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# How To Make Corporate Boards More Diverse

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# Introduction and summary

The year 2020 brought many dark clouds, but one silver lining was the broad recognition that America must address its challenges on racial and gender equity. In particular, the need for a renewed commitment to economic inclusiveness is now widely acknowledged as critical to the country's future. While the road to achieving a more inclusive economy will not be easy, the U.S. economy will benefit tremendously in the years ahead from a more racially and gender-diverse workforce, including from the skills, experiences, and creativity of diverse leadership.

Corporate America lacks racial, ethnic, and gender diversity in its top positions. The stock market soared during the coronavirus pandemic, growing the wealth of a group of mostly white and privileged shareholders but leaving many women, people of color, and low-wage workers to suffer through unemployment, food scarcity, and personal loss.<sup>1</sup>

According to the 2019 U.S. census, an estimated 50.8 percent of the U.S. population are women.<sup>2</sup> An Institutional Shareholder Services (ISS) study of the 2019 boards of directors of 2,175 Russell 3000 companies found that 45 percent of new board seats awarded that year were given to women, yet women still occupied only 19 percent of all board seats.<sup>3</sup> The need for progress on racial diversity is even greater. Census data show that 39.9 percent of Americans are nonwhite.<sup>4</sup> Yet the ISS study found that only 10 percent of Russell 3000 directors belonged to an ethnic minority, and a meager 15 percent of new directors are ethnically diverse.<sup>5</sup> For people living at the intersections of multiple identities, representation at the top can be even more paltry: In 2018, women of color represented just 4.6 percent of board seats among Fortune 500 companies.<sup>6</sup> Unfortunately, data on the LGBTQ population are not standardized in data on corporate boards or the U.S. census. Much work remains to achieve racial and gender equity on boards of directors across corporate America, from Fortune 500 companies to small-cap growth companies.

At the same time, investor demand for more racial, ethnic, and gender diversity on corporate boards is growing dramatically, and academic research is increasingly illustrating the value of diversity to corporate performance.<sup>7</sup> Recent public comments in support of a Nasdaq board diversity proposal demonstrate the breadth of market participants—including investors—who care about this information.<sup>8</sup>

Some in the business world are taking laudable steps, and their efforts provide useful lessons for improving diversity. However, despite a large swath of corporations expressing that they intend to diversify their boards, progress has been limited.<sup>9</sup> Bolder action is needed. Corporate America faces many challenges in building more diversity, equity and inclusion at the top. Significant progress will require both private sector initiatives and the unique tools available to federal regulators.

Companies should focus on building a diverse pool from which to draw candidates; to do so, they need to reach out to new organizations that can help find suitable candidates through new pipelines. Companies should also eliminate selection criteria and processes that have blocked board diversification in the past, identify new approaches, standardize new best practices, and regularly assess the effectiveness of those practices going forward. For example, companies could create a matrix of current board members' characteristics so that they can identify gaps that need to be filled and develop strategies for improving racial and gender equity on the board. Finally, the U.S. Securities and Exchange Commission (SEC) must recognize that the current principles-based approach to board diversity disclosure does not meet the demands of the marketplace. The SEC should require companies to disclose on their Form 10-K—the annual report of the firm's business and financial condition—specific diversity information similar to what the Center for American Progress recently called for in a report on workforce disclosure.<sup>10</sup> Companies should also report information about the specific actions they take to achieve racial, ethnic, and gender diversity in their board selection process, including specific measures of success they use or how they assess the effectiveness of their processes.

Investors, other market participants, and the public have made it clear that progress on diversity is at least as important at the board level as it is across the rest of the workforce. This report considers the current state of corporate board diversity and provides recommendations to accelerate progress.

