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June 16, 2022

Submitted via SEC's Internet Submission Form

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

**Subject:** File No. S7-10-22
The Enhancement and Standardization of Climate-Related Disclosures for Investors

cc: SEC Commissioners, Staff, and Stakeholders:

Dear Secretary Countryman,

Thank you for the opportunity to comment on the proposed rule to guide Climate-Related Disclosures for Investors. It is with much appreciation to the many at the SEC whose thought and efforts have produced the proposed rule.

The comments below are narrow in scope, pertaining specifically to the governance items found in the following sections of the proposed rule document:

D. Governance Disclosure Pages 93 - 100

229.1501 (Item 1501) Governance Pages 462-468

Summary

Today's corporate board of directors are struggling to provide adequate governance.[1] Concurrently, the span of their governance has increased over the past decade, will expand further per this proposed rule, the proposed Cybersecurity Risk Management rule and rules following these. As presently constituted, boards lack both the diversity and expertise required to effectively oversee new domains including climate related disclosures, activities and results. Board governance needs to be structurally augmented to restore its effectiveness. After exploring several alternative structures, we identify Advisory Committees as the best fit and request its use to be codified in the proposed rule.

Discission

Paul Polman, former Unilever CEO and board member eloquently presented the core governance issues faced by today's boards. He was part of a virtual panel discussing ESG measures at Fortune's The Modern Board convocation.

[1] Numerous citations; available to the SEC staff upon request.

> "It's not surprising when you have this enormous scale of change, bigger than the Industrial Revolution, and a speed of change more than the technological revolution."
>
> Given the magnitude and rate of change, Polman suggests most boards in their current construction are not capable of leading through these times.
>
> "The reason boards struggle with that is they're just not equipped to deal with today's challenges," he explained. "It might sound harsh, but that is the reality. They don't reflect the real world anymore. They grew up at a different time period, did an outstanding job then, but the world has moved on." [2]

In order to "reflect the real world," board governance structures need to be augmented to provide adequate oversight of stakeholder capitalism domains, specifically the governing of Environmental, Social and Societal and corporate Governance (commonly ESG) domains. The SEC's proposed Climate Disclosures rule adds significant responsibilities and duties to adequately maintain a board's oversight of the Environmental domain.

When it comes to ESG, boards lack expertise. A NYU Stern School study found that only 29 percent of current Fortune 100 board members have relevant ESG credentials.[3] The research team discovered that 21% have relevant Social experience but only six percent have relevant Environmental or Governance credentials.[4] The authors of PwC's 2021 Directors Survey echoed this finding: "When asked about how well their board understands various areas of oversight, ESG ranked lowest. Just 25% of directors say their board understands ESG risks very well." [5]

Realignment of the Board Governance Structure

Most boards are making due with their existing oversight structures by adding a strong regimen of environmental and climate related oversight to an already full agenda. An increasing number of boards have formed a board committee for this purpose. The board committee structure provides a greater ability to focus on environmental issues. But adding another board committee does not mitigate the intrinsic problems of a lack of board capacity, board member expertise or board diversity. Board committees simply do not scale well.

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[2] Kidwai, Aman. Most boards and CEOs are ill-equipped to meet the challenges of today, says former Unilever CEO. Fortune Magazine online, November 19, 2021 https://fortune.com/2021/11/19/unilever-paul-polman-ceos-boards-innovation/. Accessed March 22, 2022

[3] Whelan, Tensie, U.S. Corporate Boards Suffer from Inadequate Expertise in Financially Material ESG Matters (January 1, 2021) page 3. NYU Stern School of Business Forthcoming, Available at SSRN: https://ssrn.com/abstract=3758584 or http://dx.doi.org/10.2139/ssrn.3758584. Accessed February 8, 2022.

[4] ibid.

[5] Castañón Moats, Maria; DeNicola, Paul; Malone, Leah. The Director's New Playbook: Taking On Change; PwC's 2021 Annual Corporate Director's Survey. PwC's Governance Insights Center, 2021, page 8. https://www.pwc.com/us/en/services/governance-insights-center/library/annual-corporate-directors-survey.html. Accessed June 16, 2022

## Augmenting the Board Governance Structure

Augmenting the traditional governance structure can remedy these problems. Several proven, viable, and additive structures exist. These structures include a hybrid board-management committee, a board of advisors or an advisory committee.

