

Mutual Fund Directors Forum Webinar Series

Board Governance Update

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BOARD GOVERNANCE UPDATE

- Current Industry Landscape
- Board Meetings
- Committee Matters including Charters
- Annual Board Self-Assessments
- Board Composition
- Charters/Bylaws
- “Hot” Topics

Current Industry Landscape

- COVID-19 – the new “normal”
- Increasing focus on ESG
- Diversity mandates
- SEC considerations
- Industry consolidations
- Increasing shareholder activism
- Technology

The Rise of ESG Investing

\$17.1 Trillion

ESG Investing in U.S. at start of 2020

- **↑ 42%** growth in sustainable investing between 2018 and 2020 alone
- **33%** or *one in three dollars* of total US assets under management
- **25X the level of assets in 2015**

Source: *US SIF Foundation. Report on Sustainable and Impact Investing Trends 2020*

Where Do ESG Requirements Come From?

- Increasing regulatory and governmental focus on the national, state and local levels.
- ESG pressures “wholistic” – multiple non-regulatory sources
 - Including investors, employees, customers, ratings agencies, proxy voting firms, banks, insurance companies
- **SEC/DOL**
 - SEC guidance on disclosure requirements, risk alert, investor bulletin, comment letters
 - DOL shifting view on ESG considerations for ERISA plan investments
 - Examination priority
 - Climate and ESG Task Force (Division of Enforcement)
- **Developing regulation, e.g., new NASDAQ diversity rule**
- Worldwide initiatives such as the UN Sustainable Development Goals

Board Diversity Mandates

- Industry group initiatives
- SEC regulatory action
 - Recommendation of Asset Management Advisory Council
- NASDAQ rule
- State law

Board Meetings

- Status of SEC exemptive relief from in-person meeting requirements
- Practical considerations
 - Remote or in-person or “*hybrid*”?
 - Meeting sites
 - First in-person meeting to-dos
 - ✓ Ratification of past Board actions
 - Meetings going forward

Committee Matters including Charters

- **Composition**
 - Certain Directors v. “Committee of the Whole”
 - Solely Independent Directors or Interested Directors as well
 - Committees responsible for matters that are only for Independent Director vote should be comprised of Independent Directors only
 - Ex officio Committee members
 - Committee consolidation or necessity of new committees
- **Charters**
 - Updating of responsibilities
 - Explicitly provide for hiring of experts or consultants
 - Annual assessment of Committee
 - Intersection with other Committees’ areas of responsibility
 - Delegation provisions
 - Annual review of charter

Committee Matters including Charters (cont.)

- Special or *Ad Hoc* Committees
 - Demand Review Committee (“DRC”)
 - Other litigation or special investigation
 - Insurance
 - New regulatory requirement
 - Board education or other subject
 - Unusual conflict matter
- Task Forces and Sub-Committees

Annual Board Self-Assessments

Board must evaluate, at least once annually, the performance of the Board and its Committees

Intended to strengthen directors' understanding of their role, foster better communications and greater cohesiveness, and help directors identify potential weaknesses and deficiencies in board performance.

- Required findings with respect to Committee structure and number of funds overseen
- “Ongoing” as opposed to once a year
- No “one size fits all” process
- Tailored to each specific Board
- Areas of focus
- Assessing the evaluation process and outcomes

Board Composition

- Director candidate search process in time of COVID-19
- On-boarding of new Directors

Charters and Bylaws

- Exclusive forum provisions
- SEC Staff's positions and comments

“Hot” Topics

- ESG
 - Diversity, Equity & Inclusion
 - ESG and investment strategies
- Cybersecurity
 - Cyber insurance
- Valuation
- Compliance Oversight
- New Derivatives Rule
- Digital Engagement
- Proxy Voting
- Shareholder Activism
- Succession Planning and Business Continuity
- Consolidation
- Closed-End Funds