

April 15, 2020

NYC Comptroller Announces Results of Board/CEO Diversity Search Policy Campaign

Most Companies Receiving a 2020 Proxy Season Shareholder Proposal From the NYC Comptroller Have Implemented a Policy Requiring Consideration of Qualified Women and People of Color as Candidates in Director and External CEO Searches

SUMMARY

Yesterday, New York City Comptroller Scott M. Stringer and the New York City Retirement System (NYCRS) announced the results of their initiative calling on companies to adopt a board and CEO search policy requiring consideration of women and people of color as candidates.¹ This campaign is part of the Comptroller's "Boardroom Accountability Project 3.0" initiative, which the Comptroller's office launched in October 2019 by sending letters to 56 companies requesting that they adopt board/CEO diversity search policies.

In the 2020 proxy season, the Comptroller, on behalf of NYCRS, submitted shareholder proposals with 17 of the 56 companies, for each company to adopt a search policy for directors and external CEOs that mandates the consideration of both women and persons of color. Yesterday's announcement disclosed that NYCRS has reached negotiated settlements with 13 (or 76.5%) of those companies to adopt and disclose a board and CEO diversity search policy. NYCRS has declined to withdraw its proposal at the remaining four companies, even though two did adopt diversity search policies that apply to directors (but not to CEOs). The SEC granted one of these two companies no-action relief to omit NYCRS's proposal on the basis of Rule 14b-8(i)(10) (substantial implementation) and Rule 14b-8(i)(7) (ordinary business). However, shareholders will be voting on NYCRS's proposal at the other company that adopted a board-

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only diversity search policy, as well as two additional companies that have not adopted board/CEO diversity search policies.

DISCUSSION

The NYC Comptroller serves as the investment advisor to, and custodian and a trustee of, New York City's five pension funds, which together held approximately \$217.9 billion in assets as of January 2020. The Comptroller's Boardroom Accountability Project was launched in 2014 with the aim of making boards more diverse and independent, as well as more competent, on climate-related issues. Boardroom Accountability Project 3.0, the third and latest phase of the project, is focused on increasing diversity in boardrooms and C-suites.

The Comptroller's campaign calling on companies to consider both women and people of color during director and CEO searches was based on the National Football League's "Rooney Rule," which requires NFL teams to interview diverse candidates when filling head coaching jobs and certain front office positions. Yesterday's announcement notes that the CEO diversity search policy is not intended to be a substitute for robust internal succession planning but that NYCERS encourages companies to "maintain and disclose a process for fostering a diverse talent pipeline for executive management."

Yesterday's announcement cited the results of a 2016 study published by the Harvard Business Review finding that the odds of hiring a woman were 79 times greater when at least two women were included in the finalist pool, and the odds of hiring a person of color were 193 times greater when at least two minority candidates were included in the finalist pool. The Comptroller's office emphasized that many of the diversity search policies adopted by the 13 responsive companies specifically require the board to instruct search firms to include women and racially/ethnically diverse candidates on the initial list or pool of candidates. In addition, the Comptroller noted that, following the public launch of Boardroom Accountability Project 3.0, one company extended its existing Rooney Rule policy for director searches to cover the CEO and all other Section 16 executive officers despite not being one of the 56 companies that received a letter from the Comptroller's office.

NYCERS also indicated that it plans to continue to advance its diversity objectives by voting against directors at companies that it deems to be lacking in diversity. In 2019, NYCERS updated its Corporate Governance Principles and Proxy Voting Guidelines, stating that it will oppose the reelection of members of the nominating committee if the board lacks "meaningful gender and racial/ethnic diversity, including but not limited to, any board on which more than 80% of the directors are the same gender." The revised policy also states that NYCERS "may integrate more explicit racial/ethnic diversity expectations in the future as reliable data become available and may increase the minimum expectation for gender diversity."

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ENDNOTES

- ¹ The full text of the press release is available at <https://comptroller.nyc.gov/newsroom/nyc-comptroller-stringer-and-retirement-systems-announce-precedent-setting-board-ceo-diversity-search-policies-as-part-of-boardroom-3-0-initiative>.

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