take in a broader swath of candidates beyond the traditional choice of seasoned public company executives to include those with lower-level profit-and-loss roles, other likely future leaders, university professors and high-level management from private companies. It's an underused tactic: 72% of the open U.S. board seats in 2019 went to candidates who had previously served on public company boards.⁶ In Europe, the story is largely the same; 66% of the open board seats in 2019 went to those with prior board experience.⁷

A Mixed Record on Progress in the Fortune 500

While U.S. companies have improved the gender balance of boards, they've made little progress in the appointment of other historically underrepresented groups (see Figure 1 and Figure 2).

If you want to move faster, you can. Based on our conversations with legal leaders, recruiters and

other workplace experts, a GC looking to build board diversity should advise companies to:

- Set clear diversity goals for the board and discuss expectations for timing
- Seek out candidates for their skill sets, not titles
- Push recruiters with probing questions and clear instructions
- Consider whether to restructure the board (e.g., adding more directors, setting or enforcing existing term or age limits)

Set Clear Diversity Goals for the Board

Particularly if building board diversity is a new initiative, the first step is a frank discussion about the organization's short- and long-term diversity goals. Kim Rivera, special advisor to the CEO and former president of strategy and business management and chief legal officer at HP Inc., told us the GC should help the board strategize by asking the group:

- What are the ways we could do this?
- What makes sense for our organization?
- How do we structure our approach to this?

"When you're clear about the intent, clear about expectations and clear about timing, it does bring results," Rivera said. "I have yet to see anything that has been as effective in driving progress and change."

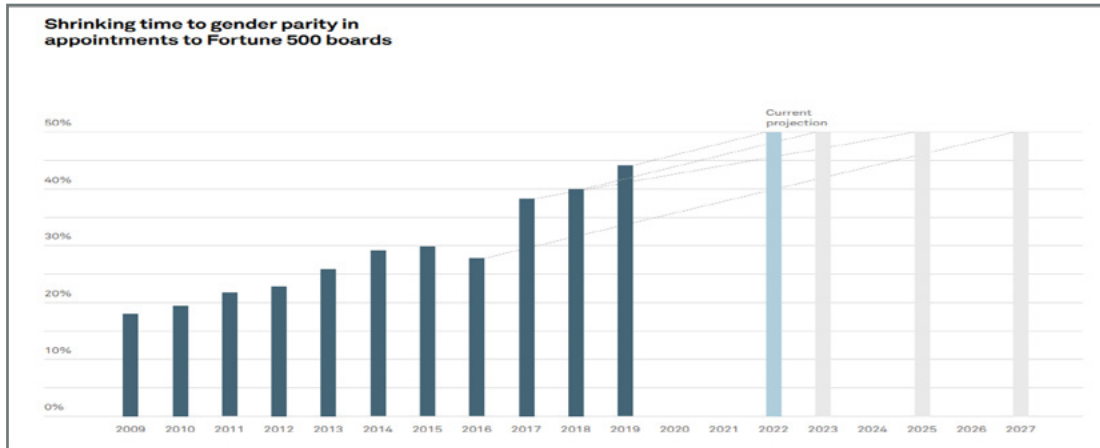


Kim Rivera

Special Advisor to the CEO and Former President of Strategy and Business Management and Chief Legal Officer, HP Inc.

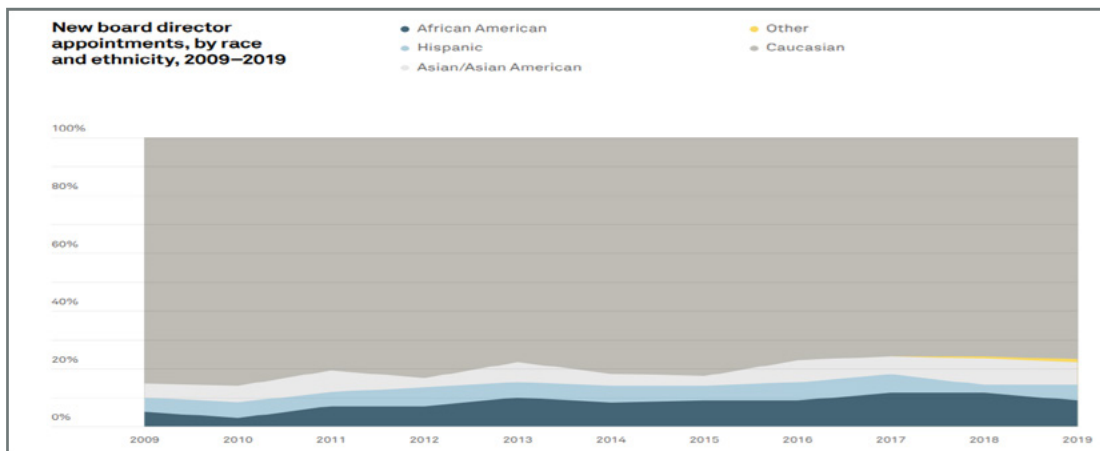
She added that it's critical for the GC to involve other top executives in the effort. "You have to make sure you have a good partnership with the CEO, the chair, the CHRO, and that you're approaching it as a team," Rivera said. In 2015, when Hewlett-Packard Company split into two groups, HP's leadership set out to create the most diverse board of directors in tech by focusing on the desired skill sets of the new company and by seeking talent from not only other corporations but also from academia and government. It was an unusual situation. Instead of filling an empty seat or two, executives created an entire board from scratch.