# Diversity in the boardroom is good for business and workers

Diverse viewpoints can positively influence a company's success. In her 2015 speech about building healthy companies and a stronger economy, SEC Commissioner Kara Stein pointed out that “[d]iverse boards appear to help avoid ‘groupthink,’ a priority when corporate success depends heavily on risk management.”<sup>11</sup> Stein’s speech focused on women on corporate boards, and she cited multiple studies demonstrating their positive impacts as directors. Specifically, researchers publishing in the *Journal of Financial Economics* determined that “diverse boards are more likely to hold CEOs accountable for poor stock price performance,” and that women are tougher monitors with better attendance on key committee assignments.<sup>12</sup>

Beyond qualities that determine good executives, gender-diverse boards may help provide strong financial performance for their respective firms. In her speech, Stein cited Dr. Yilmaz Arguden, a *Harvard Business Review* columnist and governance expert, who determined that “[w]hen Fortune 500 companies were ranked by the number of women directors on their boards, those in the highest quartile in 2009 reported 42% greater return on sales and a 53% higher return on equity than the rest.”<sup>13</sup> Finally, Stein referenced environmental, social, and governance (ESG) research conducted by MSCI Inc.—a leading investment research firm—which found that firms with a higher percentage of women on their boards had fewer instances of fraud, accounting controversies, bribery, and corruption.<sup>14</sup> While causation is difficult to prove in this area, there is a strong correlation between gender diversity and corporate performance.

In a report entitled “Duty and Diversity,” Chris Brummer, a professor at Georgetown University Law Center, and Leo E. Strine, Jr., former chief justice of the Delaware Supreme Court, expanded the research on board diversity to include racial and ethnic diversity.<sup>15</sup> They determined that the case for diversity on corporate boards makes strong business sense based on empirical data and the literature of organizational psychology. Brummer and Strine specifically mention a study by The Carlyle Group, which observed that portfolio companies with two

or more directors who identified as Black, Hispanic, Asian, or women experienced average earnings growth of 12.3 percent over the previous three years, while portfolio companies with no diverse directors experienced an average of only 0.5 percent earnings growth.<sup>16</sup> Other financial services firms such as McKinsey, Citi, and Deloitte reported similar results when analyzing the profitability, competitive strength, and work culture of their clients who had ethnically diverse boards.<sup>17</sup> Brummer and Strine found that research in the field of corporate organizational theory suggests that diversity has a positive impact on risk mitigation and strategic long-term thinking. These benefits stem from the diverse lived experiences that women and people of color, in particular, bring to the table.<sup>18</sup>

Although less empirical research exists for the LGBTQ community, at least one study has shown that U.S. laws prohibiting discrimination in the workplace based on sexual orientation and gender identity spur workforce innovation and lead to higher company performance.<sup>19</sup> Increased focus on diversity and inclusion in recent years is leading to more research in this important area. Ultimately, other disadvantaged groups, such as people with disabilities and veterans, should be included in board diversity-building efforts.

The correlation between diversity and a firm's success has also been demonstrated at other levels of a firm's workforce. For example, a recent Morningstar analysis of 685 mid- and large-cap companies in the United States and Canada found that of the 65 companies that disclosed racial and ethnicity data for their upper management, those with above the median level of diversity in their upper management ranks had higher one-to-five-year returns, compared with less diverse firms, in 84 percent of cases.<sup>20</sup> Yet, diversity in upper management and on corporate boards was consistently much lower than in the overall workforce of the firm across industry sectors.<sup>21</sup> Leveraging the full potential of diversity in the corporation likely requires a diverse board that can establish and model a corporate culture of diversity, equity, and inclusion. And more diverse boards in turn would open up opportunities for advancement for many who have not previously been able to access those positions.