### Hybrid Board-Management Committee

A hybrid board-management committee, as pioneered by Marriott International, adds 12 members of senior management to the five board members of their Inclusion and Social Impact Committee.[6] Without increasing the size of the board, the hybrid structure adds capacity by increasing the size of the committee. Adding company staff to the committee enables selection of people with a deeper level of expertise, diversity and lived experience. Membership can be much more flexible than a board committee but the opportunity to bring in outside stakeholders is limited. However, the enhancements brought about by hybrid board committee are incremental, retaining most of a board committee's structural constraints and limitations.

### Board of Advisors

A board of advisors is a structure employed by many companies to gain expertise and to be inclusive of diverse stakeholders and members of various underheard communities. Ultimately, it is an inadequate mechanism for augmenting corporate governance due to its lack of authority.

### Advisory Committee

An advisory committee (alternately: examining committee or oversight board) is the best way to augment the corporate governance structure in our view. Advisory committees have five commonalities, four of which elevate their position above that of an advisory board. These committees 1) are formally chartered in a company's bylaws or by a governing body, 2) are given wide ranging permission to independently investigate strategic and operational matters, 3) are granted authority and provide transparency by publicly publishing their findings and recommendations in an unedited report, 4) allow the governing body wide latitude in appointing the committee's members and 5) function in an advisory capacity under the authority of the organization's board of directors.

An environmentally focused advisory committee provides a vehicle to onboard people with diverse perspectives, lived experiences, tribal wisdom, community voices and technical and/or academic expertise into the governance process. Their efforts augment the traditional board structure by providing the necessary people, focus and agility to the organization's climate change disclosures and mitigation efforts.

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[6] Marriot International Inc. Inclusion and Social Impact Committee Non-Board Members - https://marriott.gcs-web.com/corporate-governance/board-of-directors. Accessed May 31, 2022.

Advisory Committees In Practice

Northwestern Mutual provides the examining committee example. The company established their Policyowner Examining Committee (POEC) in 1907 to provide more policyowner representation and to add greater transparency into the company's inner workings.[7] Because the Northwestern Mutual is a mutual insurer, it should be noted that its policyowners are the company's owners.

Four to six high profile policyowners are brought in annually and given unrestricted access to independently examine all aspects of the company's finance, distribution and operations. Their assessment and recommended actions are unedited and published as submitted in Northwestern Mutual's annual report.[8] The POEC presents its report in person to both the company's Board of Trustees and to the executive leadership team.[9] A high percentage of the POEC's recommendations have been acted upon and implemented over the years resulting in a much stronger and customer-centric company.

Meta provides the oversight board example. Their oversight board independent through Meta's funding it through a trust. As an oversight board, its mission is to make binding decisions on Facebook content. In addition to setting policy, this oversight board brings transparency to the process by producing public quarterly and annual reports of its work.[10]

The SEC itself provides several examples of utilizing an advisory committee successfully. Currently the Commission has four active advisory committees and three which have completed their mission or have an expired term and a successor committee.[11] These advisory committees meet the five criteria listed previously and bring an outside perspective to the SEC's policymaking process.

The Investor Advisory Committee was established by the Securities Exchange Act of 1934.[11] This committee proposed this Climate Related Disclosures rule in a publicly published recommendation.[12]

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[7] Gurda, John. The Policyowner's Company; A History of Northwestern Mutual 1857 – 2007. Northwestern Mutual Life, 2007. Page 57.

[8] Northwestern Mutual 2021 POEC. Northwestern Mutual Annual Report; Policyowners' Examining Committee Report 2021 https://www.northwesternmutual.com/2021-annual-report/poec/. Accessed May 31, 2022.

[9] Zore, Edward J., Kraus, Margeny. "A role for the customer in governance. (Stakeholder Representation)." The Free Library. 2003 Directors and Boards. https://www.thefreelibrary.com/A+role+for+the+customer+in+governance.+(Stakeholder+Representation).-a0101860453. Accessed June 9, 2022

[10] Zakrzewski, Cat. "Facebook Oversight Board sternly criticizes the company's collaboration in first transparency reports." Tech Policy, The Washington Post, October 21, 2021 at 8:02 a.m. EDT. https://www.washingtonpost.com/technology/2021/10/21/facebook-oversight-board-transparency/. Accessed April 6, 2022.

