



LGBTQ+ Visibility Counts:

**Board Demographics
Reporting Guidelines**

Board Demographics Reporting: The Business Case

In 2019, Out Leadership and Ropes & Gray published self ID guidelines finding many companies measure LGBTQ+ identity in their rank and file employees internally. There is a distinct lack of measuring LGBTQ+ identity in board diversity metrics across the world. Through Out Leadership's 10 years of work and research we know that visibility, especially at the top, matters to people and to the bottom line.

Diversity on corporate boards is good for business, and stakeholders are increasingly seeking transparency and engagement with regard to the demographic composition of the board. In particular, investors such as BlackRock¹, CalPERS², CalSTRS³, New York City Retirement Systems, and State Street Global Advisors⁴ actively encourage portfolio companies to improve board diversity, and are using their proxy voting power to engage with companies on this topic.

In its "Guidance on Enhancing Gender Diversity on Boards", State Street Global Advisors noted, "In the event that companies fail to take action to increase the number of women on their boards, despite our best efforts to actively engage with them, **we will use our proxy voting power to effect change** — voting against the Chair of the board's nominating and/or governance committee or the board leader in the absence of a nominating and/or governance committee, if necessary."⁵

In an open letter to corporate board chairs, State Street Global Advisors asks companies in its portfolio to provide information about "...Diversity characteristics, including racial and ethnic makeup, of the board of directors."⁶

Citing the positive impact of diversity on share price performance, Goldman Sachs announced in early 2020 that it will **no longer underwrite an IPO for a company unless it has at least one woman or other diverse member on its board**. Goldman's IPO requirement increases to two diverse directors in 2021.⁷

"This decision is rooted first and foremost in our conviction that companies with diverse leadership perform better. Consider this: since 2016, US companies that have gone public with at least one female board director outperformed companies that do not, one year post-IPO. But in addition to the real commercial benefits, it's clear that changing the stereotypes associated with corporate decision-making will have many positive effects for society as a whole." -David Salomon, CEO of Goldman Sachs, February 2020

¹ BlackRock Investment Stewardship: Corporate governance and proxy voting guidelines for U.S. Securities, January 2020.
² CalPERS' Governance and Sustainability Principles, September 2019.
³ California State Teachers' Retirement System: Corporate Governance Principles, November 7, 2018.
⁴ State Street Global Advisors, "Open Letter" to Board Chairs, August 27, 2020.
⁵ State Street Global Advisors' Guidance on Enhancing Gender Diversity on Boards, page 1, 2019.
⁶ State Street Global Advisors, "Open Letter" to Board Chairs, August 27, 2020, p. 2.
⁷ Diverse Leadership Is Needed More Than Ever – Here's What We're Doing, David Solomon, LinkedIn, January 23, 2020.

And with the passage of SB-826 in 2018 and AB-979 in September 2020, California became the first state to require boards of publicly-held companies headquartered in the state to have at least a minimum number of female directors and directors from underrepresented communities⁸. The California Secretary of State is expected to establish requirements for companies to report on the demographic composition of their boards, and will publish annual reports documenting compliance with the law's requirements.

Comprehensive data on board demographics is not easily obtained from most publicly-traded companies' reporting, and is even more difficult to gather from privately-held and venture-backed companies. Director biographies include some demographic data – for example, in the form of gendered pronouns, surnames or accompanying photographs – that allow investors to assess board diversity across a few dimensions, but major gaps in reporting make it difficult to discern the full picture.

Only 12 companies out of the Fortune 500 (2.4%) have LGBTQ+ included in their definition of board diversity. The companies are:



*current or former members of Out Leadership

The lack of director demographic information reported by companies in their public filings and other investor communications has given rise to an inefficient and incomplete patchwork of workarounds, as investors seek this information from other sources. **By failing to report on boardroom demographics, companies miss an opportunity to communicate with their stakeholders about their commitment to boardroom diversity**, and stakeholders are frustrated in their efforts to understand the governance priorities of companies in which they have invested or may invest.

Enhanced disclosure enables companies to explain how their directors are qualified to serve, and to demonstrate the demographic diversity of their boards, without asking investors to make assumptions based on incomplete data, or to waste resources sourcing demographic information from third parties.

According to research conducted by Quorum and Ropes & Gray, only twelve Fortune 500 companies included sexual orientation in the board diversity guidelines published in their 2020 annual proxy statements. That's only 2.4% of companies in the Fortune 500.