# Private sector efforts are growing, but not quickly enough

Pressure on companies has grown from within and without to step up board diversity efforts. In December 2020, the Nasdaq—one of the two major stock exchanges in the United States—filed a proposal with the SEC, which is charged with overseeing the stock exchanges, seeking to establish new rules for companies that want to list their stock on the Nasdaq. The proposed new rules would require all Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority (defined as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, or Native Hawaiian or Pacific Islander) or LGBTQ+.<sup>22</sup> The proposal would provide exceptions for foreign private issuers and smaller reporting companies, allowing them to satisfy the requirement by having two female directors. This exception weakens the proposal and runs contrary to its stated aim.<sup>23</sup> Still, as SEC Commissioners Allison Herren Lee and Caroline A. Crenshaw stated, the proposal is a step in the right direction,<sup>24</sup> and on August 6, 2021, the SEC approved the Nasdaq proposal.<sup>25</sup>

The proposal will be implemented in stages, with deadlines for companies to meet the requirements at each stage. One calendar year from August 6, 2021, all companies will have to provide uniform statistical information about diversity at their respective firms. No later than two calendar years after the approval date, every company will be required to have, or explain why they do not have, one diverse director. Furthermore, each company will be required to have, or explain why they do not have, “two Diverse directors no later than: (i) four calendar years after the Approval Date for companies listed on the Nasdaq Global Select or Global Market tiers; or (ii) five calendar years after the Approval Date for companies listed on the Nasdaq Capital Market tier.”<sup>26</sup> Differences between different tiers are based on initial financial and liquidity requirements when listing, and the Nasdaq Global Select Market and Global Market are stricter than the Nasdaq Capital Market tier.<sup>27</sup>

One criticism of the Nasdaq approach is that prescribing seats to be filled by specific minorities can lead to exclusion of groups not chosen or conflicts over the appropriate mix of diversity representation.<sup>28</sup> Especially where the number of diversity seats is very limited, such approaches may appear weak, result in counterproductive competition, and lead to a check-the-box view of diversity rather than a shift in the overall culture of the organization and an improved understanding of what it means to be qualified for a board position. Historically, corporate board positions have been filled with friends and family of existing board members and executives, most of whom are white and male.<sup>29</sup> By setting such a low bar, these approaches can actually undermine incentives to continue building diversity and may not lead to the systemic structural and behavioral change needed to truly diversify the boardroom. Moreover, given that the average board size among S&P 500 index companies is 11,<sup>30</sup> two board seats for diverse members clearly is not enough, especially if corporate boards are to reflect the population metrics of communities across America.

Some large institutional investment management firms are also beginning to exert pressure on companies. In August 2017, CalPERS, a \$330 billion retirement fund for California’s public employees, sent letters to 504 firms listed on the Russell 3000 Index with a lack of gender diversity on their boards. In the letters, CalPERS requested “that each company develop and disclose its corporate board diversity policy and implementation plan to address the lack of diversity.”<sup>31</sup> In the investment fund’s press release on the letters, Anne Simpson, CalPERS’ investment director for sustainability, outlined how her team would closely monitor companies’ progress on diversity, potentially leading to withheld votes from companies’ directors at future shareholder meetings for those that fail to make adequate changes.<sup>32</sup> The CalPERS approach is less prescriptive and allows companies the flexibility to assess their own diversity issues by developing a customized plan for improvement but still puts significant outside pressure on companies through its role as an important investor group.

Goldman Sachs also established a new initial public offering (IPO) policy, which became effective on July 1, 2020, that requires companies looking to have an IPO to have at least two diverse board members or candidates in order to receive underwriting services.<sup>33</sup> While this positive step could lead other Wall Street firms to exert similar pressure on the companies in their client lists, the Goldman rule sets a bare-minimum standard, rather than a bold move for change.

State and local policymakers and financial regulators also have some power to encourage improvements in board diversity among companies within their jurisdiction. California’s Legislature has passed two different laws of this nature—a

