Increasing Board Diversity: Strategies from Activist Investor Susan Baker of Trillium

Career Development

While many of us are enjoying the coming of spring, Susan Baker, vice president and member of the shareholder advocacy team at Trillium Asset Management, has had her head down for months. “Since many companies have spring annual meetings, it’s a busy time of the year scheduling dialogues and filing shareholder proposals!” she says. Baker’s hectic work is definitely worth the time and effort.

Founded in 1982, Trillium is an independent investment advisor focused exclusively on sustainable and responsible investing. It manages over US$2.2 billion in assets for clients including high net worth individuals, foundations, endowments, religious institutions, and other nonprofits. According to Baker, Trillium takes share ownership seriously. Since its inception, the company has had a deep commitment to shareholder advocacy and its ability to make an impact in the form of improved corporate, environmental, and social governance performance, which benefits companies, communities, and the health of the economy.

Baker has been successful in bringing a stronger focus at the board level on gender diversity. For example, of the 15 companies Trillium engaged with over the past couple years through dialogue and/or shareholder proposals, all have revised corporate governance documents by adding clear commitments to gender, race, and ethnicity in the criteria they look for in building a board. Nine companies, including eBay, Wabtec, Stifel Financial, Palo Alto Networks, Superior Energy, Hartford Financial, Lowe's, Apple, Discovery Communications, and Cree have appointed one or more women to serve on the company's board of directors as a result of this engagement. It's notable that many of these companies are in the technology and financial industries, which have acknowledged challenges in increasing women in senior leadership and director roles. Baker explains:

> "We have yet to see a study that says board gender diversity is bad for business. Quite the opposite is true. Boards with diverse talents and perspectives inclusive of gender and race enhance the culture of innovation and critical thinking in the boardroom. Measures of financial health and stock performance can improve. So the real challenge is understanding and overcoming barriers to establishing more diverse boards."

Start with your corporate governance guidelines

"Are good governance policies addressing board composition and qualifications in place and adhered to?" Baker asks. If a company's policies lack a commitment to diversity inclusive of gender and race in its board composition criteria and its skills matrix, then no meaningful accountability mechanism exists. Of course, the board will be slow to prioritize diversity. "Articulating a commitment to diversity, going beyond the optics by then describing a strategy to seek diverse board candidates inclusive of gender and race, and holding board members accountable to its stated guidelines are all important steps," she recommends.

For example, in 2014 Trillium filed a board diversity proposal at eBay. At the time, the company had one woman on its board, stated it did not have a diversity policy, and had recently announced the spinoff of PayPal. After a constructive dialogue with the company, Trillium withdrew the proposal in

exchange for an agreement by eBay to revise its governance guidelines. The revised guidelines included gender and racial diversity among the qualities eBay seeks in its board members. They stated, “When searching for new directors, the board should actively seek out highly qualified women and individuals from minority groups to include in the pool from which board nominees are chosen.” Four months later, eBay appointed Bonnie Hammer from NBC and Gail McGovern from the Red Cross to its board. Subsequent to the spinoff, Paypal took eBay’s governance guidelines as its template, and Gail McGovern joined Paypal’s board. Since then, the company, understanding it has not yet reached its diversity goals, has made gender and racial diversity a high priority in identifying qualified board candidates.

Commit to an annual review of board member skills and backgrounds

Board refreshment is a challenge in the United States. Since 1998 annual turnover of board seats in the S&P 1500 was four percent on average, which explains in large part why achieving a gender-balanced board, according to a recent GAO report, is decades away. According to Baker, “we can talk to companies about these reports, but except amongst diversity leaders, there is a lack of conviction around what to do about it.”

Change can occur if companies commit to drawing from diverse candidate slates — how to do this? Expand the criteria for board directors, look for women in senior leadership positions, and untapped talent pools (e.g., academia, risk management officers, etc.). The Committee for Economic Development (CED) advocates a goal setting approach whereby boards commit to appoint a woman to every other vacant board seat while keeping existing seats held by women. This means women would hold one third of Fortune 500 board seats within the next five years.

Use available resources

“Participating in dialogues with shareholders, using resources available from coalitions with diversity expertise, including the Thirty Percent Coalition can help boards move more quickly to identify diverse board candidates. Trillium is member of the Thirty Percent Coalition and Baker serves on its board. Its mission is for women to hold 30 percent of board seats in all public companies. The coalition’s work is on the demand side of board diversity — influencing corporations to strengthen their efforts to increase the number of women on their boards.

Along with investors, the coalition membership also includes public companies, private equity, professional service firms, national women’s organizations, and government officials. For the first time, these groups will be working together to drive the pace of change, and demonstrate the importance of multi-stakeholder groups in gaining the momentum needed for significant impact.

Using outside resources, in-house attorneys and professionals who regularly interact with boards can play an important role. Is a commitment to diversity embedded in your company at the board level? If so, ask the board to discuss and answer the questions below. Make the answers public in governance documents and/or the annual proxy. Set timelines and concrete goals.

- Describe the board’s plan to implement board diversity inclusive of both gender and race;
- Describe steps already taken to implement the plan;
- Describe the venues of your candidate search, as well as resources you have accessed to identify qualified candidates;
- Describe any directives to search firms to encourage or require a diverse candidate pool; and,
- Summarize any barriers to progress and plans to address them (e.g., relationship to tenure,

retirement).

For Trillium and an increasing number of investors companies, combining competitive financial performance with high standards of corporate governance, including a gender-balanced board, better positions them to generate long-term value for their shareholders. In-house counsel can learn from the strategies that Baker outlines as a company's success is measured in large part by increased shareholder value at the end of the day.

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Olga V. Mack is a fellow at CodeX, The Stanford Center for Legal Informatics, and a Generative AI Editor at law.MIT. Mack shares her views in her columns on ACC Docket, Newsweek, Bloomberg, VentureBeat, Above the Law, and many other publications.

Mack is also an award-winning (such as the prestigious ACC 2018 Top 10 30-Somethings and ABA 2022 Women of Legal Tech) general counsel, operations professional, startup advisor, public speaker, adjunct professor, and entrepreneur. She co-founded SunLaw, an organization dedicated to preparing women in-house attorneys to become general counsels and legal leaders, and WISE to help female law firm partners become rainmakers.

She has authored numerous books, including Get on Board: Earning Your Ticket to a Corporate Board Seat, Fundamentals of Smart Contract Security and Blockchain Value: Transforming Business Models, Society, and Communities. She is working on her next books: Visual IQ for Lawyers (ABA 2024), The Rise of Product Lawyers: An Analytical Framework to Systematically Advise Your Clients Throughout the Product Lifecycle (Globe Law and Business 2024), and Legal Operations in the Age of AI and Data (Globe Law and Business 2024).

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