Governance Insights Center

Serving on and chairing the nominating/governance committee

With board composition among investors' top concerns, board nominations and governance play an increasingly critical role. Nominating/governance committee service may involve more responsibilities and higher expectations than ever before.

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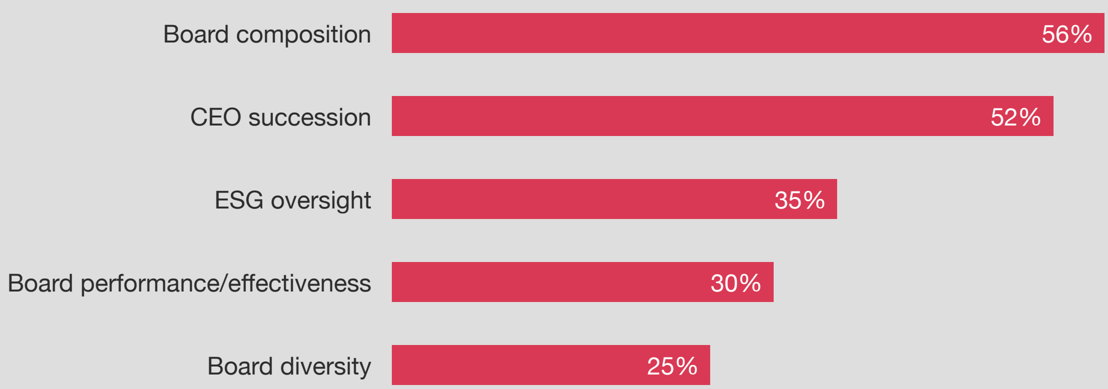
One of the nominating/governance committee's primary roles has always been to identify and recruit a highly qualified group of people with the right mix of skills to serve on the board. It still is. But the EU's Corporate Sustainability Reporting Directive, California's new climate disclosure rules, and several new or pending SEC rules have made governance structure and process a much more explicit disclosure requirement than in the past. Companies may also be facing: higher investor expectations on governance; growing stakeholder demands for the company to act on energy transition; equity in pay, promotion and hiring; human rights in supply chains and other social issues; polarized politics intruding more deeply into business; and a volatile global risk environment. The nominating/governance committee must also lead the board's efforts to build a governance structure and processes that support management and help the company thrive in uncertainty and change.

Nominating/governance committee chairs view board composition as their committee's top priority



Source: Spencer Stuart, *Nominating/Governance Chair Survey 2023*, July 2023.

This guide offers insights on how nominating/governance committees can best meet the increased demands for more structured and transparent corporate governance. We discuss, based on our experience with hundreds of public companies, the specific challenges nominating/governance committees are facing, its role and responsibilities, as well as strategies for improving decision-making and effectiveness.

How to use this guide

1. The first part of this guide, **Who is on the nominating/governance committee and how it works**, lays out the basics of serving on a board's nominating/governance committee, from who sits on the committee to how it collaborates with others to fulfill its responsibilities.

2. The second part of the guide, **What's high on the committee's ongoing agenda?**, outlines some of the committee's most critical and ongoing agenda items, including:

- Board effectiveness
- Committee structure
- Board composition
- Board diversity
- Board refreshment and succession planning
- Board recruitment
- Director onboarding
- Ongoing director education

3. The third part of the guide, **How are the more traditional nominating/governance committee responsibilities being remade?**, walks through some of the committee's longstanding responsibilities related to the relevant administrative, governance and disclosure requirements, including:

- Articles of incorporation and by-laws
- Director code of conduct and ethics
- Corporate governance guidelines
- Board leadership structure
- Director independence
- Director and officer protection
- Annual meeting

4. And the appendices offer several supplemental tools, with examples of a board skills matrix, a committee charter, and an annual committee calendar or agenda, as well as a comparison of NYSE and Nasdaq corporate governance requirements to support the work of the committee.

We hope that both new and experienced nominating/governance members will find this guide useful in keeping pace with rising stakeholder expectations and making committee membership effective, efficient and rewarding.

Part 1

Who is on the nominating/governance committee and how it works

The board chair may set the tone once the board is set, but establishing and facilitating an effective board begins with who is in the room — the domain of the nominating/governance committee. Unlike for the compensation and audit committees, regulators and exchanges have no specified requirements for nominating/governance membership, beyond requiring that (for most companies) members be independent *(see Appendix for a comparison of NYSE and Nasdaq listing requirements).*[1] But with varied and often unpredictable work, the committee benefits from its members having a range of experiences and perspectives. Diversity, in all its forms, can broaden committee deliberations as well as searches for potential board candidates.

How the nominating/governance committee works with other board committees

The nominating/governance committee doesn't work in isolation — it collaborates with the board's other committees on succession planning not only for the board but also for committee assignments and rotation. For example, the nominating/governance committee traditionally works with the audit committee to review the committee composition, confirming that an official financial expert is present as required; and the nominating/governance committee also works with the compensation committee on director compensation and issues of transparency, and investor engagement regarding executive compensation.

Collaboration with other board committees

Audit committee

- Succession planning for audit committee membership and leadership, including identifying an audit committee financial expert and ensuring that all members are financially literate
- Proxy statement review, especially non-GAAP disclosures
- Accuracy and transparency of ESG disclosures

Compensation committee

- Succession planning for compensation committee membership and leadership
- Director compensation
- CEO succession planning*
- Transparency and investor engagement about executive compensation

* Though many boards assign CEO succession planning to the compensation committee, a sizable number of boards assign CEO succession planning to the nominating/governance committee. For additional information on varying approaches to overseeing CEO succession planning, see our paper *How the best boards approach CEO succession planning*.

Nominating/governance chairs, like other committee chairs, need to have experience, integrity and strong communication skills. Additionally, they need to be committed to fine-tuning the regular agenda and effectively guiding discussion. Chairs need to be both willing and able to effectively coordinate with other board committees, and to make themselves available to board members as well as senior management in between scheduled meetings.

How long should members serve on the nominating/governance committee?

To promote refreshment on the nominating/governance committee and other board committees, nominating/governance committees may want to consider establishing a rotation policy specifying a maximum term for committee service, applied across all committees to promote effective committee refreshment. These policies can balance the benefits of long-tenured members with deep company experience against the benefits of having new members who can bring fresh ideas and perspectives, while allowing exceptions for special situations. The policy may be either informal or formal.

Making nominating/governance committee meetings run smoothly

It's always a challenge for committee chairs to check every agenda item and lead robust discussions of every relevant new subject area in the limited number of hours allotted. How should the nominating/governance committee fulfill its mandate while squeezing in all that needs to be squeezed in? Some chairs use innovative approaches to meet mounting demands:

Agenda planning. While building flexibility for urgent and trending topics that arise, an annual agenda can help set an efficient course for the year. The chair can designate a specific management representative, such as the corporate secretary, to help coordinate specific meeting agendas, including inevitable additions. The agenda should map out topics — most of them recurring — and time allotments for all scheduled meetings, including room for deep dives into selected topics and unexpected issues *(see Appendix for an example).*

Charter compliance. Annual agenda planning should begin with the nominating/governance committee charter, the committee's official commitment to shareholders. At the start of each year, the chair should review the charter with the full committee *(see Appendix for an example).* The chair should then map the annual agenda against the charter and get consensus from the committee that the agenda fulfills all the charter's requirements.