2018 law requiring publicly held corporations with principal executive offices in the state to have at least one female director on their board and a 2019 law requiring these corporations to have one to three directors from an underrepresented community on the board, based on the size of the board.<sup>34</sup> In New York City, an initiative announced by Comptroller Scott Stringer as a part of the city’s Boardroom Accountability Project 3.0 strongly encouraged 56 high-profile S&P 500 companies to mandate consideration of both women and people of color when hiring new CEOs and board directors.<sup>35</sup> Stringer’s office also filed diversity-improvement shareholder proposals at four S&P 500 companies that lacked “any apparent racial and ethnic diversity among the most senior ranks of their top executives.”<sup>36</sup> Since its inception in 2014, the various phases of Stringer’s Boardroom Accountability Project have successfully brought proxy access—a policy that includes the formal right for shareholders to propose their own director candidates alongside the candidates nominated by the incumbent board—to 600 companies, demonstrating the potential power of local financial regulators.<sup>37</sup>

Finally, pressure for board diversity can come from activist groups and unions. In 2020, Majority Action and the Service Employees International Union (SEIU) joined together to create targeted policy suggestions for some of the largest asset managers. In their policy report, the union and organizing group argued that these massive, multitrillion-dollar investment funds had significant ability to affect corporate behavior through their outsize voting power and substantial equity holdings.<sup>38</sup> While SEIU and Majority Action pressured asset managers to require board diversity, they also emphasized workforce diversity and civil rights issues for average laborers.

SEIU and Majority Action implored asset managers to use “proxy voting authority to hold boards accountable on the full range of racial equity issues facing companies.”<sup>39</sup> In their recommendation, the organizations also encouraged firms to call for racial equity and civil rights audits in all invested companies and to limit their political contributions to organizations that hindered societal progress on these matters.<sup>40</sup> This broader suite of actions recognizes that corporate boards are not islands unto themselves. Their members come from the executive ranks of other companies, and their decisions have the power to improve diversity and workplace equality up and down the chain of corporate authority and beyond. Ultimately, corporate boards must be responsible for the full range of racial and gender inequities at their companies, and they must be stewards for structural change.

# Policy recommendations to improve corporate board diversity

Diversity should be developed throughout an organization’s workforce—including on its board of directors. In fact, diversity at the leadership level of an organization can lead to greater diversity in hiring throughout the organization and enhanced racial and gender equity in advancement and pay. The remainder of this report outlines recommendations to improve diversity on corporate boards, presenting policies for both corporations and the federal government to implement.

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## Corporate actions

Private sector efforts such as those described in this report suggest that improvements in the board selection process itself, rather than the prescription of specific diversity seats on corporate boards, may advance diversity goals more effectively.

### Building a more diverse pool of candidates

Nasdaq, in a companion proposal also approved by the SEC, proposed how it will provide noncomplying Nasdaq-listed firms one year of free access to board diversity services.<sup>41</sup> This aspect of the proposal recognizes that, as with any effort to fill a position, creating a diverse pool of candidates to draw from is key. Expanding the diversity in the applicant pool increases the likelihood of hiring racially-, ethnically-, or gender-diverse individuals, and there are more resources today than previously for finding diverse candidates.

For example, corporations should consider partnering with new membership or entrepreneurship organizations in diverse communities—such as the National Urban League, the NAACP, the National Council of Negro Women, the Black Economic Alliance, and the National Economics Association—to identify potential Black candidates. Organizations such as these can also help identify new pipelines for finding qualified diverse candidates. In a comment submitted under the Nasdaq’s SEC filing, Marc Morial, president and CEO of the National

Urban League, implored the exchange to use his organization to identify Black candidates.<sup>42</sup> Another example is the Thirty Percent Coalition—a team including public companies, private equity, professional services firms, institutional investors, state treasurers, and advocacy groups—which has compiled its own list of resources to help corporate search teams create a diverse candidate pool.<sup>43</sup> And the central mission of the Latino Corporate Directors Association is to identify and prepare suitable Latino candidates to serve on corporate boards.<sup>44</sup>

Over the past few years, a number of new and existing consulting firms also have begun offering services to address the pipeline challenge for diverse board candidates.<sup>45</sup> Companies should assess these firms and their databases of potential executive and board candidates to determine how successful they are at identifying qualified diverse candidates. It is important that old approaches that have historically yielded board candidates with similar demographic, educational, and experiential backgrounds be replaced with new, more promising approaches and selection criteria that will actually result in a racially, ethnically, and gender-diverse board that is equally diverse in its experience, skills, wisdom and talent. Finally, companies should remember that cultivating broader workforce diversity and equity throughout an organization can provide excellent future candidates for their own or another firm's board.