⁸ AB-979 defines a director from an under-represented community as one "who self-identifies as Black, African-American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaska Native, or one who self-identifies as gay, lesbian, bisexual or transgender". The law requires covered companies to have at least 1 director from an under-represented community by the end of 2021, and by the end of 2022 boards with more than 4 but fewer than 9 members must have 2 such directors, and boards with more than 9 members must have at least 3. SB826's requirement of at least one woman on boards of covered companies became effective at the end of 2019, with similar numerical increases required by the end of 2021.

Board Demographics Reporting: Recommendations

1. We recommend that companies provide information to their stockholders about the demographic composition of their boards, **at least annually**, in a clear, comprehensive matrix format.
2. We encourage companies to provide demographic data for **each** board member, including gender and gender identity, ethnicity/race and sexual orientation, international experience, disability or veteran status.

For companies traded publicly in the U.S., this disclosure may be included in the annual proxy statement filed with the U.S. Securities and Exchange Commission (SEC). (See language from Goldman Sachs' and Mastercard's Proxy statements as examples). For privately-held companies, disclosure may be included in their annual proxy statements, information statements distributed to stockholders (if applicable) or other communications. Companies should also consider disclosing this information in the governance section of their corporate websites.

3. We recommend a **matrix format for disclosure of board demographic** information such as the example on the following page, which was adapted from a format by the New York City Comptroller, Scott Stringer, and Pension Funds with support and advocacy from Out Leadership.

Goldman Sachs Board Diversity Language:

"Our Governance Committee considers a number of demographics and other factors, including race, gender identity, ethnicity, sexual orientation, culture, nationality and work experiences (including military service), seeking to develop a board that, as a whole, reflects diverse viewpoints, backgrounds, skills, experiences and expertise."

Mastercard Board Diversity Language:

"While the Board does not have a specific diversity policy, our Corporate Governance Guidelines provide that the NCG should seek to foster diversity on the Board when nominating directors for election by taking into account geographic diversity to reflect the geographic regions in which we operate in a manner approximately proportional to our business activity, as well as diversity of viewpoints, age, gender, sexual orientation, race, ethnicity, nationality and cultural background."

Board Matrix

		Board of Directors							
		name	name	name	name	name	name	name	name
Skills & Experience	Board of Directors Experience								
	(Specific) Industry Experience								
	CEO/Business Head								
	International								
	Human Capital Management/Compensation								
	Finance/Capital Allocation								
	Financial Literacy/Accounting (Audit Committee Financial Expert or "ACFE")								
	Government/Public Policy								
	Marketing/Sales								
	Environmental Science/Policy/Regulation								
	Academia/Education								
	Risk Management								
	Corporate Governance								
	Technology/System								
	Business Ethics								
Real Estate									
Other:									
Demographic Background	Board Tenure								
	Years								
	Sexual Orientation								
	LGBQ								
	Gender								
	Male								
	Female								
	Non-Binary								
	Transgender Male								
	Transgender Female								
	Age								
	Years old								
	Race/Ethnicity								
	Asian								
	Black or African American								
Hispanic or Latino									
Native American or Alaska Native									
Native Hawaiian or Pacific Islander									
White									
Two or more races									