Figure 1. Board Appointments of Women Have Grown Over Time



Source: Heidrick & Struggles

Figure 2. Board Appointments of People of Color Have Stagnated



Source: Heidrick & Struggles

Board diversity has remained an objective ever since, Rivera said. HP currently has both women and directors from historically underrepresented groups on its board. When there’s an opening, she told us, HP works to source candidates with professional organizations, including:

- Association of Latino Professionals for America
- Black Corporate Directors Conference
- DirectWomen
- Latino Corporate Directors Association
- Leadership Counsel on Legal Diversity
- Minority Corporate Counsel Association

Such groups can help you expand your talent search beyond the traditional profile of a “corporate executive with prior board experience.” Once you establish a relationship, maintain the connection so you can jump-start recruiting when you need to in the future.

It will take time. “You’re not going to get it all done overnight,” Rivera said. “The way you change this is by changing it, by accepting you’re going to have to do this a bit differently, a step at a time.” If organizations tap into wider networks and think more broadly, she said, “I actually don’t think it will be a crisis of lack of candidates or lack of talent. There’s a lot of talent out there.”

If your company doesn't set its own goals, policymakers may do it for you. California's gender diversity law has been challenged in court but has nonetheless had an impact: When the bill was passed and signed by the governor in 2018, 30% of public companies in California had boards composed of just men. In 2020, fewer than 3% had only male directors.⁸ Other U.S. states have passed or considered passing legislation requiring companies to have gender, racial or ethnic diversity on their boards (see Figure 3).

In Europe, governments have been moving to impose gender quotas for boards for more than a decade. Norway was the first, in 2008.⁹

Perhaps these initiatives explain why half of the open board seats in Europe went to women in 2019, compared with 44% in the U.S., according to Heidrick & Struggles. In Hong Kong, with no gender quotas for directors, the figure was merely 6%.¹⁰

See Figure 4 for a look at the global picture.

Figure 3. Board Diversity Requirements — Recent Moves at the U.S. State Level

States With Laws Mandating Diversity on Boards	States Mandating Firms Report Gender, Racial or Ethnic Composition of Boards	State Legislatures That Introduced Board Diversity Resolutions	State Legislatures Considering Board Diversity Mandates
<ul style="list-style-type: none"> California^a (2018, 2020)^b Washington (2020) 	<ul style="list-style-type: none"> Illinois (2019)^c Maryland (2019) New York (2019) 	<ul style="list-style-type: none"> Colorado (2017)^d Iowa (2019) Ohio (2019) Pennsylvania (2019) 	<ul style="list-style-type: none"> Hawaii (2020) Massachusetts (2019) Michigan (2019) New Jersey (2019)

Sources: "Will Other States Follow California in Adopting Board Gender Diversity Mandates?" Cooley PubCo; "States Are Leading the Charge to Corporate Boards: Diversify!" Harvard Law School Forum on Corporate Governance; "Corporate Governance Emerging Best Practices Series: Gender-Diverse Boards," The National Law Review.

^a California requires companies to have gender diversity and at least one director from a historically underrepresented group. Washington requires gender diversity.

^b Year passed or introduced.

^c All three states require companies to report gender diversity. Illinois also requires the reporting of historically underrepresented groups.

^d Colorado's legislature adopted the resolution, which was a nonbinding measure.

