On the 2024 nom/gov committee agenda

KPMG Board Leadership Center

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> In 2024, pressures on management and boards will increase significantly as companies contend with uncertainty and disruption as well as demands for increased transparency amid new regulations and heightened stakeholder expectations around climate change, cybersecurity, human capital management (HCM), artificial intelligence (AI), and other issues. Boards will need agility and fortitude to rise to the challenge of effective oversight.

In light of this, nominating and governance (nom/gov) committees will want to reevaluate the appropriate director skill sets and committee structure to oversee the company's strategy, risks, and opportunities as issues evolve and new opportunities and challenges arise. The committee will also need to work with board leadership to establish and maintain a culture where the ability to adapt and the robustness of disclosures are viewed as vital to effective governance in today's high-speed world.

Drawing on insights from our latest surveys and interactions with directors and business leaders, we highlight seven issues to keep in mind as nom/gov committees consider and carry out their 2024 agendas:

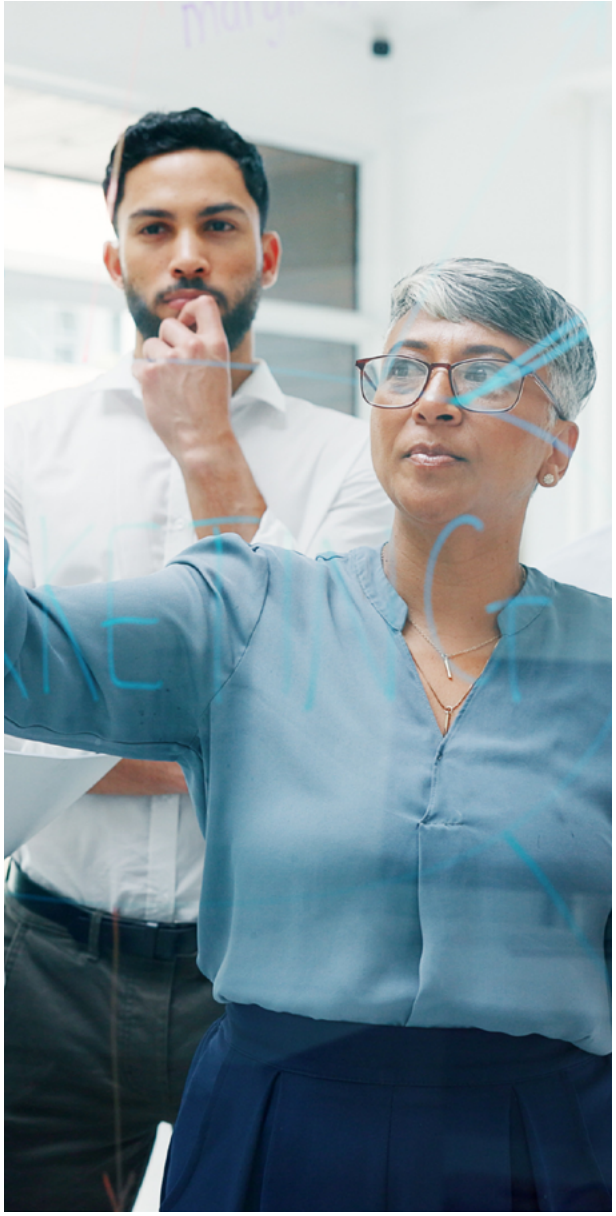
- **Lay the foundation to support agility in the board's guidance and oversight.**
- **Revisit the board's committee structure and workload distribution.**
- **Enhance the committee's focus on board composition.**
- **Impose high standards for individual director effectiveness and education.**
- **Holistically reevaluate oversight of the company's sustainability messaging.**
- **Set the tone for board and committee leaders.**
- **Sharpen communication to address investor needs.**

Lay the foundation to support agility in the board's guidance and oversight.