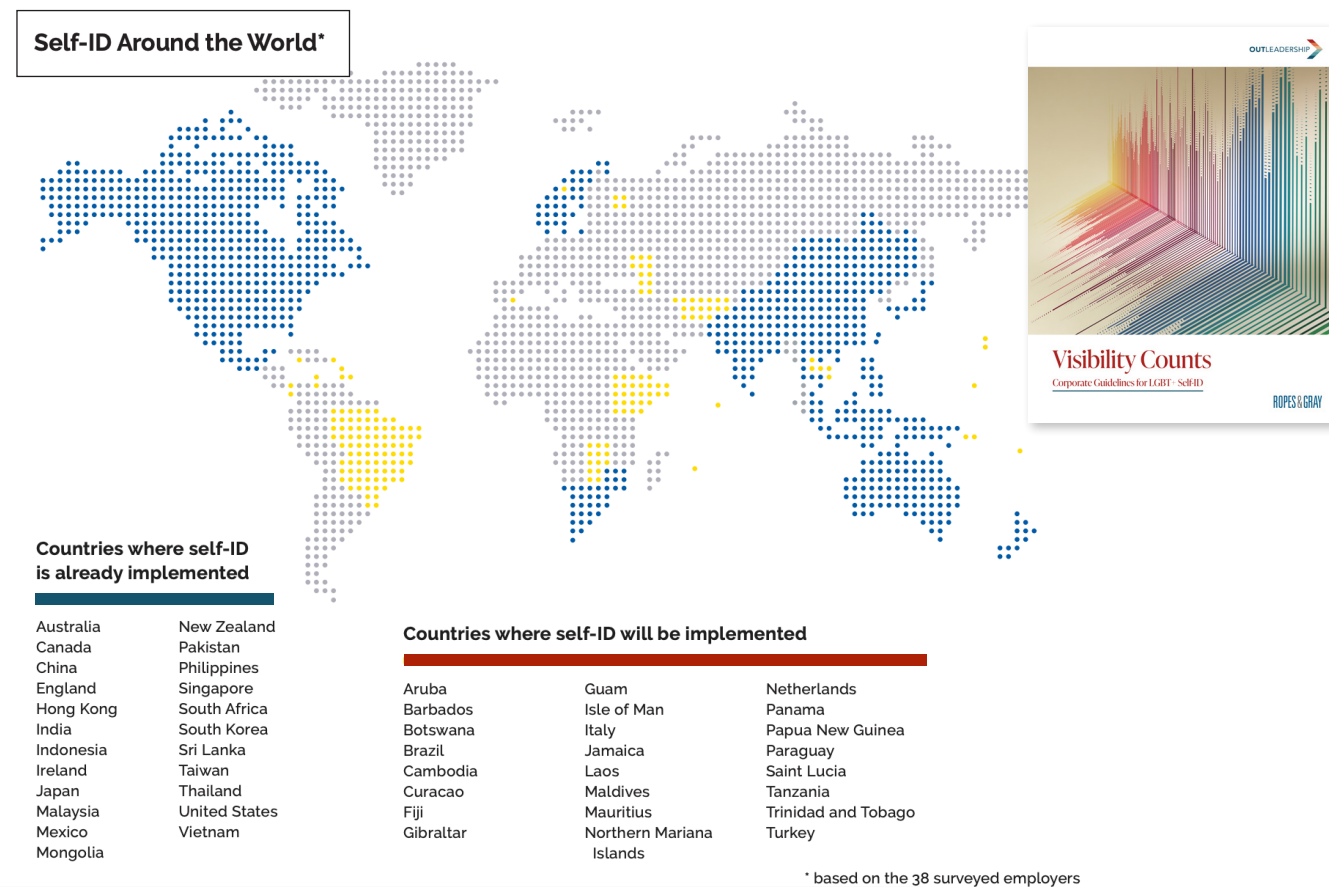


Board Demographics Reporting:

1. One simple approach to collect demographic data about board members is through Director and Officer ("D&O") questionnaires, which are typically completed annually to provide data for corporate compliance, disclosure, governance, insurance and other purposes, and (for publicly-traded companies) to enable preparation of proxy statements.
2. Example demographic questions are shown in the following page, and may be customized by each company. The ethnicity and race categories included in this example align with the categories generally used in the United States, and may be adapted for companies in other regions of the world.

Companies are asking for LGBTQ+ individuals to self-identify at the employee level. They need to also be asking at Board level.

Findings from Visibility Counts report, by Out Leadership and Ropes & Gray, 2019



Example D&O Demographic Questions

(1) At our Company, diversity and inclusion are part of our values. Your voluntary responses to the following questions help us to understand and report to our stockholders on the diverse backgrounds, skills, and experiences that our directors bring to the Company.

(a) **Ethnicity and Race Categories⁹ – Please indicate all that apply to you:**

- Asian¹⁰
- Black or African American¹¹
- Hispanic or Latino¹²
- Native American or Alaska Native¹³
- Native Hawaiian or Pacific Islander¹⁴
- White¹⁵
- Two or more races¹⁶

(b) **Gender – Do you identify as:**

- Female
- Male
- Non-Binary

(c) **Sexual Orientation – Do you identify as a member of the lesbian, gay, bisexual, transgender or queer (LGBTQ+) community?**

- Yes
- No

(d) **Please describe components of diversity that apply to you which are not covered by the questions above.¹⁷**

[Please describe]

⁹ Ethnicity and race categories are drawn from the U.S. Equal Employment Opportunity Commission Standard Form 100, March 2018.

¹⁰ **Asian** (Not Hispanic or Latino) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

¹¹ **Black or African American** (Not Hispanic or Latino) - A person having origins in any of the black racial groups of Africa.