Of course, having a diverse pool does not ensure diverse candidates will be selected. Firms should consider adopting or even improving upon the NFL's Rooney rule for head coaching and front office management positions.<sup>46</sup> The rule requires that at least one diverse candidate, and preferably multiple diverse candidates, be interviewed for each open position.<sup>47</sup> While data suggest that the Rooney rule worked well for roughly a decade, its impact may be waning for the NFL.<sup>48</sup> This illustrates the importance of regular assessment of diversity-building processes, whatever they are, to ensure that they are and continue to be effective.

### Standardizing and reforming the selection process

Creating racial and gender equity in the selection process is critical, including by eliminating unconscious bias throughout the process. Once appropriate steps are identified, they can be standardized to ensure that positive approaches continue. Transparency around characteristics of current board members helps companies identify gaps and be clear-eyed about whether their process is successful.

Nasdaq’s proposal includes a standardized data collection process in the form of a board diversity matrix—a diagram indicating the self-identified gender and ethnic background for each board member.<sup>49</sup> Numerous business and labor leaders supported this action, including Aron Szapiro of Morningstar Analytics; Kurt Schacht of the CFA Institute; Brandon Rees at the AFL-CIO; Michael Dunstan of AllianceBernstein; and John Rogers and Mellody Hobson at Ariel Investments.<sup>50</sup> In her response to Nasdaq’s SEC filing, Lisa Woll, CEO of US SIF, urged all other exchanges operating in the United States to institute similar listing requirements and standardization policies for data across corporate boards.<sup>51</sup>

To reform the complex and often obscure process for selecting board members, companies should also consider expanding upon Nasdaq’s proposed board diversity matrix. For example, Comptroller Stringer recommended that an expanded board diversity matrix include the skills, experiences, and attributes that are most relevant to a company’s long-term strategy and risk management.<sup>52</sup> This component would emphasize the positive benefits of diversity while removing the checklist style of board recruitment that reduces excellent candidates to their demographic profile. The expanded board diversity matrix would also emphasize a holistic and multifaceted approach to improving racial and gender equity.

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## Federal actions

Since companies have been slow to develop effective board diversity processes on their own, federal policymakers should help speed up adoption of better and more inclusive corporate board diversity processes. The SEC, in particular, can require more transparency around fair, virtuous selection that helps secure the best and most qualified candidates, particularly women and candidates of color.

### Requiring corporations to fully disclose board diversity data and policies

While corporations have pledged for years to increase the number of women and underrepresented minorities on boards, and some have taken steps to implement those pledges, progress on a voluntary basis is not happening fast enough. A comprehensive 2020 survey on board composition by ISS’ ESG division determined that underrepresented ethnic and racial groups make up just 12.5 percent of board directors, only slightly more than the 10 percent level measured five years earlier.<sup>53</sup> Moreover, despite statements supporting diversity, very few

public companies disclose internal data about diversity. Remarkably, 72 percent of Russell 1000 companies do not disclose any data about the racial makeup of their employees, and less than half of Fortune 100 companies disclose the gender and ethnic compositions of their boards.<sup>54</sup>

The SEC’s authority to require disclosure of information that investors seek in making their investment decisions is a potentially powerful tool to improve the pace of change in large companies’ board composition. As SEC Commissioner Allison Lee stated in her September 22, 2020, speech on diversity and inclusion, “[W]hen companies have to formulate disclosure on topics it can influence their treatment of them.”<sup>55</sup> This corporate phenomenon can be boiled down to the saying “what gets measured, gets managed.”<sup>56</sup>

