



UK, US and Australia Act to Address Director Competency, Diversity and Effectiveness

IN THE AFTERMATH OF THE FINANCIAL crisis, modifications have recently been made in the UK, US and Australia to the regulations concerning board composition and qualifications of directors.

In the UK, proposed changes to the Combined Code include (all new):

- **Director Skills and Experience**
“The board and its committees should consist of directors with the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively.”
- **Company Knowledge and Information**
“To function effectively, all directors need appropriate knowledge of the company and access to its operations and staff.”
- **Director Development**
“The chairman should agree and regularly review a personalized approach to training and development with each director.”
- **External Board Evaluation**
“Evaluation of the board should be externally facilitated at least every three years.”



In the US, new Securities and Exchange Commission (SEC) rules now require disclosure of whether there is a separation of chair and CEO roles (and if not, the presence and role of a lead independent director), director qualifications and diversity policies. The rules read:

- **Board Leadership Structure**
“Briefly describe the leadership structure of the registrant’s board ... The disclosure should indicate why the registrant has determined its leadership

structure is appropriate ... In addition, disclose the extent of the board’s role in risk oversight ... and the effect that this has on the board’s leadership structure.”

- **Director Qualifications**
“[F]or each director or person nominated or chosen to become a director, briefly discuss the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director ...”
- **Diversity Policy**
“Describe the nominating committee’s process for identifying and evaluating nominees for director, including ... whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy.”

The Australian Stock Exchange (ASX) has gone even further in providing guidance to listed companies on what it wishes to see in diversity policies.

- **Definition of Diversity**
Whereas the SEC has not defined “diversity,” the ASX has, as follows:
“For the purpose of this policy, ‘diversity’ includes gender, age, ethnicity and cultural background.”
Each nominating committee of ASX-listed companies, as part of its charter, should recommend to the board strategies to address board diversity. Nominating committee charters should also “provide for regular review of and reporting to the board about the proportion of women at all levels in the company.” Each board, in turn, is advised to include gender diversity objectives at all levels



of the company as part of measures against which the performance of the board should be reviewed, and disclose, as part of the corporate governance statement in the annual report, a statement as to the mix of skills and diversity that the board of directors is looking to achieve in membership of the board. The ASX also proposes detailed guidance to companies in formulating a diversity policy.

• **Commitment to Gender Diversity**

The ASX goes on to state, “Diversity is an economic driver of competitiveness for companies. Research has shown that increased gender diversity on boards is associated with better financial performance, and improved workforce participation at all levels which positively impacts on the economy.” The ASX has proposed that listed companies disclose in their annual report their achievement against gender objectives set by the board and the proportion of women on the board, in senior management and throughout the organization.

What the above changes reflect is a clear intention by regulators to address the diversification of background and competencies of boards of listed companies, either through disclosure (SEC) or a Code (UK) or even more intrusive approaches. For example, the UK financial regulator – the Financial Services Authority (FSA) – has begun to interview certain directors for “gaps in competencies, behaviours or non-technical skills,” in a self-acknowledged “more intrusive approach.” To date, the FSA has interviewed 322 candidates. It has not rejected any, although 25 have dropped out, according to press reporting.

In my view, boards in Canada can expect greater scrutiny of their

diversity strategies. Does your board have an effective approach?

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