Key elements of committee meetings:

- Agenda planning
- Charter compliance
- Strategy alignment
- Coordination with other board committees
- Pre-meeting materials
- Updates on ongoing issues

Strategy alignment. The chair should meet with the CEO and senior leadership team to align the nominating/governance committee agenda with the company's strategic priorities for the year. For example, if management is planning to grow the company by strategic acquisition, the committee needs to agree on the board committees that will provide primary oversight and who in management will be responsible for reporting to the relevant committees. Another example: If the company has made a climate pledge, the nominating/governance committee needs to agree on a process for board oversight of progress toward meeting that commitment. The alignment discussion will vary widely based on strategic priorities, existing governance maturity, degree of transformation the company is undergoing, and external market or regulatory pressures.

> The goal is to ensure that the board fully understands strategic priorities and has in place a transparent and effective process to make sure the right information gets to the right people in the right form at the right time.

A key value of strategic alignment is to strengthen management's understanding that the oversight process will help the company more effectively execute its strategy by providing thoughtful feedback, offering critical review where needed and demanding regular accountability on progress.

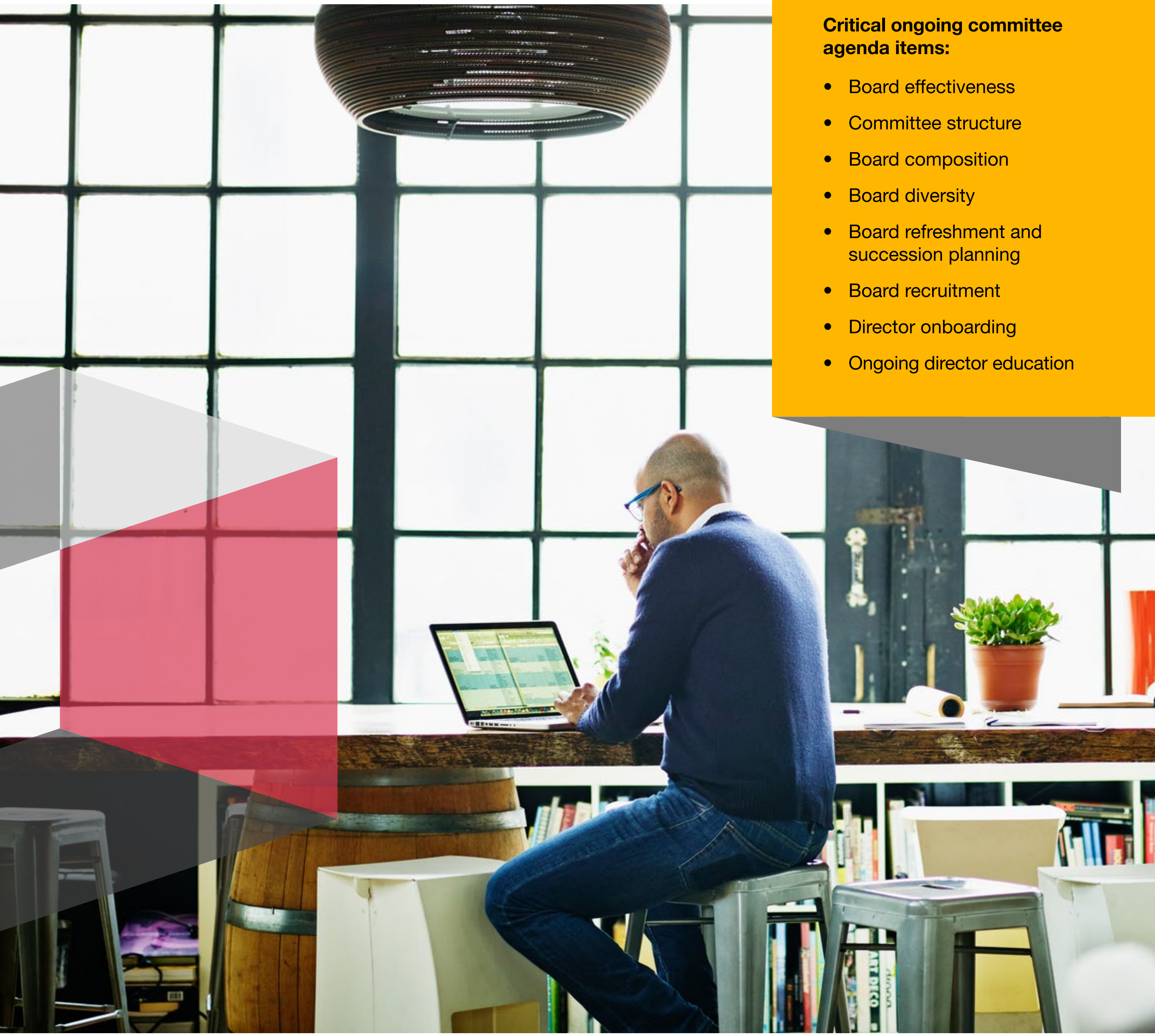
Coordination with other board committees. The chair should regularly touch base with other committee chairs before finalizing and distributing the annual and specific nominating/governance committee meeting agendas, to adjust topics and/or time allocation if needed.

Pre-meeting materials. Directors consistently tell us that that they want better board materials. They want more management insights, better-highlighted risks, and shorter and more summarized materials that call out any changes from prior meetings on the same topics. Usually, management aims to have materials available at least a week in advance of the meeting, though a shorter lead time may be appropriate for remote meetings with limited agendas. With the common use of board portals, some companies post materials to the portal as they are available, but make sure that the deadline for the complete meeting package is clear.

Updates on ongoing issues. Committee members appreciate brief updates on topics addressed in previous meetings, not only to focus attention on key ongoing subjects but to suggest progress. A regularly updated nominating/governance committee dashboard can offer information for directors who might want to follow up on any unresolved agenda items.

Part 2

What's high on the committee's ongoing agenda?



Critical ongoing committee agenda items:

- Board effectiveness
- Committee structure
- Board composition
- Board diversity
- Board refreshment and succession planning
- Board recruitment
- Director onboarding
- Ongoing director education

Board effectiveness. The nominating/governance committee is charged with assessing and enhancing overall board effectiveness. The committee guides the board's evolving approach to its work and the information flow to and from the board. There are various tools that the nominating/governance committee can use to assess and enhance board effectiveness. They include but are not limited to peer benchmarking, board and committee self-assessments, and individual director assessments.

What is the nominating/governance committee's role in the self-assessment process?

Generally, the board delegates responsibility to the nominating/governance committee for leading the annual self-assessment process for the full board and its committees (mandated for NYSE-listed companies). The committee is also typically tasked with determining whether and how individual directors will be assessed (not required by NYSE or Nasdaq).

The nominating/governance committee plays a critical role in reviewing assessment results, translating notable results into board actions and monitoring their progress. Though very few companies disclose this information today, some investors are beginning to look at the conduct of and reporting out of results and follow-ups from self-assessments as an indicator of good governance. Frequently, the nominating/governance chair will provide the board chair with an individual assessment when the board chair runs the other discussions. The nominating/governance chair may even join the board chair in all the director discussions.