But the SEC’s current disclosure regime as it applies to board diversity is inadequate. Item 407(c)(2)(vi) of Regulation S-K, which lists disclosures required in a company’s 10-K, states that a company is required to describe “whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director,” and, if the firm has a policy for considering diversity, to describe how that policy is implemented and assessed for effectiveness.<sup>57</sup> In 2019, however, staff of the SEC’s Division of Corporation Finance clarified that if a board nominee self-identifies diversity characteristics and consents to the company disclosing those characteristics, and the board or nominating committee considers those self-identified diversity characteristics, only then must the company discuss the diversity characteristics—including how they considered them when disclosing information about the individual in 10-K filings, proxy statements, or other registration statements. If a nominating committee has a policy on considering diversity characteristics, SEC staff expect the firm’s disclosures to include discussion of how the nominating committee considers self-identified diversity characteristics.<sup>58</sup>

Unfortunately, this minimal SEC disclosure regime is not specific enough to generate adequate information for investors—or, in many firms, any information at all. In its December 2020 proposed rule change, the Nasdaq highlighted its extensive discussions with a broad spectrum of investors and market participants as well as its finding that the broad latitude afforded to companies by the SEC’s current diversity rules has resulted in board diversity statistics that are “significantly unreliable and unusable to investors.”<sup>59</sup> Its research on companies listed on its exchange revealed many challenges for investors and other market participants,

including inconsistent definitions and disclosures across companies, limited data on diversity characteristics beyond gender, and information that was difficult to extract because it was embedded in graphics or hidden in aggregated statistics.<sup>60</sup>

The Nasdaq research provides timely and valuable empirical evidence of the ineffectiveness of the current SEC board diversity disclosure regime and points toward steps the SEC can take to help investors, other market participants, and the public obtain the information they are demanding and to facilitate efficient and orderly capital markets. While the SEC acted appropriately in approving the Nasdaq proposals recently, a more detailed SEC disclosure regime applicable to all listed companies—not just those on the Nasdaq exchange—would be even more valuable to investors, especially retail investors, and other market participants. Indeed, it would provide them with even more consistent and comparable information across capital markets.

CAP proposes that an SEC rule on board diversity disclosure could require the following in both the 10-K and proxy statements:

- Companies should disclose diversity information about members of the board based on voluntary, self-identified information, including race, ethnicity, gender, and LGBTQ+ status, as well as veteran status and disability status—for directors and members of a company’s nominating committee. This information could complement anticipated SEC rules on workforce disclosure.<sup>61</sup>
- Companies should disclose information about whether a company has policies and procedures around consideration of race; ethnicity; gender; and LGBTQ+, disability or veteran status, in the board recruitment and selection process and/or around building board diversity. If so, they should be required to provide a description of those policies and procedures—and, if not, explain why not. In addition, companies should be required to disclose whether and how they assess the effectiveness of these policies and procedures and any follow-up changes made to address shortcomings.
- Companies should be required to use standardized terminology and reporting formats established by the SEC for purposes of these disclosures. Presumably, these would be consistent with any new terminology and reporting formats established under the SEC’s proposed rule on workforce disclosure.

More broadly, organizations such as Majority Action and SEIU are pushing asset managers to encourage companies to live up to their public commitments to address systemic racism.<sup>62</sup> The SEC should require companies to disclose whether they are conducting racial audits of the company through an outside auditor and, if so, provide information about the results. This could include information about directors.

Currently, the SEC has an Office of Minority and Women Inclusion (OMWI), which was established in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>63</sup> This division assists the SEC in its goal of assessing diversity at regulated entities. The OMWI implemented a voluntary diversity self-assessment tool in 2018; however, the submission rates have since been extremely low, with only 4 percent of firms reporting their data.<sup>64</sup> To tackle the low response rate, the OMWI's diversity self-assessment could be required in annual reports for all entities regulated under the SEC's purview.