¹² **Hispanic or Latino** - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

¹³ **Native American or Alaska Native** (Not Hispanic or Latino) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

¹⁴ **Native Hawaiian or Pacific Islander** (Not Hispanic or Latino) - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

¹⁵ **White** (Not Hispanic or Latino) - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

¹⁶ **Two or More Races** (Not Hispanic or Latino) - A person who identifies with more than one of the above five races.

¹⁷ A company may add questions about other dimensions of diversity relevant to its business.

FAQ'S

Will board members be uncomfortable if asked to provide their demographic data?

Publicly-traded companies routinely ask directors to complete extensive D&O questionnaires for proxy disclosures, compliance, corporate governance and other purposes. Demographic data about directors represents a minor expansion to these requests, and one that solicits information requested by proxy advisory firms, investors and other company stakeholders, and which is required in some states. In addition, since companies routinely collect demographic data from their employees, many directors will be familiar with this data collection from their executive roles.

Will expanded disclosure of board demographics add litigation risk for companies?

Our discussions with corporate governance experts at leading law firms have not identified any incremental risk to companies in providing more expansive board demographic reporting. We encourage companies to consult with their corporate secretary and outside counsel in connection with proxy and other disclosures.

How can institutional investors help?

Institutional investors can engage with the management teams and boards of their portfolio companies and encourage companies to report on the demographic diversity of their boardrooms. Investors can also formally recommend that companies report on the demographics of their boards: For example, CalPERS' Governance and Sustainability Principles specify:

Boards should annually disclose their demographic information including race, ethnicity and gender. Ideally, companies should disclose their Employer Information Report, known as the EEO-1 report, or similar workforce demographic data to enable shareowners to assess the board's diversity relative to its workforce and compare companies in similar industries.¹⁸

Investors may also recommend disclosure formats, such as the New York City Comptroller's "Best Practices in Board Matrices" guide.¹⁹

¹⁸ CalPERS' Governance and Sustainability Principles, September 2019.

¹⁹ "Best Practices in Board Matrices", New York City Comptroller, August 2018. <https://comptroller.nyc.gov/wp-content/uploads/2018/08/NYC-Comptrollers-Office-Matrices-Compendium-8-2018-FINAL.pdf>

How can general counsel, corporate secretaries and law firms help?

Outside and in-house counsel are a vital source of advice for Boards on corporate governance matters. Nominating committees and boards will look to their legal department leaders and to outside law firms for guidance regarding disclosures, and often rely on law firms' "best practice" approaches.

We encourage law firms to:

- Update their D&O questionnaire templates and example proxy disclosures to reflect these recommendations.
- Discuss with clients the opportunity to provide enhanced disclosure of board demographic diversity in proxy statements and other documents.

We encourage general counsels and corporate secretaries to:

- Discuss emerging trends in board demographic diversity disclosure with their boards and committees.
- Lead in the development of D&O questionnaires that collect expanded demographic data.
- Provide context and advice to board members to help facilitate the transition to expanded disclosure.

How can employee affinity groups help?

Operating within their companies, employee affinity groups representing under-represented communities can:

- Review their companies' director demographic disclosures, and encourage enhanced reporting.
- Collaborate with other employee affinity groups to encourage improved demographic disclosures.

How can board diversity advocacy organizations help?

Organizations advocating for other communities of directors, including those focused on diversity of gender and race/ethnicity, can partner to encourage companies to collect and report data on the demographic diversity of their boardrooms.

About the Diverse Corporate Directors Coalition

The vision of the [Diverse Corporate Directors Coalition \(DCDC\)](#) is a corporate America where **boardrooms leverage the strength of America's diversity as a competitive advantage**. The DCDC is composed of representatives from the leading associations that support diverse corporate directors as follows: Ascend Pinnacle, the Black Corporate Directors Conference (BCDC), the Latino Corporate Directors Association (LCDA), Out Leadership's Quorum, and the WomenCorporateDirectors Foundation (WCD).

This coalition has been formed to accelerate change and equity, as the progress toward inclusive diversity continues to be slow. Diversity, equity, and inclusion (DE&I) make good business sense. A growing body of research has demonstrated the correlation between board diversity and corporate financial performance. For example, according to the 2018 McKinsey report *Delivering through diversity*, companies in the top quartile for ethnic diversity were 43 percent more likely to see above-average profitability²⁰.