The business environment in 2024 is poised to face a continuation of geopolitical, economic, and societal risk and uncertainty. Domestically, the US presidential election and congressional and local races will heighten the already intense level of political polarization. Internationally, as existing wars continue and the threat of new and escalating conflicts are ever-present, companies are assessing the impact on their business operations globally. Those companies that do business in Europe and the US are preparing to comply with a growing patchwork of regulations related to cybersecurity, data privacy, climate change, and human capital. The potential for persistently high interest rates and changing dynamics in global economic growth, the focus on sustainability, and advances in AI will further complicate the business environment in the year ahead. Continual reassessment of the company's strategic direction and risk profile will be key to maintaining resiliency, and boards should be mindful not to let risk overshadow opportunity.

We encourage nom/gov committees to approach 2024 with a focus on board agility—in composition, structure, and mindset. To excel, boards should be prepared to pivot in sync with a rapidly changing business environment to guide management in making well-founded decisions, and to serve as a steadying force for young management teams lacking historical context.

Nom/gov committees should establish a board culture that embraces dynamism and raises the bar for both individual director and collective board performance. This may require greater board turnover to make room for directors with different skill sets, the need for greater access to external expertise, and more advanced continuing education for board members as new issues arise and existing issues evolve. More frequent board meetings, committee meetings, or updates from management between board meetings may also be required. And rigor will be needed to keep agendas focused on what's important. All of this indicates that nom/gov committees should not wait until an annual evaluation process to assess board effectiveness—rather, agility, coupled with constant calibration and adaptation, are the watchwords for 2024.



Revisit the board's committee structure and workload distribution.

As the board's responsibilities expand, nom/gov committees must lead the charge in determining how the board, through its committee structure, will oversee emerging issues in addition to the more traditional work of the board. Nom/gov committees should review annually the key strategic issues and risks that the company and board are facing, mapping them to the appropriate committees. For 2024, special attention should be devoted to how the board will oversee the following areas:

- *Sustainability:* A flood of new laws, potential regulations, and enforcement related to climate change[1] and human capital[2] will up the ante on disclosure of metrics and risk-related governance. Nom/gov committees should consider how to optimize oversight through a structure that enables attention not only to compliance but also to sustainability-related value creation. While the ideal structure will vary by company, a good starting point is to consider the following:
  - Consider which committees will monitor stakeholder perspectives, assess risk, and oversee climate goals and the path to achieve them;
  - Oversee climate-related disclosures and controls around such disclosures in the audit committee (see On the 2024 audit committee agenda);
  - Oversee diversity, equity, and inclusion (DEI) and other HCM practices in the compensation committee, commonly renamed the compensation and human capital committee or similar (see On the 2024 compensation committee agenda); and
  - Integrate sustainability considerations into enterprise strategy at the full board.

For more on compliance and messaging around sustainability, see page 9.)

Questions for assessing board committee structure

- What are the company's key strategic issues and risks, and where are there gaps or overlaps in committee oversight?
- Do committee names, committee charters, or governing documents need to be adjusted to reflect changing priorities or mandates?
- Is any committee overloaded, and, if so, how can the workload be rebalanced?
- Does a new committee need to be created? Does the board have the right skill sets and number of directors to form such a committee? How will the schedule for committee meetings be impacted if directors sit on multiple committees?
- What mechanisms are in place to ensure coordination and communication between committees (e.g., meetings of the committee chairs, cross-committee membership, open committee meetings, and committee reports)?

[1] KPMG LLP, Hot Topic: ESG in the US: California introduces climate disclosures and assurance, October 2023. KPMG International, First set of ESRSs is now out! Updated September 27, 2023. KPMG LLP, Understanding the SEC's climate proposal, March 2022.

[2] Cydney Posner, Investor Advisory Committee recommends human capital management disclosure, Cooley PubCo, September 25, 2023.