One of nominating/governance committee's challenges is that *more than half of directors* say they find it difficult to be frank in board and committee self-assessments, and 41% say assessment processes are too much of a check-the-box exercise. The committee's commitment to and leadership in conducting impactful self-assessments of the board and its committees can produce demonstrable improvements in effectiveness — and serve to increase director support for the process.

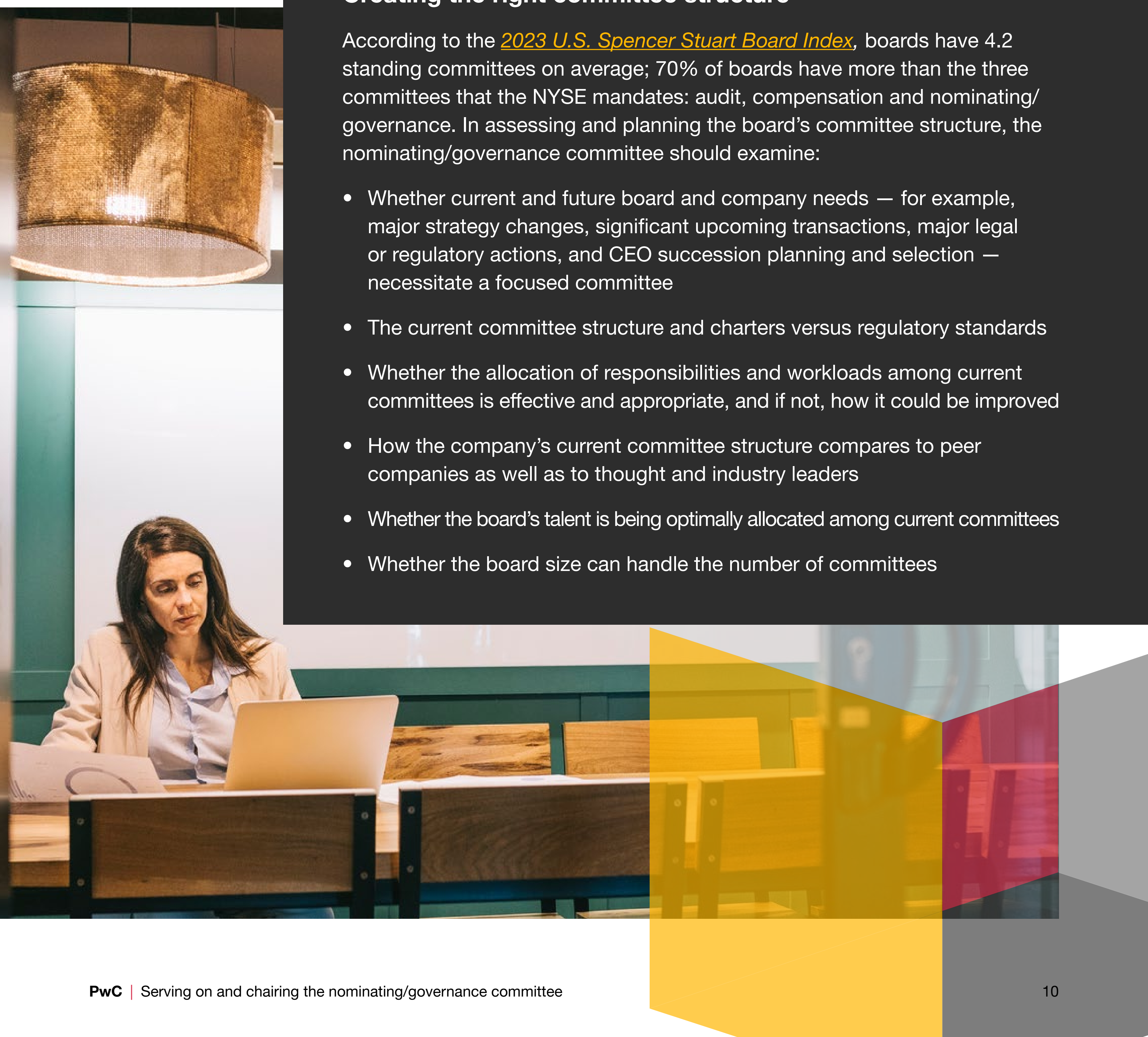
For information about conducting effective board and committee self-assessments, see our paper, *Conducting effective board assessments*. For information on conducting individual director assessments, see our paper, *Why boards should evaluate individual director performance*.

Committee structure. Some committees, including nominating/governance, are legally required to be in place; others are optional, to help the board more effectively carry out its oversight functions. The nominating/governance committee is responsible for regularly assessing the board's committee structure and allocation of responsibilities and recommending adjustments when appropriate to maintain alignment with the company's long-term strategy.

Creating the right committee structure

According to the *2023 U.S. Spencer Stuart Board Index*, boards have 4.2 standing committees on average; 70% of boards have more than the three committees that the NYSE mandates: audit, compensation and nominating/governance. In assessing and planning the board's committee structure, the nominating/governance committee should examine:

- Whether current and future board and company needs — for example, major strategy changes, significant upcoming transactions, major legal or regulatory actions, and CEO succession planning and selection — necessitate a focused committee
- The current committee structure and charters versus regulatory standards
- Whether the allocation of responsibilities and workloads among current committees is effective and appropriate, and if not, how it could be improved
- How the company's current committee structure compares to peer companies as well as to thought and industry leaders
- Whether the board's talent is being optimally allocated among current committees
- Whether the board size can handle the number of committees



Board composition. The board is a dynamic body: a collective of skills, experience and perspectives that must continuously adapt to the changing business environment and the company's strategy, goals and needs. The nominating/governance committee determines the appropriate board size and continually refines the board's composition to align with the company's evolving strategy as well as reflect the broader business environment and key stakeholders. A useful way for the committee to assess board composition is to maintain an up-to-date board matrix *(see Appendix for an example)* that captures director skills and experience, diversity, other boards served on, tenure and anticipated end of service. Having a snapshot of the board as a collective whole enables the committee to identify any gaps or needs to inform either upskilling or the board's recruitment priorities and plans. It can also provide a basis for proxy disclosure about board composition.

The committee also weighs the desirability of informally designated "specialist directors" with deep expertise in finance, cybersecurity, ESG, technology or other key issues, both to have that knowledge close at hand and to reassure regulators and stakeholders. If the board lacks specific expertise and can't easily add directors, the nominating/governance committee can suggest areas that may need external input and/or education.

Board diversity. Research and experience have confirmed that diverse groups of decision-makers outperform those in which everyone looks and thinks alike.[2] The nominating/governance committee should keep this in mind when considering the board's overall makeup. An independent, diverse board with varied perspectives and experience suited to the company's circumstances will likely make better decisions.

Indeed, many investors have adopted and regularly review proxy voting policies expressly supporting board diversity. Those investor policies often speak to gender and minority representation, but some go beyond those criteria to urge diversity of perspectives and personal characteristics such as race, age and ethnicity. The nominating/governance committee should aim to stay abreast of investors' evolving views on board diversity.

