

Race in the Boardroom: A Black Paper

What's a Black Paper? A White Paper focused on issues around Black people and others of color.

On October 27, 2020, the Director Diversity Initiative convened a virtual session to discuss how issues relating to longstanding racial injustice could be addressed in the boardroom.¹ This paper is our preliminary product, informed by reading and study we did in preparation for the program and by small group discussions that occurred during the program among our 55 participants.² This, of course, is not a complete or exhaustive examination of everything a corporate board could or should do, but we hope it will be helpful for those boards interested in beginning a conversation about how their board might address racial equity issues.



The program's panelists (pictured above) were Emma Battle, Bernard Bell, Keecha Harris, and Lloyd Johnson. Lissa Broome, head of the Director Diversity Initiative, moderated the program.

The P's: Procurement, People, Pipeline/Pathways, Philanthropy

Various observers have used alliteration (with P's) to identify issues that boards could tackle regarding racial diversity. We provide our own spin on these below.

Procurement (or the Power of the Purse) – Boards can . . .

- Establish a policy that the company utilizes racially diverse suppliers and vendors whenever possible³;
- Establish a policy that requires that service providers, like lawyers and accountants, provide racially diverse teams to deliver services to the company;
- Establish a policy to add Black-owned banks and investment firms to the company's affiliated financial institution.

People – Boards can . . .

- Demand diverse candidate slates when they are hiring the CEO, other senior executives, or filling board seats;
 - Follow the Rooney Rule and require that diverse candidates be included in the final pool⁴;
- Provide significant incentive compensation for the CEO and senior executives that has specific, measurable objectives regarding racial diversity, equity, and inclusion⁵;
- Nominate new Black board member(s)⁶;
 - Add a Black board member if the board may be increased in size and there is no current opening on the board⁷;
 - Ensure the Black nominees meet skills identified by the board’s nominating and governance committee from a matrix analysis so he/she will not be viewed as a token;
 - Ensure that the board’s Nominating and Governance Committee has diverse representation, including in the role of committee chair;
 - Ask board members to express to their personal networks the importance of diversity and their desire to find more qualified Black board members;
 - Be inclusive and welcoming to Black directors through a deliberate onboarding process for the new director and the old directors;
 - Ask the SEC for mandated reporting of race and ethnicity of director nominees in the proxy statement (what gets measured, gets done)⁸;
- Provide diversity, equity, inclusion, and cultural competence education for all employees, including board members, and particularly for those in charge of recruiting and talent development;
- Use new methods of sourcing talent and for board members and senior executives use search firms with a track record of finding diverse talent and take advantage of director registries maintained by various affinity groups of diverse individuals;
- Encourage proxy advisory firms to focus on the recruitment and retention of BIPOC individuals in senior executive and board roles.

Pipeline or Pathways⁹ – Boards can . . .

- Review the executive pipeline on a regular basis, ask for a breakdown based on demographic characteristics, and seek improvement in the number and percentage of diverse leaders in the pipeline;
 - Determine if there are leaks in the pipeline and devise strategies to stop the leaks and retain talent;
- Hire or revise the role of the Chief Diversity, Equity, and Inclusion Officer¹⁰;
 - Consider making the CDE&I Officer a direct report to the CEO;
 - Avoid focusing only on identity or affinity groups, speaker series, and trainings;

- Fill the pipeline by recruiting at HBCUs and providing scholarships and internships to HBCU students and diverse students from other schools.

Philanthropy – Boards can . . .

- Direct the company’s foundation or philanthropy arm to support social justice issues;¹¹
 - The best philanthropic support aligns with the principles of Trust Based Philanthropy:
 - Conduct your own research on the group(s) of interest then interview them to gauge their interests in a funding relationship;
 - Provide multi-year, unrestricted funding for general operations ;
 - Streamline and simplify the application and reporting processes;
 - Be transparent about expectations and responsive to inquiries;
 - Solicit and act on feedback;
 - Offer support beyond the check.

Resources Provided by the Director Diversity Initiative

Database, <https://ddi.law.unc.edu/database/login.aspx>

- Diverse potential directors should register on the database and companies looking to add diversity should contact the DDI (Lissa Broome, lbroomer@email.unc.edu) to have a search performed;
 - Since June 2020, the DDI has performed 13 searches for a variety of public, private, and nonprofit organizations.

Education and Networking

- Take advantage of education and networking opportunities provided by a variety of groups focused on corporate governance and diverse potential director populations, <https://ddi.law.unc.edu/organizations/>;
 - DDI hosts a very successful one-day virtual program, which will be held next on May 27, 2021. Applications are currently being accepted, <https://ddi.law.unc.edu/programs/>;
 - Check out the short programs also offered by DDI on topics such as financial literacy, enhancing your online presence, introduction to mutual fund boards ;
 - Follow DDI on [LinkedIn](#) to learn more about our upcoming programs and other board diversity resources.