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- *Cybersecurity:* The SEC's final cybersecurity rules require disclosures regarding material cyber incidents and also disclosure of how the board oversees risks from cybersecurity threats. The nom/gov committee should ensure that cybersecurity oversight has a designated home, in a committee or the full board, with sufficient expertise and bandwidth to provide appropriate oversight. For many companies, the audit committee serves as the default for this role.[3] The nom/gov committee should work with the audit committee to assess its capacity, particularly as cybersecurity becomes more intertwined with broader aspects of technology such as AI. Does the audit committee have the time and the expertise, and if not, where can the work be better accommodated? If oversight resides somewhere other than the audit committee, does the audit committee drill down on cybersecurity-related disclosures and controls?
- *HCM:* 2023 brought renewed attention to workers' rights amid a flurry of union strikes and contract negotiations. As HCM issues continue to rise in strategic importance, compensation committees have widened their remits to incorporate oversight of corporate culture, employee engagement, DEI, and/or talent development into their charters. For example, 49% of S&P 500 companies have a compensation committee name that expands beyond compensation, and 84% include at least one nontraditional compensation committee responsibility in their charter.[4] Nom/gov committees should consider whether the board's oversight of HCM is sufficiently broad and properly documented in a committee name and charter. Additionally, the SEC's regulatory agenda includes a proposed rule on HCM disclosure, which could require an expanded narrative disclosure and/or disclosure of quantitative workforce metrics.
- *Technology:* Given the rapid developments in technology, particularly generative AI, boards need to better position themselves to provide effective oversight for strategy in this area. What are the most impactful technology developments—e.g., AI, robotics, cloud computing, blockchain, e-commerce, social media—the company is facing, and how are financial and human capital being allocated accordingly? Nom/gov committees should determine the right home for oversight, whether at the full board, a standing committee, or a new committee. To the extent that it touches multiple committees, the nom/gov committee should foster coordination.

[3] In a review of disclosures by the Center for Audit Quality and Audit Analytics, 59% of S&P 500 companies disclosed that the audit committee is responsible for cybersecurity risk oversight. Center for Audit Quality, 2023 Audit Committee Transparency Barometer, November 2023.

[4] NACD and Pearl Meyer, Future of the American Board: Compensation Committee Blueprint, 2023, p. 10.

Enhance the committee's focus on board composition.

Take a fresh look at structuring oversight of evolving issues.

Nom/gov committee chairs surveyed by Spencer Stuart in 2023 identified board composition as their committee's number one area of focus.[5] Evolving business needs and expectations require board members who are capable of asking informed questions, assessing management's answers, and offering guidance as companies navigate these issues and as new issues emerge. Nom/gov committees should consider the following questions:

- Do we need to add a board member with direct experience in a key strategic area?
- If so, where will we find candidates with the right experience who are also strong business leaders?
- If not, what alternative means will we use to provide effective oversight, such as intensive board education, hiring a third-party expert, or forming an advisory board?
- How will we communicate our decisions to our investors?

Addressed in this way, the question of whether to recruit for specific expertise can be approached strategically in the context of the company's overall needs.

Maintain focus on the fundamentals—strategy, finance, risk.

According to a report by The Conference Board, the percentage of S&P 500 directors with disclosed experience in business strategy declined from 70% in 2018 to 59% in 2023.[6] This is coupled with an increase in directors disclosing experience in other areas such as ESG or technology. While to some extent it may simply indicate a shift in the experience directors and their companies choose to emphasize in their disclosures, it serves as a reminder that traditional board skill sets, such as strategy, industry expertise, financial acumen, and governance should not only be present but should also be disclosed.

Harness the power of diversity.