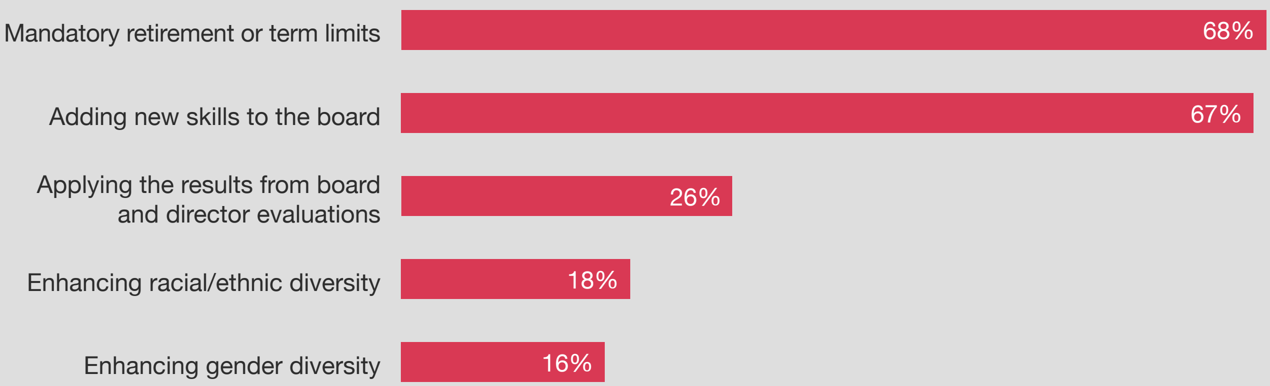
Making investor interest in board diversity official

Nasdaq adopted and the SEC approved rules that require companies listed on Nasdaq's US exchange to have at least two diverse directors, including one self-identified female director and one director who self-identifies as an underrepresented minority or as LGBTQ+ (several states have challenged this rule). A corporate board that fails to satisfy both criteria must explain why it does not have two diverse directors.[3]

Board refreshment and succession planning. With rising shareholder activism and the advent of universal proxy turning increasing attention to board composition, refreshment will likely move higher on the nominating/governance committee's agenda. Boards are working to align composition with evolving management strategies and external developments; that may mean making changes in board membership. Succession planning — implementing thoughtful refreshment and turnover — has become not only a critical nominating/governance agenda item but perhaps the most fraught one.

The nominating/governance committee oversees board refreshment as part of assessing not only the board composition but the specific structural mechanisms underpinning composition, including annual director elections, voting guidelines in which directors who fall short of a majority shareholder vote must offer to resign, term limits and age limits.

Mandatory retirement and term limits continue to drive board refreshment, but other approaches are gaining steam



Source: Spencer Stuart, *Nominating/Governance Chair Survey 2023*, July 2023.

Board recruitment. Based on the committee's assessment of the board's current and expected board composition needs, the nominating/governance committee should proactively aim to identify the board's recruitment priorities and consider broadening their sources, as well as executive profiles, for board candidates. In the past, boards often tapped mostly their existing members' networks or professional search firms for board candidates, focusing primarily on sitting or former CEOs. Recently, however, nominating/governance committees have begun turning to other more nontraditional channels to help the committee build and maintain a wide pipeline of viable nominees, with candidates from an array of roles and backgrounds.

What are today's top board recruitment priorities?

38%	24%	23%	23%
Financial expertise	Retired CEO/COO	Active CEO/COO	Operational experience (e.g., GM or P&L leader)

Source: Spencer Stuart, *Nominating/Governance Chair Survey 2023*, July 2023.

There is ongoing debate as to whether boards should recruit narrow, subject matter expertise such as cybersecurity. If a board recruits a specific kind of expertise, we recommend that the director candidate have broad executive experience with knowledge spanning other areas of board oversight. It's okay to have a director deep in one area, but their knowledge and experience should be farther-reaching. Boards can always use external advisors to provide topic area expertise when needed.

The committee should also be opportunistic in its recruitment efforts. If the committee identifies an ideal candidate, the committee can always recommend that the board temporarily increase the size of the board to bring on that candidate — and reduce the size of the board once it is time for another director to step down.

Director onboarding. A solid director onboarding program can help new directors make contributions faster. New directors need to learn about the company and the board's ways of working, since no two companies and no two boards are the same. The committee provides input into that structure and who should take part in the new director's onboarding. Additional details about this process can be found *here*.

How to fast-track onboarding of new nominating/governance committee members

The nominating/governance chair and corporate secretary can partner to bring new nominating/governance committee members up to speed quickly through a structured approach. Onboarding should include scheduled time with the lead director (often the nominating/governance chair), general counsel, corporate secretary, sustainability officer, public affairs officer and investor relations officer (if applicable).

Key orientation topics	Governance documents and discussion points
Organic documents	• Articles of incorporation • By-laws
Corporate governance guidelines	• Board leadership structure and rationale • Key provisions of governance guidelines • Director stock trading pre-clearance requirements and reporting • Communication of governance guidelines and priorities to stakeholders
D&O protection	• Indemnification (by-laws and agreement, if applicable) • Insurance coverage (Side A, Side B, Side C) • Director and officer exculpation • Advancement of legal and other defense expenses
Investor base and engagement	• List of largest investors and key governance policies • Engagement program • Recent investor interactions • Recent annual meeting voting results
Board composition and director recruitment	• Board skills matrix • Director demographics • Prospect identification and recruitment • Use of external recruitment firm • Communication of board composition to stakeholders
Nominating/governance committee processes	• Committee charter • Annual committee meeting agenda • Committee self-assessment • Feedback loop during director's first year • Individual director assessments
Support and resources	• Chair's role • Continuing education • Committee liaison • Corporate secretary and general counsel as well as chief sustainability officer, chief public affairs officer and investor relations

Ongoing director education. No matter whether directors are recent arrivals or veterans, they need education and upskilling to keep pace with technologies and external developments affecting company strategy and business operations. The nominating/governance committee typically oversees director training and education, whether aimed at filling individual knowledge gaps or educating the full board.

The committee may want to consider adopting a policy mandating that directors attend bespoke board training (often conducted in the boardroom) or third-party director continuing education programs to ensure that everyone on the board remains current. Bespoke training can be tailored to the board's and company's specific circumstances. Third-party programs can expose directors to a broader range of experts and provide them with opportunities to connect with directors from other companies to exchange best practices. By making continuing director education mandatory, the nominating/governance committee makes clear its expectations that directors maintain their currency and deepen understanding of evolving issues. The board's budget should include funding for director education programs and related costs.

37% of directors say they are not provided with sufficient director education opportunities.

Source: PwC, *2023 Annual Corporate Directors Survey,* October 2023.

Why does the nominating/governance committee's agenda seem to be expanding?

As the business landscape has shifted in recent years in response to dramatic environmental, social and governance developments, nominating/governance committees have found themselves taking on more and more responsibilities. Among the sources driving this expanding remit include:

- Investor and proxy voting advisory firms' policies and evolving views of "good governance" and shareholder rights
- The need for coordinated board oversight of the company's environmental, social and governance initiatives; absent a dedicated sustainability committee, the committee often serves as one and coordinates ESG oversight activities housed in other committees
- SEC regulations, especially governance-related disclosure requirements, as well as the California climate disclosure requirements and the EU's Corporate Sustainability Reporting Directive
- Exchange listing standards, especially those governing composition and disclosure
- Corporate law developments, such as key Delaware court decisions and changes in corporate law in several US states
- Federal and state laws and regulations applicable to the boards of insurance holding companies, bank holding companies, financial services companies and similar specialized companies

Part 3

How are the more traditional nominating/governance committee responsibilities being remade?