[11] SEC. Procedures for Appointments to the Investor Advisory Committee https://www.sec.gov/files/iac-procedures-for-appointment.pdf. Accessed June 1, 2022.

[12] SEC. Spotlight on Investor Advisory Committee, ESG Disclosures link. https://www.sec.gov/spotlight/investor-advisory-committee.shtml. Accessed June 1, 2022.

The committee stated "the SEC has periodically contemplated whether ESG disclosures are material" and asserted "that the time has come for the SEC to address this issue." [13] Hence, the proposed rule.

The SEC's use of the advisory committee structure is not an anomaly within the Federal government. The Federal Advisory Committee Act, passed in 1972, provides "the legal foundation defining how federal advisory committees operate." "The law has special emphasis on open meetings, chartering, public involvement, and reporting." [14] The use of advisory committees within the Federal government is immense as quantified in the following quote from the U.S. General Services Administration (GSA) website.

> "Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse.
>
> Today, an average of 1,000 advisory committees with more than 60,000 members advise the President and the Executive Branch on such issues as the disposal of high-level nuclear waste, the depletion of atmospheric ozone, the national fight against Acquired Immune Deficiency Syndrome (AIDS), efforts to rid the Nation of illegal drugs, to improve schools, highways, and housing, and on other major programs." [15]

Augmentation of Federal agencies' decision making and organizational transparency using advisory committees has proven to be a powerful and longstanding success. Granting regulatory permission to augment corporate governance structures for climate change disclosures and mitigation with an advisory committee paves the road for corporations to likewise succeed. Enabled by the requisite diversity, expertise and lived experience of its members, an advisory committee will create the necessary oversight, capacity and agility to fully and diligently prepare its climate change disclosures. Advisory committees can and will be used to further mitigate climate change throughout a corporation's businesses and operations.

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[13] SEC. Recommendation of the SEC Investor Advisory Committee Relating to ESG Disclosure (May 21, 2020). https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf. Accessed June 1, 2022.

[14] U.S. General Services Administration (GSA). The Federal Advisory Committee Act (FACA) of 1972 (Public Law 92-463). https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/legislation-and-regulations/the-federal-advisory-committee-act. Accessed June 14, 2022.

[15] U.S. General Services Administration (GSA). The Federal Advisory Committee Act (FACA) Brochure. https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/advice-and-guidance/the-federal-advisory-committee-act-faca-brochure. Accessed June 14, 2022.

Core Recommendations

1) Codify regulatory permission to augment the standard corporate governance structure with an advisory committee focused on climate change disclosures and other environmental and sustainability matters.

2) The SEC needs to establish an additional advisory committee to effectively implement, monitor and enhance full compliance with the final Climate Change Disclosure rule.

   There are many facets to the proposed rule. There promises to be a large learning curve with an evolutionary component to the rule's implementation, administration and compliance. Having an environmental advisory committee within the SEC arms the Commission with agility to react to problems, offer clarifications and seize opportunities for process enhancement as the disclosure rule is rolled out and administered.

Related Recommendation

1) The SEC should strongly consider establishing an advisory committee for the development of regulations regarding the use of algorithms and artificial intelligence by public companies.

   In our view, there are many parallels with the need for climate change disclosures and the emerging need for disclosures related to the use of algorithms and artificial intelligence. Not only is there a lack of existing regulation in this domain, but the SEC will need to align any proposed regulations with other Federal and state regulatory entities.[16, 17]

Thank you for reviewing our comments on the proposed rule.

With appreciation to all,

/s/ Tim Tesch

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Brookfield, Wisconsin

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[16] SEC Investor Advisory Committee to Discuss Artificial Intelligence and Cybersecurity on March 10, Press Release. https://www.sec.gov/news/press-release/2022-36. Accessed June 14, 2022.

[17] National Artificial Intelligence Advisory Committee (NAIAC) (Commerce Department) https://www.ai.gov/naiac/. Accessed June 14, 2022.