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UK, US and Some Asian Jurisdictions Join in Pressing Companies To Diversify Their Boards

Contributing Partner

George Knighton / London

Associate

Chloe Bowskill / London

Takeaways

– The FCA is poised to adopt rules requiring companies with equity shares listed on the premium and standard segments of the U.K. main market to report annually on their achievement of gender and ethnic diversity targets.

– This requirement would mirror similar initiatives recently implemented in the U.S. and some Asian countries.

– Influential large institutional investors are publishing their own voting guidelines, which seek to support greater diversity on boards.

In July 2021, the U.K. Financial Conduct Authority (FCA) published a consultation paper, "Diversity and inclusion on company boards and executive committees," laying out proposed diversity disclosure requirements expected to go into effect in early 2022 for U.K.-listed companies.

The paper noted significant gains in gender diversity on boards. In 2011, women represented only 12.5% of U.K. directors at FTSE 100 companies, but by 2020 36.2% of directors were women. However, the level of ethnic diversity remains low. In 2017, after a review found only 2% of directors of FTSE 100 companies were persons of color, the FCA set a target of at least one director of color by 2021 for FTSE 100 companies. A recently published review found that, as of April 30, 2021, 61 FTSE 100 companies reported they had met that target, 18 reported they had not and 19 did not report whether or not they had.

Details of the FCA's Proposed Rules

The FCA paper proposes requiring U.K.-listed companies to include in their annual report a "comply or explain" statement as to whether specific targets for gender and ethnic diversity were achieved in the financial year reported on. If the goals were not achieved, companies would need to explain why they were not and what steps are being taken to reach them in the next financial year.

The proposed goals are:

- at least 40% of the board are women;
- at least one of the chair, CEO, senior independent director (SID) or CFO is a woman; and
- at least one member of the board is from a non-white ethnic minority background.

In addition to being obliged to report on these goals, listed companies would be required to provide data on the gender and ethnic diversity of their boards, senior board positions and most senior executive management.

Companies would also be encouraged to include in their annual report:

- a summary of key policies, procedures and processes to improve the diversity of their boards and executive management;
- any mitigating factors that make achieving diversity more challenging;
- any risks in meeting the targets in the next accounting period; and
- any plans to improve board diversity.

The paper stated that the policy disclosures should apply to remuneration, audit and nomination committees, and cover ethnicity, sexual orientation, disability and socio-economic background.

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One Manhattan West
New York, NY 10001
212.735.3000

The consultation process ended in October 2021 and the FCA said in November 2021 that it expects to publish new rules to implement the proposals by early 2022. The new rules would apply to U.K. and overseas issuers with equity shares, or certificates representing equity shares, admitted to the premium or standard segment of the FCA's Official List, but excluding open-ended investment companies, "shell companies" and existing exemptions for small and medium companies.

Other Jurisdictions

The FCA's initiative keeps the U.K. in line with other significant financial markets, such as the U.S., Hong Kong, Japan, Australia and Singapore, each of which has taken similar steps over the past two years. (See "Investors Press for Progress on ESG Matters, and SEC Prepares To Join the Fray.")

Investor Policies in Favor of Diversity

In parallel with these initiatives from regulators, high-profile large institutional investors are pledging to exercise their voting rights to encourage listed companies to increase diversity on their boards.

On December 2, 2021, Goldman Sachs Asset Management (GSAM) announced that, beginning March 2022, its proxy voting policies would include an expectation that each company in the S&P 500 and FTSE 100 indexes would have at least one diverse director from an unrepresented ethnic minority group on its board. GSAM also stated that it expected public companies globally to have at least two women on their boards (unless the board has 10 or fewer members or local requirements are higher than this minimum). GSAM has stated that it will enforce these expectations by voting against members of the nominating committees of companies that fail to meet them, and, in the U.S., GSAM will continue to vote against all members of boards that do not include any women.

The global push for diversity continues to gather momentum and that seems unlikely to change, not least because investors believe diversity is good for business. In announcing its new policy, GSAM was clear: "Boardroom diversity is an important source of diverse thinking at the highest level of every company and is an important driver of corporate performance."

Market	Agency/Exchange	Date	Description
United States	The U.S. Securities and Exchange Commission: approved board diversity rule for companies listed on the Nasdaq exchange	Approved: August 6, 2021	Nasdaq-listed companies must (subject to some exceptions): – annually report on board-level diversity statistics using a standard matrix template beginning in 2022:[1] • total number of board members; and • how those board members self-identify regarding gender, race and ethnicity categories and LGBTQ+ status; and – appoint at least one diverse director by August 7, 2023, and at least two by August 6, 2025, of whom one should self-identify as female and one as either an underrepresented minority or LGBTQ+. If the company has not met these standards by those dates, explain why not. See our September 28, 2021, client alert "SEC Approves Nasdaq Board Diversity Listing Standards."

[1] Disclosure is required by the later of (a) August 8, 2022, or (b) the date on which the company files its proxy or information statement for its 2022 annual shareholder meeting.

Market	Agency/Exchange	Date	Description
Hong Kong	The Stock Exchange of Hong Kong Limited (HKEX): has adopted measures to improve board diversity at HKEX-listed companies	Took effect: January 1, 2022	HKEX-listed companies must: - appoint at least one director of the absent gender by December 31, 2024, if they have single-gender boards; - not have single-gender boards from July 1, 2022, if they are IPO applicants; - set and disclose numerical targets and timelines for achieving gender diversity both on their boards and within their wider workforces for financial years commencing on or after January 1, 2022; and - have their boards review the progress of their diversity policy annually for financial years commencing on or after January 1, 2022.
Japan	The Tokyo Stock Exchange: revisions to Japan's Corporate Governance Code	Took effect: June 11, 2021	Japan-listed companies must: - disclose their policies and "voluntary and measurable" goals for ensuring diversity in senior management, such as the promotion of women, foreign nationals and midcareer hires to middle management roles; and - disclose their human resource development policies to ensure diversity and report on the implementation of those policies.
Australia	The Australian Securities Exchange (ASX): Corporate Governance Principles	Published: February 2019	ASX-listed companies must: - set and disclose measurable objectives for achieving gender diversity in the composition of their boards, senior management and workforces generally; and - report annually on the achievement of those objectives. For members of the S&P/ASX 300 Index, the objective should be to have at least 30% of its directors be of each gender.
Singapore	The Singapore government: Council for Board Diversity (CBD)	Established: 2019	The board has a mandate to "promote a sustained increase of women on boards of listed companies." The CBD set a target for the top 100 listed companies of: - 20% women on boards by the end of 2020; - 25% by the end of 2025; and - 30% by the end of 2030. As of June 30, 2021, the CBD reported a level of 18% — below the target but an improvement from 16.2% in December 2019.