In addition to the big and ongoing agenda topics discussed above, the nominating/governance committee continues to hold responsibility for certain longstanding, and sometimes administrative, governance and disclosure requirements. However, even these responsibilities continue to evolve due to shifting pressure from investors, regulators and the overall business environment.

- **Articles of incorporation and by-laws.** Certain provisions (e.g., dual-class stock or disproportionate voting power) in these organic documents can become the focus of shareholder proposals and activism or prompt “no” votes against directors. The nominating/governance committee should regularly review and recommend to the board, and as required, to shareholders, any changes to the provisions governing shareholder rights such as majority voting, advance notice nomination requirements, shareholder action by written consent, proxy access, shareholder rights to call a special meeting, exclusive forum provisions and director protections.
- **Director code of conduct and ethics.** The content and application of the Directors’ Code (required by NYSE but not Nasdaq) reflects the board’s increasing expectations for directors. The nominating/governance committee should review the code annually to make sure it reflects evolving legal requirements, sets a high bar for director behavior, and aligns with guidelines for executives and employees. The committee should also promptly and thoughtfully address any waiver requests, and those should be disclosed quickly.

Other committee responsibilities:

- Articles of incorporation and by-laws
- Director code of conduct and ethics
- Corporate governance guidelines
- Board leadership structure
- Director independence
- Director and officer protection
- Annual meeting

- **Corporate governance guidelines.** The nominating/governance committee oversees these guidelines, which serve as a “how and why” roadmap to a company’s governance principles and practices. Investors often use these guidelines, also required by NYSE but not Nasdaq, to assess governance at portfolio companies and make proxy voting decisions. Annual reviews and updates to reflect evolving best practices and preferences are important to maintain credibility with the company’s stakeholders.

- **Board leadership structure.** Public companies must disclose their board leadership structure, whether the CEO and chair roles are combined, and whether the company has a lead independent director and, if so, the responsibilities of that role. Many investors strongly prefer that the roles be separate or, if combined, that the board appoint a lead independent director. If the board opts for a lead independent director, the nominating/governance committee is responsible for enumerating the role and responsibilities.

- **Director independence.** Independence is not always easy to assess, but it falls to the nominating/governance committee to make recommendations to the board about each individual director’s independence. Both Nasdaq and NYSE require that a majority of a board’s directors be “independent,” but they define independence differently. The committee should evaluate each director’s unique circumstances to assess their independence, applying the applicable exchange standards. The committee can then recommend to the board whether the board can reliably find that the individual directors are independent. Companies must then disclose which of their directors is independent under these standards.[4] But the committee cannot simply apply exchange standards alone. State laws may also contain standards for independence.

  To add further complexity to the nominating/governance committee’s consideration of director independence, investors and proxy advisory services often adopt and apply their own standards for independence when assessing company governance and voting proxies. As a result of these divergent definitions, directors can sometimes face negative votes even if they meet the applicable exchange’s standards. Practically speaking, the nominating/governance committee should evaluate each director’s independence against these third-party standards and the technical, legal and listing standards.

- **Director and officer protection.** The nominating/governance committee is often charged with recommending to the board what protections the company should provide to directors and officers for potential losses arising from lawsuits. These can include D&O insurance, exculpation and other mechanisms. For complex organizations, especially those operating internationally, the topic of director and officer protection can extend to the company’s subsidiaries.

- **Annual meeting.** The nominating/governance committee plays a significant role in annual meeting planning and assessing shareholder voting results. Committee remits now include meeting format (in-person, hybrid, virtual), proxy statement content, evaluation of shareholder proposals, investor outreach and feedback, universal proxy, proxy advisory services and large investor policies.

Telling a story of good governance — and building trust with stakeholders

Board communication with stakeholders is central to the nominating/governance committee's role in enhancing board effectiveness. The committee should evaluate the information flow to and from the board, since necessary information changes along with the issues that the board addresses.

The committee can take the lead in building trust with the full range of stakeholders through communication about the company's corporate governance, clearly explaining the board's membership and governance practices in the company's proxy statement as well as on the website. Often this involves offering enhanced disclosure, including information sought by investors and other stakeholders, but the larger goal is to tell the company's governance story, specifying why current governance practices are appropriate for the company and its stakeholders, and align with a deeply-held commitment to good governance.

A second and important way that committee members can build greater trust is to engage directly with investors and/or other stakeholders about the company's governance. Hearing directly from the nominating/governance chair or other members can build confidence in the committee and full board. To effectively engage with investors, the nominating/governance chair and committee members need to be informed about topics to be discussed and be prepared to actively listen to constituents' questions and feedback. Preparing for those meetings should include receiving legal advice and coordination with the company's investor relations team to ensure consistency of messaging. This is easier if nominating/governance members are kept up to date on emerging and evolving issues particular to the company as well as more broadly.

Conclusion

With the business, legal and regulatory environments constantly shifting, and stakeholder expectations forever rising, stable corporate governance is more important than ever. The nominating/governance committee is central to board effectiveness, with the committee not only performing legally-required functions but helping the board build trust among the company's varied stakeholders. Facing a myriad of changes and challenges, the nominating/governance committee strives to address current needs and prepare the board and company for the future.

Endnotes

1. **Which public companies must have a governance committee?**

   NYSE requires listed companies to have a nominating/governance committee — with a charter and composed of independent directors. Notably, NYSE-listed controlled companies are exempt from NYSE's requirement for a majority independent board and fully independent nominating/governance committee.

   Nasdaq does not require listed companies to have a nominating/governance committee. However, it does require listed companies to have a written charter or resolutions specifying the director nomination process and that only independent directors select nominees. Nevertheless, most Nasdaq-listed companies have governance committees — reflecting the increasing responsibilities and importance of governance committees to board effectiveness

2. **David Rock and Heidi Grant, "Why Diverse Teams Are Smarter," *Harvard Business Review,* November 4, 2016.**

3. **Here is how Nasdaq categorizes and defines underrepresented minorities:**

   - **Non-binary** – Refers to genders that are not solely man or woman. Someone who is non-binary may have more than one gender, no gender or their gender may not be in relation to the gender binary.
   - **African American or Black** (not of Hispanic or Latinx origin) – A person having origins in any of the Black racial groups of Africa.
   - **Alaskan Native or Native American** – A person having origins in any of the original peoples of North and South America (including Central America), and who maintain cultural identification through tribal affiliation or community recognition.
   - **Asian** – A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.
   - **Hispanic or Latinx** – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term Latinx applies broadly to all gendered and gender-neutral forms that may be used by individuals of Latin American heritage, including individuals who self-identify as Latino/a/e.
   - **Native Hawaiian or Pacific Islander** – A person having origins in any of the peoples of Hawaii, Guam, Samoa or other Pacific Islands.
   - **White** (not of Hispanic or Latinx origin) – A person having origins in any of the original peoples of Europe, the Middle East or North Africa.
   - **Two or more races or ethnicities** – A person who identifies with more than one of the above categories.
   - **Underrepresented individual in home country jurisdiction** – A person who self-identifies as an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the foreign issuer's principal executive offices (as reported on the foreign issuer's Forms F-1, 10-K, 20-F or 40-F). LGBTQ+ –A person who identifies as any of the following: lesbian, gay, bisexual, transgender or as a member of the queer community.
   - **LGBTQ+** – A person who identifies as any of the following: lesbian, gay, bisexual, transgender or as a member of the queer community.