Figure 4. Board Diversity Requirements — Select Moves in Europe and Asia/Pacific

Countries With Gender Quotas for Boards	Countries With Board Diversity Initiatives Backed by Stock Exchanges or Executive Groups
<ul style="list-style-type: none"> Belgium (2017)^a France (2017) Germany (2015)^b India (2013) Switzerland (2021)^c 	<ul style="list-style-type: none"> Australia (2019) New Zealand (2017) U.K. (2015, 2021)^d

Sources: U.S. Library of Congress; Deloitte; U.K. Department for Business, Energy & Industrial Strategy.

^a Effective year.

^b Germany, in November 2020, put forth a new measure requiring gender diversity on executive boards, building on its 2015 law that mandates 30% of the seats on nonexecutive supervisory boards go to women.¹¹

^c Switzerland has a gender quota for executive boards and boards of directors.

^d The U.K.'s Parker Review, in 2017, set a goal for FTSE 100 boards to have at least one person of color by 2021. That followed the government-commissioned Davies Review, which recommended 25% of board seats go to women by 2015.

Seek Out Candidates for Their Skill Sets (Not Titles)

You may tell a recruiter you'd like a female CEO for your board, but if you do, you will crop a significant number of potential candidates out of the picture; there are only a few dozen female chief executives in the Fortune 500.¹²

Instead, try instructing the recruiter to seek a candidate who's been responsible for the decision-making process at a company. This puts division presidents, executive vice presidents, vice presidents and chief operating officers in the mix and expands the scope of the search, according to Rochelle Campbell, director, board recruitment and special projects, National Association of Corporate Directors.

You can also ask recruiters to seek candidates with financial, marketing or human capital expertise. As you go through the recruitment and interview process, you can use your skills-based profile to help shape the final decision, Campbell told us.

Push Recruiters to Help You

HP Inc.'s Rivera advises companies to ask recruiters where they source candidates and how many diverse candidates they have placed in the past.

The GC could also guide the organization to select an executive search firm with experience in diversity and inclusivity. Four out of the top five executive search firms have associates who specialize in the area, dedicating a major part of their services to helping organizations build a more diverse and inclusive workplace, our HR research shows.

If your recruiters come up empty, challenge them to explore deeper. Organizations should aim to have at least 50% of the slate be diverse because it heightens the odds that a board candidate from a historically underrepresented group will be selected in the end, Allyson Zimmermann, executive director of Catalyst Europe, Middle East and Africa, told us.

Consider the Need to Restructure the Board

Board seats don't open up often — few companies have the blank slate that HP did. In 2019, for instance, 40% of companies in the S&P 500 did not change the composition of their boards, according to The Conference Board.¹³ Just 31% nominated a new director or added a seat, 19% nominated two new board members and 10% added three or more.

The GC can suggest an expansion in order to bring more historically underrepresented groups into the boardroom or ask that retirement rules be enforced (they often aren't) or that term limits be added (under 6% of global companies do this).¹³ One way to overcome resistance: strengthen director evaluations. The most in-demand director skills require constant updating. Companies need to either improve director education efforts or explore ways to sunset directors whose skills no longer match their needs.

¹ [Diversity, Equity and Inclusion: Board Practices Quarterly \(September 2020\)](#), Deloitte.

² [Global Corporations Agree to Adopt Set of Key Performance Indicators to Measure and Improve Diversity](#), Catalyst.org.

³ [These 17 Companies Are Pledging to Add a Black Board Member by the End of 2021](#), Fast Company.

⁴ [Nasdaq Pushes for Diversity in the Boardroom](#), The New York Times.

⁵ [Newsom Signs Law Mandating More Diversity in California Corporate Boardrooms](#), Los Angeles Times.

⁶ [Board Monitor U.S. 2020](#), Heidrick & Struggles.

⁷ [Board Monitor Europe 2020](#), Heidrick & Struggles.

⁸ [Exclusive: California's Board Diversity Law Led to 670 Board Seats Filled by Women, Report Finds](#), Fortune.

⁹ [California Companies Are Rushing to Find Female Board Members](#), The New York Times.

¹⁰ [Board Monitor Hong Kong 2020](#), Heidrick & Struggles.

¹¹ [Merkel's Boardroom Gender Quota Plan Doesn't Go Far Enough, Say Germany's Greens](#), Deutsche Welle.

¹² [Female Fortune 500 CEOs Reach an All-Time High, But It's Still a Small Percentage](#), CNN.

¹³ [Corporate Board Practices in the Russell 3000 and S&P 500: 2020 Edition](#), The Conference Board.

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