Among other benefits, those disclosures would allow investors to determine if companies are following through on public statements about board-related racial and gender equity commitments—a valuable tool, given that hundreds of companies issued statements regarding racial equity in the wake of George Floyd's death in 2020.<sup>65</sup>

While the SEC has the authority to require more specific board diversity disclosures through its own rulemaking, some members of Congress have sought such disclosures through legislation and provided additional steps the SEC can take to expedite progress on diversity and inclusion. In 2021, Sen. Robert Menendez (D-NJ) and Rep. Gregory Meeks (D-NY) introduced companion legislation S. 374 and H.R. 1277, the Improving Corporate Governance Through Diversity Act, which would require public companies to annually disclose the voluntarily, self-identified gender, race, ethnicity, and veteran status of their board directors.<sup>66</sup> The legislation would also require the SEC to report annually its analysis of the board diversity information that public companies disclose. And it would require the SEC to establish a diversity advisory group made up of representatives from federal, state, and local governments; academia; and the private sector.

### Federal contracting reviews of corporate management

The value of racial and gender equity on corporate boards is not just about the benefits to the corporation but also the protection of the people who work there. Companies engaged in contracting with the federal government are subject to federal laws and regulations protecting workers from discrimination and ensuring equal employment opportunities for all federal workers. These federal contractors employ an estimated one-fifth of the nation's workforce.<sup>67</sup>

The Office of Federal Contract Compliance Programs (OFCCP), part of the U.S. Department of Labor, is charged with enforcing anti-discrimination and equal opportunity laws with respect to businesses that contract with the federal government. Among other actions, OFCCP conducts corporate management reviews of federal contractors—previously called glass ceiling reviews—in which they assess racial and gender diversity in senior management to determine whether there are discrimination problems that are limiting opportunities for advancement.

Corporate management reviews should extend to a corporation's board, which has significant influence over the company's values and its approach to racial and gender equity. As CAP has recommended previously,<sup>68</sup> the OFCCP should increase the number of corporate management reviews it conducts to ensure that progress is being made.

### Modeling racial, ethnic, and gender diversity

Finally, it is worth mentioning that the federal government itself should be a good role model for racial, ethnic, and gender diversity and inclusion. Diversity must be improved at the highest levels of the SEC. At the time of this writing, there are no Black commissioners at the SEC or the Commodity Futures Trading Commission (CFTC). There has also never been a Black chairperson of the Federal Deposit Insurance Corporation, the CFTC, or the SEC.<sup>69</sup> Women are also underrepresented in SEC leadership when compared with population data. While three of the current SEC commissioners are women,<sup>70</sup> in 2020, only 39.4 percent of supervisors and managers were women.<sup>71</sup> Diverse perspectives among regulators must be a priority going forward, as these individuals help push the implementation of improved equity at all regulated entities.

Improving racial and gender equity in corporate America will require sustained effort; it is time to reset the goals and pick up the pace. Much more than voluntary efforts are required. The SEC must use its authority to focus those efforts and raise the stakes on behalf of investors and the public. Importantly, it is not just

corporate boards that should be scrutinized on diversity grounds, but also “all aspects of corporate interactions with employees, customers, communities, and society generally.”<sup>72</sup> Improving equity across all companies listed on the major exchanges in the United States, including on corporate boards, will better serve all stakeholders in American corporations, including the public, and help ensure that invested capital flows toward a more inclusive economy.

# Conclusion

The current lack of racial and gender diversity on corporate boards is appalling. Corporate boards do not reflect the population metrics of the communities where companies operate. While numerous studies have highlighted the business success that companies can achieve with more diverse leadership, and while investors have demanded more diverse boards, corporate America is moving too slowly in addressing the issue. Both private sector entities and federal policymakers must work to build equitable systems to improve board diversity. It is necessary to expand and identify qualified candidate pools, reform the selection process, and institute regulatory and—if necessary—legislative actions to require corporate boards to reflect the diversity of America. Taken together, these measures would constitute bold steps as the country aims to correct its historical record on diversity and address the crises highlighted in the past year.

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## Endnotes

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