4. **Ensuring that directors do not run afoul of these varied standards can be challenging.** Careful due diligence of facts underpinning independence is critical to these determinations. In order for the company's legal counsel and governance committee to evaluate circumstances and assess independence, directors need to be both scrupulously honest and fulsome in their responses to the company's annual director questionnaire and alert the corporate secretary or general counsel if circumstances change at any point. The corporate secretary and general counsel should also maintain awareness of changes in a director's circumstances that might affect independence — and actively investigate those changes with the director and, if needed, other relevant parties.

Appendices

NYSE vs Nasdaq corporate governance requirements comparison

Standard/topic	NYSE	Nasdaq
Director independence	A majority of the company's board must be independent.	A majority of the company's board must be independent.
Independence standards*	• Director can have no material relationship with the company • Minimum independence standard: greater of 2% of consolidated gross revenues or $1M — may adopt higher or additional independence standards. If adopted, those must be disclosed. • Proxy statement must disclose the board's determination that a relationship is not material.	• The board must determine that the director has no relationship that would interfere with the director's exercise of independent judgment. • Minimum independence standard: greater of 5% of recipients consolidated gross revenues or $200,000
Related party/conflict of interest transactions (RPT)	• Must adopt a code that addresses conflict of interest transactions • Must disclose RPTs as required by Reg. S-K, Item 404	• Audit or comparable committee (could be a governance committee) must review but not approve RPTs • Must disclose RPTs required by Reg. S-K, Item 404
Required board committees	• Audit • Compensation • Nominating/governance	• Audit • Compensation
Nominating/governance committee	• Required • Must be comprised of independent directors • Must have a charter • Charter must provide for annual committee evaluation	• Not required, however, the board must authorize a committee of independent directors to recommend director nominees and document the nomination process. • If the board establishes a governance committee, it must have three independent members. It may have an additional member who is not independent, but the member may serve for no more than two years. • The company must certify that it has adopted a formal written charter or board resolution documenting the nominations process — and related matters under the federal securities laws.
Code of business conduct and ethics	Must adopt and disclose a code for directors, officers and employees that addresses Sarbanes-Oxley standards and topics specified in NYSE listing standards. Code must address: • Conflicts of interest • Corporate opportunities • Confidentiality • Fair dealing • Protection and proper use of company assets • Compliance with laws, rules and regulations (including insider trading laws) • Reporting of any illegal or unethical behavior • Waivers – Only the board or board committee may approve a waiver of the code for a director or officer – Prompt disclosure is required Must disclose code on website and provide link in annual report.	Must adopt and disclose code for directors, officers and employees that addresses Sarbanes-Oxley standards. Code must address and promote: • Honest and ethical behavior — including handling of conflicts of interest • Full, fair, accurate, timely and understandable disclosure • Compliance with applicable governmental laws, rules and regulations • Promote internal reporting of code violations • Accountability for adherence to the code • Enforcement mechanism • Waivers – Only the board or board committee may approve a waiver of the code for a director or officer – Prompt disclosure is required Must disclose code on website and provide link in annual report.

NYSE vs Nasdaq corporate governance requirements comparison (Continued)

Standard/topic	NYSE	Nasdaq
Corporate governance guidelines	Adopt guidelines that address: • Director qualification standards • Director responsibilities • Access to management • Access to independent advisors • Director compensation • Director orientation and continuing education • Management succession • Annual board performance evaluation Must disclose guidelines on website and provide link in annual report.	Not addressed in listing standards
Continuing education for directors	Corporate governance guidelines must address director education.	Provides directors with a listing of continuing education sessions.
Compliance with listing standards	Annual CEO certification is required. Certification must state that CEO is not aware of any violations of the NYSE corporate governance standards and qualify the certification as needed. The CEO must notify the NYSE in writing if any executive officer becomes aware of any failure to comply with NYSE corporate governance standards.	The company must notify Nasdaq if any executive officer becomes aware of any failure to comply with Nasdaq corporate governance standards.
Executive sessions	• Regular executive sessions of non-management directors are required. Independent directors should meet in executive sessions at least annually. • Proxy disclosure is required regarding: – Lead director (LD) selection and role – Shareholder communications with lead director and non-management directors	• Regular (at least twice a year) executive sessions of independent directors are required

* Investor governance policies and proxy voting advisory services as well as state law standards for “independence” should also be considered.

Example annual nominating/governance committee calendar/agenda

Agenda topics	Notes	Board action needed
At every meeting		
Review and approve minutes of prior committee meeting		
Executive session		
At every regular meeting	Given the reputational risks associated with these topics, the committee should receive a brief/summary report at each regular meeting in addition to its annual deep dive into these topics.	
Review political activities dashboard		
Review charitable activities dashboard		
Review ESG dashboard	Addressing this topic at each meeting puts it on par with the board's other operational responsibilities.	
1Q meeting		
Recommend nominees for election at the annual meeting of shareholders ("ASM")		Approve director nominees
Review responses to director & officer ("D&O") questionnaire regarding: • Independence • Company and investor limitations on number of boards • Compliance with stock ownership requirements	Addressing this topic at this meeting helps to establish accurate proxy statement disclosure.	Confirm committee's director independence findings
Review proxy statement governance disclosure	Address compliance topics such as: • Governance policies and practices • Board composition bios and matrix • Related person transactions (if called for) • Any late SEC Form 3, 4 and 5 filings	Approve proxy statement
(If any) Review shareholder proposals	Consider: • Status of discussions with proponents • Proposed position statements for inclusion in the proxy statement • Requests for SEC no-action letters • Vote projections from proxy solicitor	Approve statements in opposition — if applicable
Review annual meeting resolutions regarding: • Record date, meeting date, time and location/virtual • Appointment of proxies and inspectors of election • Form of proxy card and Voting Instruction Form (VIF) • Proxy statement and delegation of authority to management to update as needed	It is important that the committee review and understand the text on the universal proxy card and VIF. It should no longer be "boilerplate."	Approve
Review results of board and committee self-evaluations	Consider need for board action regarding: • Corporate governance guidelines • Leadership structure or selection • Committee charters, memberships or structure • Board composition • Board succession planning	Certain actions will require board approval at this meeting or following the ASM
Review director compensation program	Obtain advice from independent compensation consultant	

Example annual nominating/governance committee calendar/agenda (Continued)