Other Resources

NACD Board Diversity Resource Center:

https://www.nacdonline.org/insights/resource_center.cfm?itemnumber=22875

Diligent Insights: Inside America’s Boardrooms

VIDEO SERIES: Battling Systemic Racism: How Boards Can Have a Positive Impact

https://insights.diligent.com/inside-americas-boardrooms/?mkt_tok=eyJpIjoiWVdaa1pqWXIOV1E0WVdZeCIsInQiOiJYY0xoRWpidWhWNjZESn g0NzR3emdXdkVGZmV2K1NQXC82TFZYTFRUMUrODNzbyswbVVYZGY3QXc0WG92U3ZDWm91 T3hBSHdpblF5R3l1eWZCRmhybVdjRG04QjIjQXc9nbngyNVdiT0ZuZDF0N3FWakJub1BXQ05KZE pMNE90VXpuIn0%3D

North Carolina Law Review (2011)

Lissa Broome, John Conley & Kimberly Krawiec, Dangerous Categories: Narratives of Corporate Board Diversity

https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2963&context=faculty_scholarship

The Inclusion Imperative for Boards

<https://www2.deloitte.com/us/en/insights/topics/value-of-diversity-and-inclusion/redefining-board-responsibilities-to-support-organizational-inclusion.html>

Kenan Insights (October 2020)

The Corporate Social Justice Imperative

<https://kenaninstitute.unc.edu/kenan-insight/corporate-social-justice-imperative/>

¹ Many CEOs issued statements in the wake of the death of George Floyd, Breonna Taylor, Ahmoud Arbery, and others, such as, “we are committed to fighting against racism and discrimination wherever and however it exists.” Jamie Dimon, CEO of Morgan Stanley, and Brian Lewis, Head of D&I, <https://www.jpmorganchase.com/news-stories/message-from-jamie-dimon-and-brian-lamb>. This Black Paper attempts to provide suggestions for how boards can help make these sentiments a reality.

² The program’s panelists were Emma Battle, Bernard Bell, Keecha Harris, and Lloyd Johnson. Lissa Broome, head of the Director Diversity Initiative, moderated the program.

³ National Association of Corporate Directors, How Boards Can Help Address Systemic Racism in America, June 2020, <https://blog.nacdonline.org/posts/boards-address-systemic-racism>.

⁴ Goldman Sachs has adopted this approach requiring that at least two diverse candidates be interviewed for any open job, <https://www.wsj.com/articles/goldman-sachs-implements-its-own-rooney-rule-in-diversity-push-11552938901>.

⁵ Starbucks ties executive pay to diversity goals, Business Journals (October 2020), <https://www.bizjournals.com/bizwomen/news/latest-news/2020/10/starbucks-ties-executive-pay-to-meeting-diversity.html>. “[J]ust 78 of roughly 3,000 companies said fulfilling diversity goals determined some portion of chief executives’ pay, according to an analysis of public pay disclosures by Pearl Meyer, a compensation consulting firm.” Peter Eavis, Want More Diversity? Some Experts Say Reward C.E.O.s for It, New York Times, July 14, 2020.

⁶ In the top 500 companies by revenue, Blacks hold 7.5% of board seats, while LatinX individuals hold 2% of the seats, and Asian/Pacific Islanders hold 1%. <https://www.equilar.com/press-releases/123-EDN-launches-ethnicity-data-campaign.html>. For the 50 largest companies headquartered in North Carolina, as of September 30, 2018, nonwhites held 9.2% of board seats. <https://ddi.law.unc.edu/boarddiversity/>.

At the end of 2021, corporations incorporated or headquartered in California must have at least one board member from an “underrepresented community,” defined as someone who self identifies as “Black, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaskan Native, or as gay, lesbian, bisexual, or transgender. For a board of 9 or more directors, 3 of the directors must be from underrepresented communities by December 31, 2022. California also has a gender mandate, requiring at least 3 female directors on a board of 6 or more directors by the end of 2021. These legislative initiatives are being challenged on various grounds, including equal protection.

⁷ Zillow, Nextdoor and Other Companies Pledge to Add Black Directors, Wall St. Journal, Sept. 9, 2020. <https://www.wsj.com/articles/zillow-nextdoor-and-other-companies-pledge-to-add-black-directors-11599649200?mod=djem10point>.

⁸ SEC Commissioner Allison Harren Lee advocated this approach in a September 22, 2020, speech to the Council of Institutional Investors, <https://www.sec.gov/news/speech/lee-cii-2020-conference-20200922>. A bill mandating disclosure was proposed in the 116th Congress, <https://www.congress.gov/bill/116th-congress/house-bill/5084/text>).

On December 1, 2020, Nasdaq asked the SEC to adopt new listing rules related to board diversity and disclosure that would require all U.S. Nasdaq-listed companies to have at least two diverse board members – one woman and one underrepresented minority or LGBTQ+. In addition, within one year of the SEC’s approval of the rule, all Nasdaq-listed companies would be required to disclose their board diversity. <https://www.nasdaq.com/press-release/nasdaq-to-advance-diversity-through-new-proposed-listing-requirements-2020-12-01>.

⁹ In other contexts, the “pipeline” term has been criticized since it may indicate that there is a single path going in only one direction to achieving a certain position, when in reality people may get to a that position from multiple pathways. The Myth of the STEM Pipeline, Inside Higher Education, Oct. 2, 2019, <https://www.insidehighered.com/views/2019/10/02/negative-consequences-pipeline-metaphor-stem-fields-opinion>.

¹⁰ See Demand for Chief Diversity Officers Is High. So Is Turnover, Wall St. Journal (July 2020), <https://www.wsj.com/articles/demand-for-chief-diversity-officers-is-high-so-is-turnover-11594638000>; Do You Know Why Your Company Needs a Chief Diversity Officer? Harvard Business Review (September 2020), <https://hbr.org/2020/09/do-you-know-why-your-company-needs-a-chief-diversity-officer>.

¹¹ For instance, WalMart announced a \$100 million commitment from the WalMart Foundation to create a center on racial equity, with four focus areas for the center and for the company:

1. Drive access to minority owned businesses in minority supplier and marketplace seller development
2. Provide greater accessibility to better health and wellness
3. Strengthen academic support efforts such as Live Better U and creating deeper recruiting programs with HBCUs
4. Review hiring process to ensure non-violent formerly incarcerated applicants are appropriately considered as they enter the workforce