Getting the right mix of traditional and forward-looking experience on the board is no easy feat, and nom/gov committees that extend their searches to diverse networks increase their odds of finding extraordinary candidates. Boards have increased the percentage of seats held by women and underrepresented minority groups in recent years. This has likely been influenced by numerous forces: the aftermath of the 2020 murder of George Floyd; California laws with respect to women and underrepresented groups on boards (declared unconstitutional and undergoing appeal); Nasdaq's Board Diversity Rule (upheld by the Fifth Circuit and assigned to en banc review); and the voting policies of numerous institutional investors that engage with companies and exercise votes consistent with their views about the importance of diversity in achieving long-term value.[7]

[5] Spencer Stuart, Nominating/Governance Chair Survey 2023, July 2023.

[6] The Conference Board, Business Strategy Experience Declines on Corporate Boards, press release, October 3, 2023.

[7] For example, State Street Global Advisors (SSGA) may vote against the nom/gov committee chair for lack of board gender diversity, racial/ethnic diversity, or failure to disclose the board's gender and racial/ethnic composition. BlackRock may vote against nom/gov committee members at companies that fail to disclose their approach to diversity as it relates to board composition. SSGA, Proxy Voting and Engagement Guidelines, March 2023 North America, p. 5. BlackRock Investment Stewardship, Proxy voting guidelines for U.S. securities, January 2023, p. 9.

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While progress has been made, the recent slowdown in diversity gains[8] means that nom/gov committees should remain focused on this issue. Women still hold only 33% of S&P 500 board seats and 29% of Russell 3000 board seats. Latino directors remain severely underrepresented among both S&P 500 and Russell 3000 boards. And while Black and Asian directors have made gains, there is still significant room for their numbers to grow. Take a fresh look at how the board's diversity compares to that of the company's customers, employees, and the communities in which the company operates—keeping in mind that board diversity is a trifecta: (1) the board is looking broadly to find the best board talent, (2) the board benefits from the lens of a demographic that is important to the business, and (3) the company benefits from the hard work that boards do when groupthink is less likely to occur.

Board demographics		
	% of S&P 500 board seats disclosed	% of Russell 3000 board seats disclosed
Gender		
Male	66.6%	70.8%
Female	33.4%	29.2%
Race/Ethnicity		
White/Caucasian	73.0%	75.8%
African American/Black	12.3%	8.3%
Latino/Hispanic	5.0%	3.7%
Asian, Hawaiian, or Pacific Islander	6.8%	8.1%
Two or more races/ethnicities	1.2%	1.5%
Did not disclose race/ethnicity	0.9%	2.1%
Other race/ethnicity	0.7%	0.6%
Sexual orientation		
LGBTQ	0.9%	1.0%

Source: KPMG Board Diversity Disclosure Benchmarking Tool, powered by ESGAUGE, September 30, 2023. Those directors disclosed as identifying with two or more races/ethnicities may also be identified with the individual racial/ethnic categories to which they belong. Gender data is based on self-identification and pronouns. Race/ethnicity data and LGBTQ data is based on voluntary self-identification and disclosures.

[8] Spencer Stuart, 2023 U.S. Spencer Stuart Board Index, p. 15.

Impose high standards for individual director effectiveness and education.

Nom/gov committees should work with board leadership to make clear that directors are expected to add value from the day they join the board to the day they leave. This begins up front, with the nom/gov chair and board chair/lead director setting expectations about the desired levels of individual director contribution and continuing education, and communicating clearly that renomination decisions will be based on how individual performance, experience, and skill set align with the board's current and future needs.

A well-thought-out onboarding program is helpful for any new director, and is particularly valuable for helping first-time directors as they work to get up to speed quickly. Yet according to a survey by Equilar, the Ellig Group, the Nasdaq Center for Board Excellence, and the Society for Corporate Governance, 34% of public companies surveyed do not have a formal onboarding process in place for first-time directors, despite the fact that 90% of these companies added a first-time director in the past three years. And although designating an experienced board member to serve as a "board buddy" for a new director has emerged as a leading practice, 71% of companies surveyed do not do so.[9]

When a board is committed to continuous learning, expectations for individual director onboarding seamlessly evolve into ongoing expectations for director education. To help establish a board culture of continuous learning, the committee should assess where there are gaps in the board's knowledge with respect to both external issues and areas of the business, and consider:

- In what areas should individual directors be encouraged to seek out training to address known gaps and generally to help the board stay current?
- Is the company paying for memberships and training consistent with the needs of the board?
- When individual directors obtain training on a topic, how are they expected to bring the information back to benefit the full board?
- Are directors' commitments to education evaluated in individual director and full-board evaluations?
- How is the nom/gov committee publicly disclosing the board's endeavors around continuing education?