Agenda topics	Notes	Board action needed
Special meeting to address ASM developments (if needed)		
Review and report to board on the following events: • A proxy advisory firm or significant investor recommends a negative vote on a company proposal (e.g., "say on pay") • Company's proxy solicitor advises that a nominee is likely to receive less than "majority of votes cast" • Shareholder proposal developments (e.g., proxy solicitor advises proposal is likely to obtain a significant or majority vote, SEC no-action letter process escalates to litigation)	Discuss company response and solicitation efforts. If relevant, review majority voting by-law provision to promote full understanding of process and implications.	Review committee report
Board's annual organization meeting following ASM		
Review notable results and follow-ups	Examples include: • Director receiving less than 85% vote • Management proposals receiving less than 85% vote • Shareholder proposals receiving more than 15-20% vote	Review committee report
(If company has majority voting by-law provision) If a board-nominated nominee received less than a "majority of votes cast," review nominees' required letter of resignation and recommend board action on the proffered resignation.		Accept or reject
Recommend board approval of board organizational matters	Examples include: • Changes to committee charters or allocation of responsibilities • Committee membership, committee chairs and related independence and qualification determinations (e.g., audit committee financial expert) • Election of lead independent director by independent directors • Any changes to corporate governance guidelines warranted by the ASM voting results	Approve
Recommend board approval of company organizational and control matters	Examples include: • Election of officers • Delegations of authority • Policies governing related person transactions • Insider trading policy as applied to directors	Approve
Recommend board approval of director compensation program	This timing aligns any compensation changes with director terms (rather than the calendar year).	Approve
Summer meeting		
Determine approach to annual board, committee and individual director assessments as well as timing for and approach to analyzing the results		Review committee report
Review D&O protections. Recommend amendments to organic documents as needed.	Consider: • Exculpation provisions • Indemnification provisions in organic documents • Stand-alone indemnification agreements • Advancement of expenses • Insurance program (Side A, B and C) • Subsidiary protections	Approve amendments to the protection provisions in organic documents or adoption of individual indemnification agreements
Consider further actions prompted by voting results at ASM	Examples include: • Investor engagement • Changes to governance guidelines • Changes to board composition	Approve

Example annual nominating/governance committee calendar/agenda (Continued)

Agenda topics	Notes	Board action needed
Fall meeting		
Review board composition	Consider: • Individual and collective qualifications, experience/ expertise and skills as they relate to the company's strategy, material and emerging risks, and other board/ company needs over the next 3-10 years • Personal attributes • Individual director effectiveness • Diversity (e.g., gender, racial, ethnic, age, LGBTQ+, disability, veteran status, other as relevant to the company's locations, strategy, market) • Planned departures required by tenure or term limits and mandatory retirement age policy • Director independence • Investor expectations — both formal policies and feedback provided to the company during investor engagements	Review committee report
Review board's policy *(if any)* regarding identification and recruitment of diverse directors	Assess efficacy of policy	Review committee report
Review corporate governance guidelines. Recommend changes as warranted.	Consider: • Investor policies and emerging trends • Significant new governance recommendations from credible organizations • Changes prompted by developments within the board or company as well as ways of working	Approve
Review board refreshment mechanisms (e.g., term limits, mandatory retirement age, change in primary position, individual director assessments)	Consider: • Efficacy and currency of mechanisms • Investor expectations • Governance trends and best practices	Approve
Review preliminary draft of required proxy statement governance disclosure as well as additional governance content and messaging responsive to constituencies' expectations	Consider: • Board composition • Board practices • Rationale for renominating incumbent directors and nominating nominees — including how the board considers diversity in the nomination process • Allocation of oversight of risk function • Feedback from shareholder engagement and company responses	Review committee report
Review shareholder proposals received or anticipated	Review status of: • Negotiations with proponents • Requests for no-action letter from SEC • Draft statements in opposition	Review committee report
Review board leadership structure Review draft proxy disclosure describing rationale for leadership structure — including role and responsibilities of lead director, if any	Consider: • Current structure (e.g., lead independent director, non-executive or executive chair) • Future structure given upcoming executive and board composition changes • Investor expectations (both formal policies and feedback provided during investor engagements)	Review committee report
Review significant investor and proxy advisory services' proxy voting policies		Review committee report

Example annual nominating/governance committee calendar/agenda (Continued)

Agenda topics	Notes	Board action needed
Fall meeting		
Review ASM activities and preparation	Consider: • Feedback from investor engagements • Activism initiatives (at and relevant to the company) • Shareholder nominees for inclusion in the proxy statement and on universal proxy card • Any new proxy statement disclosure requirements or best practices as well as any voting-related process changes	Review committee report
Review results of committee's self-assessment	Consider: • Survey responses/summaries of interviews • Committee charter • Draft annual agenda for the following year	Review committee report
Discuss results of full board and director self-assessments	Review: • Actions to improve individual director performance/ engagement • Actions to improve full board performance • Implications of results for board leadership succession and director recruitment • Implications of results for board's annual agenda for the following year	Review committee report
Review form of D&O questionnaire	Focus on new questions addressing new compliance, disclosure or other requirements	Review committee report
Additional agenda topics the governance committee should address annually as meeting schedule permits		
Review oversight of political activities and corporate contributions, including lobbying, any political action committee activities	Review: • Strategy • Compliance • Facilitating or expediting payments • Reputation management	Review committee report
Review corporate charitable giving and community engagement	Review: • Strategy • Compliance • Tax implications • Reputation management • Employee involvement • Corporate social responsibility (CSR) report (if company prepares one)	Review committee report
Review company's ESG strategy, commitments and progress	Review: • Strategy — including operational implications • Commitments • Progress against commitments • Peer comparison	
Special meetings as events dictate		
Review director resignation (for any reason except failing to receive majority vote at ASM)	Address resignation's impact (e.g., committee assignments, board succession planning)	As circumstances dictate
Review director performance or reputational issue		As circumstances dictate
Review change in a director's independence status	Address need to remove director from a role (e.g., lead independent director) or committee membership	As circumstances dictate

Example of public company nominating/governance committee charter*

The company's board of directors (the "board") establishes the nominating/governance committee (the "committee") to assist the board in its nominating/governance functions as described below.

The board has adopted this committee charter (the "charter") and has delegated to the committee the authority and responsibilities described in this charter. The committee may, in its discretion, delegate specific duties and responsibilities to a subcommittee or an individual committee member to the extent permitted by law and by the rules of [NYSE/Nasdaq].

The committee's membership

The board shall:

- Determine the committee's size, but in no event shall the committee consist of fewer than [#] members.**
- Appoint committee members. The board may remove a committee member at any time — with or without cause.
- Designate a member of the committee to serve as committee chair.
- If a vacancy on the committee occurs, fill it or reduce the committee's size to eliminate a vacancy if the committee is larger than the minimum size specified in this charter.

All committee members shall meet the applicable [NYSE/Nasdaq] independence requirements as well as any other requirements imposed by the company's bylaws, governing law, regulations and rules as the board, in its business judgment, interprets those requirements.

The committee's operations and meetings

The committee shall:

- Regularly report to the board regarding committee meetings and activities.
- Annually review its own performance, including reviewing and reassessing the adequacy of this charter, and recommend any proposed changes to the board for approval.
- Meet as often as necessary (but not less than [#] times a year) to fulfill its responsibilities under this charter.