Supply is not the issue. The combined membership of our organizations demonstrates that there is ample supply of diverse experienced directors and board-qualified executives. Our groups represent among the most respected and accomplished business leaders at the pinnacle of corporate governance; therefore, we are paying it forward by preparing and opening doors for experienced C-level executives.

In August 2020, the DCDC released a groundbreaking Call to Action for public boards in an effort to finally bring diversity, equity, and inclusion (DE&I) to one of the least diverse environments in America—the corporate boardroom.

²⁰ Delivering through diversity, McKinsey, January 2018.

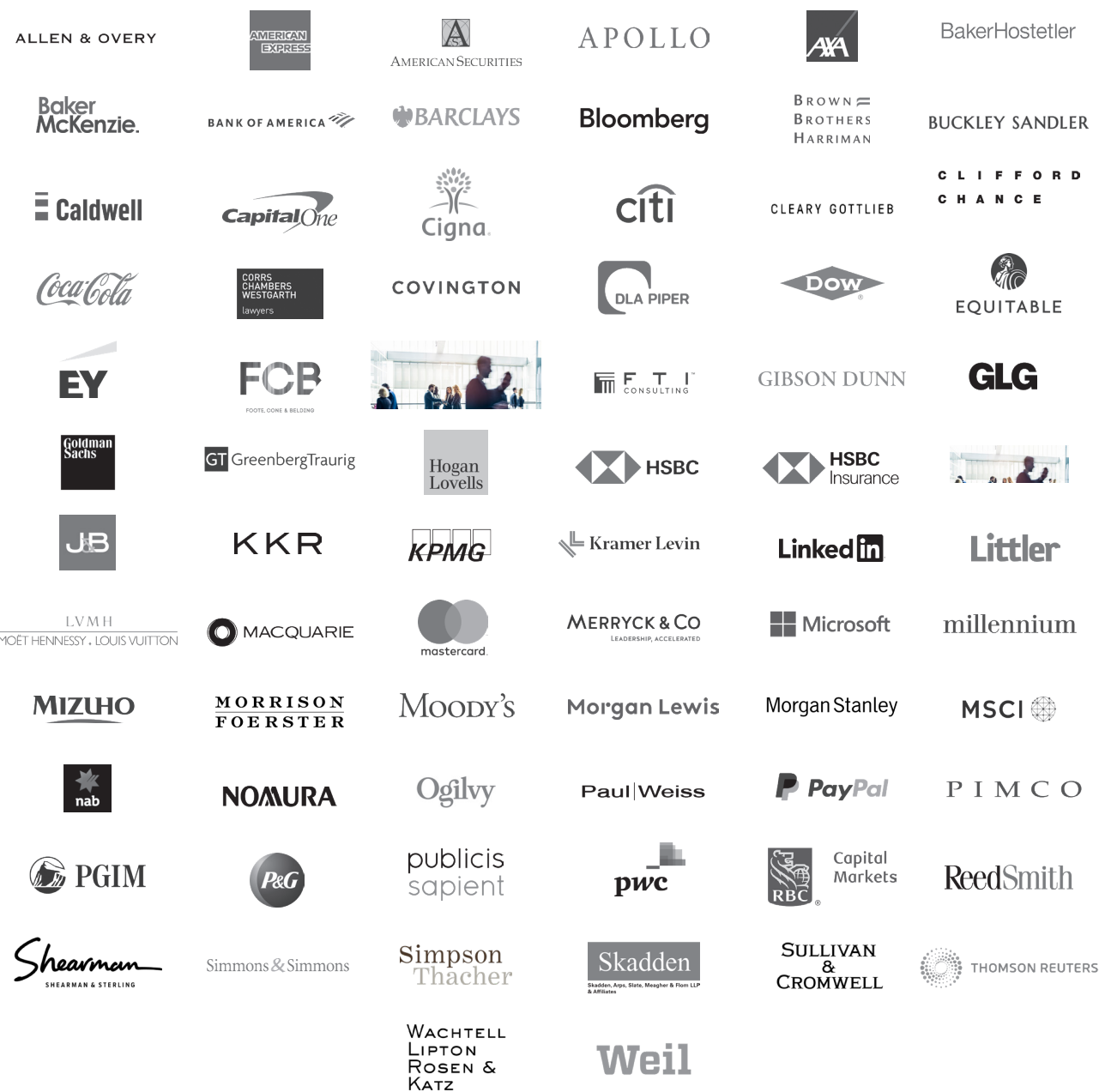


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