As recommended in the 2023 NACD Blue Ribbon Commission Report, *Culture as the Foundation: Building a High-Performance Board,* "Destigmatize the decision of individual directors to leave a leadership position or to go off-board." Rapidly evolving regulations, stakeholder expectations, operating conditions, and technological developments may render the existing skill sets of directors no longer fit for purpose at a quicker pace than longer-tenured directors have historically experienced. Going the extra mile to remain relevant and add value should be table stakes for all board members, and nom/gov committees can reinforce this through communication, annual assessments, and renomination decisions.

While nearly all S&P 500 companies conduct annual board evaluations, only 47% disclose that they perform individual director evaluations, according to the 2023 U.S. Spencer Stuart Board Index.

[9] Equilar, Ellig Group, Nasdaq Center for Board Excellence, and Society for Corporate Governance, Assessing First-Time Director Success: A Survey of Board Member Onboarding Practices, September 2023. Other considerations for onboarding are available in the KPMG BLC New director onboarding guide.

Holistically reevaluate oversight of the company's sustainability messaging.

Heading into 2024, nom/gov committees should take a fresh look at the company's sustainability strategy, goals, initiatives, messaging, and disclosures—not only as a result of growing regulation and reporting frameworks but also amid increasing political polarization around the term "ESG." Depending on the company, the issues may be delegated to a single committee (the nom/gov committee or a separate sustainability committee) and/or multiple committees may play a role. For example, the audit committee often provides oversight of disclosure, while the compensation committee frequently oversees HCM, including DEI. Regardless of the structure, the nom/gov committee plays an important role in ensuring that the work is done in a way that enables collaboration, avoids gaps, and minimizes silos. Consider the following:

Oversight of required disclosures: US companies may be subject to climate-related reporting via the SEC's proposed climate rule, California's new climate disclosure laws,[10] the EU's European Sustainability Reporting Standards, and/or the International Sustainability Standards Board standards (currently voluntary but expected to be mandated by certain jurisdictions). In addition, the SEC's regulatory agenda listed a proposed rule on HCM disclosures, although the timing is uncertain. The nom/gov committee should ensure the board is prepared to provide a deeper level of oversight over mandatory sustainability disclosures, comparable to oversight of financial disclosure. Which company disclosures and communications will the board review, and which directors or committees will be responsible for this oversight? Does management have the budget, talent, controls, and resources to meet upcoming reporting deadlines? Where are the pain points and how are they being addressed?

Alignment: Consistency in the company's messaging across regulatory filings, sustainability reports, and communications with analysts, investors, customers, and employees is essential. Is the board driving the tone on sustainability-related communications? How is the company's leadership, including the board, articulating how the company's strategy incorporates sustainability risk and opportunity? Is the board setting the expectation that sustainability information shared publicly or with third parties be consistent, with a single unified message, even if different levels of detail are provided in different contexts? Alignment goes beyond messaging. Does the company consider sustainability from a value-creation perspective, not just as a risk? How do long-term sustainability goals align with shorter-term plans for capital allocation? How strong is the linkage across the company's purpose, values, sustainability philosophy, and strategy?

Focus: Encourage the board and management to focus the company's sustainability efforts and communications around the environmental and social issues that are most integral to the company's strategy and risk. Deepening rhetoric—and politicization of the term "ESG" and associated terms—threaten to distract and detract from corporate sustainability efforts. Nom/gov committees can help maintain board and management focus on the business and how the company engages with its stakeholders in order to continue on a path to long-term sustainable value.