The committee chair shall consult with other committee members and appropriate company officers to establish the agenda for each committee meeting. Any committee member may submit items for inclusion on the agenda. At meetings, committee members may raise topics that are not on the agenda.

The committee chair shall preside over the conduct of meetings and have other responsibilities as the board or committee may designate.

A majority of the committee members shall constitute a quorum for conducting business at a committee meeting. The act of a majority of committee members present at a duly-convened committee meeting at which a quorum is in attendance, shall be the action of the committee, unless a greater number is required by law, the company's certificate of incorporation or bylaws. If a committee member is excused from a meeting, or recuses herself or himself from a committee meeting, in either case to permit the remaining committee members to consider or act on any matter in which such member's participation is not appropriate, then such member's absence shall not affect the validity of any action taken at a meeting where a quorum is otherwise present.

The committee may request any company officer or employee, or any representative of the company's or committee's advisors to attend a committee meeting or to meet with any committee members or representatives outside of committee meetings.

* Given the range and evolution of issues for which a company's nominating/governance committee may be given responsibility, the committee and board should review this charter annually (as part of its self-evaluation) to ensure that the charter remains current.

** The board shall set the minimum number of committee members consistent with governing state law and company's certificate of incorporation and by-laws.

The committee's resources and authority **(Continued)**

The committee shall have:

- The authority to discharge its responsibilities as required by law.
- The resources the committee deems necessary to compensate any consultants and any other advisors it retains.
- The sole authority to engage and terminate any search firms to identify director candidates and to approve the search firm's fees and other retention terms.

In performing its duties, the committee and its members shall have unrestricted access to management. The committee shall have the authority to obtain advice and assistance from internal legal, accounting or other company personnel. The committee may also retain and terminate independent legal counsel or other independent advisor(s) the committee deems appropriate to assist it in fulfilling its responsibilities.

The committee's responsibilities

Nominating function

The committee shall:

- Identify qualified candidates for board membership, consistent with criteria approved by the board and board needs. The committee shall consider the appropriate skills and characteristics of directors.
- As part of the company annual meeting process and when vacancies on the board occur, review whether potential directors, including those nominated by stockholders, meet the board's membership criteria, and recommend qualified candidates to the board.
- Evaluate and recommend whether the board should renominate an incumbent director for re-election to the board upon expiration of such director's term, based upon the board's membership criteria and such other factors as the committee deems appropriate.
- Recommend to the board a slate of director nominees for election to the board by stockholders at each annual meeting.
- The committee shall propose individuals to fill any board vacancies occurring between annual meetings of stockholders.
- Review and make recommendations to the board on the independence of directors and candidates.
- Review any director resignation letter proffered in accordance with the company's director resignation policy set out in the company's bylaws and evaluate and recommend to the board whether to accept the proffered resignation.

Governance function

The committee shall:

- Review and recommend to the board corporate governance principles for the board and company. Among other topics, the committee's review shall address the board's size, functions and policies, as well as the structure, size, membership and functions of the board's various committees.
- Review and reassess the adequacy of the board and company's corporate governance principles at least annually and recommend any proposed changes to the board for approval.
- Approve and oversee the annual self-evaluation process used by the board and its committees. The committee shall consider and report to the board for discussion the results of the board and all committee's annual self-evaluations.
- Annually review and make recommendations to the board as to the compensation and benefits provided to directors, including any incentive compensation plans and equity-based compensation plans.
- Monitor directors' compliance with the company's stock ownership guidelines.
- Oversee a new director orientation process and continuing education needs and programs for continuing directors.
- Consider questions of possible conflicts of interest of directors and senior executives.
- Periodically review the company's charitable and director and indirect political contributions.
- Review proposals submitted by company stockholders for inclusion in the company's proxy materials and recommend appropriate action to the board.
- [*Depends on whether this responsibility lies with the committee* – Oversee policies and programs related to the company's corporate environmental, social and governance ("ESG") strategy. The committee shall regularly review updates regarding the company's performance against its ESG strategy and targets, and oversee risks related to such matters.]

The committee may perform any other duties and fulfill any other responsibilities that are consistent with the committees' purpose, the company's certificate of incorporation and bylaws, and governing law, as the board or committee deems necessary or appropriate.

Example board skills matrix

Director nominee qualifications and attributes

The chart below highlights certain qualifications and attributes along with the reasons that the board considers those desirable to include on the board.

Qualification/attribute	Importance to the board	Director nominees								
		A	B	C	D	E	F	G	H	I
Strategic planning *Experience in identifying strategic direction and strategies necessary to achieve them and internal performance management systems used to monitor and evaluate progress*	Critical to the board's evaluation and approval of the company's strategic direction, strategic plans and transactions									
Human capital management including diversity, equity and inclusion *Experience in programs to effectively attract, develop, evaluate, and compensate diverse talent and succession planning*	Important to board oversight of well-designed human capital strategy — to produce a diverse and inclusive workforce and equitable compensation and benefits program intended to discourage imprudent risk-taking and align rewards with long-term stockholder interests									
Enterprise risk management *Experience in understanding of the risks and mitigation efforts*	Fundamental to board oversight of the company's ERM framework, including mitigation of emerging risks									
Financial literacy *Ability to read and understand fundamental financial statements (i.e., balance sheet, income statement and cash flow statement)*	Critical to oversight of the company's financial performance and reporting and related internal and disclosure controls									
Corporate governance *Knowledge of corporate governance best practices*	Important to continuous improvement of board practices, dynamics, operation, management accountability and stockholder interests									
Relevant industry experience *Understanding of business issues in the context of the company's industry*	Can help the board understand and analyze the unique challenges the company faces and those which the company's industry is experiencing and can anticipate and advise management accordingly									
Constituent relations management *Experience building relationships and communicating with government, business, public, private and non-profit organizations as well as individuals to gather information, foster collaborative relationships and advocate for the organization*	Can help the board contribute to the company's efforts to build trust and advance its interests amongst internal and external constituencies									
Leadership *Experience executing strategy amid competing priorities*	Can help the board set priorities and advise management, and advance shareholder interests through both good times and bad									
Technology *Experience in utilizing IT as a key strategic enabler, in furtherance of strategic and operational goals*	Important to board oversight of technological resources and risks, and their use in executing the company's mission									
Environmental, social and governance (ESG) *Experience in identifying, implementing and/or managing ESG/sustainability initiatives in furtherance of the organization's long-term success*	Can help the board integrate ESG efforts with strategic initiatives — in furtherance of operational excellence and long-term success									
Branding, marketing and sales *Ability to understand evolving marketing methodologies and means of ascertaining customer preferences*	Can help the board evaluate branding, marketing, and sales plans and results to drive revenue									
Regulatory experience *Experience in understanding the business implications of and ensuring compliance with regulatory requirements — especially those that apply to the company's particular businesses and operations*	Can help the board evaluate the efficacy of compliance programs, proposed product launches or modifications, impact of proposed regulatory changes and ease of doing business in different markets/jurisdictions									
Diversity *Representation of gender, ethnicity or other perspectives*	Expands board understanding of the needs and viewpoints of the company's customers, partners, employees, communities, governments and other stakeholders									

How PwC can help

To have a deeper discussion about how this topic might impact your business, please contact your engagement partner or one of the PwC specialists below.

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