For more on climate-related communications, see *Boardroom climate competence: Advancing the board-management conversation*.

[10] For details on SB 253 and SB 261, see "California introduces climate disclosures and assurance," KPMG Hot Topic, October 2023. Also see "California imposes ESG reporting related to carbon offsets," KPMG Defining Issues, November 2023.

Set the tone for board and committee leaders.

The Edelman Trust Barometer continues to identify business as the most trusted institution amid low trust in government, abundance of misleading information, and severe societal polarization. Topics on which CEOs are expected to take action include climate change, discrimination, wealth disparity, employee reskilling, and more.[11] With this backdrop in mind, the nom/gov committee should select and cultivate strong board leaders to guide and serve as a sounding board for the CEO. Consider the following questions for board leader succession planning in 2024:

- What leadership characteristics should the board chair/lead director/committee chairs possess to facilitate inclusive and innovative discussion?
- How often are leadership positions refreshed to maintain independent thinking and keep skill sets current?
- Do board leaders approach board succession with open minds and access diverse networks?
- Which board leadership structure best suits the board's and company's evolving needs (e.g., an independent chair, combined chair/CEO with a lead independent director, executive chair who is not the CEO)?
- How is the board's leadership structure communicated to, and perceived by, the company's largest shareholders?
- What culture and values does the board aim to foster and promote in 2024? What is working well? What isn't?

[11] Edelman, 2023 Edelman Trust Barometer: Global Report, 2023.

Sharpen communication to address investor needs.

As a result of the SEC's new universal proxy rule, the 2023 proxy season revealed an increased focus on board composition—specifically, the skill sets of individual directors. More activist campaigns were settled, and of those that went to a vote, 67% resulted in the election of at least one activist nominee, up from 40% in 2022.[12] In this environment, where shareholders can mix and match their preferred nominees from multiple slates, longer-tenured or over-boarded directors—as well as those without industry experience or with outdated skill sets—risk being perceived as low hanging fruit for activist campaigns.

Percentage of companies that disclose individual director demographics by name

Disclosure type	% of S&P 500 boards	% of Russell 3000 boards
Gender	52%	24%
Race/Ethnicity	42%	20%
Sexual orientation	10%	5%

Source: KPMG Board Diversity Disclosure Benchmarking Tool, powered by ESGAUGE. Data as of September 30, 2023. Percentages refer to the percentage of companies that make a disclosure **by individual director**, not the percentage of individual directors. For example, an S&P 500 company that includes a line for LGBTQ directors in its board matrix is included in the 10% figure, even if it has no directors who self-identify as LGBTQ.

Meaningful individual director evaluations tied to renomination, long-term succession planning matching director skill sets to strategy, and continual board refreshment are table stakes for good governance and should be accompanied by robust disclosures. Providing in-depth disclosures about the board's composition—including age, tenure, diversity, and experience/skills—and clearly explaining the value proposition for each individual director is more important than ever. The company should disclose a matrix that clearly describes the skills, experience, and demographics of each individual director.

Nom/gov committees should also ensure that management understands the key issues and perspectives of the company's largest shareholders, with engagements and disclosures tailored to address concerns. Nom/gov committees should expect a continued focus on issues important to company risk and reputation, such as workers' rights, human rights in the supply chain, climate change, and other environmental considerations.[13] And, as regulations such as the SEC cybersecurity regulation (and likely the climate and HCM regulations, when finalized) require disclosure of how the board is overseeing risk, nom/gov committees should work closely with the corporate secretary to understand how companies are framing their disclosures and what "good disclosure" looks like in this new context.

[12] Kirkland & Ellis, Shareholder Activism: Lessons from the First Season of Universal Proxy, June 26, 2023.

[13] Freshfields, Trends and Updates from the 2023 Proxy Season, July 2023, p. 4.

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