



# **SEC Disclosure Rules on Board of Director Diversity**

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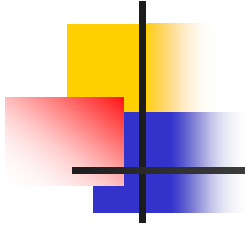
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# Presentation Overview

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- I. What do the SEC rules require on the topic of corporate director diversity disclosure?
- II. What are companies reporting?
- III. How do companies evaluate board & director diversity?
- IV. What do we currently know about diversity of directors?



I. What do the SEC rules require on the topic of corporate director diversity disclosure?



# The Rules

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- On December 16, 2009, the U.S. Securities & Exchange Commission approved rules that require enhanced proxy statement disclosures regarding corporate governance and compensation matters. The rules were generally effective as of February 28, 2010.
- The new disclosure rules include a requirement that public companies, for the first time, provide disclosure regarding board diversity. *Item 407(c)(2)(vi) of Regulation S-K*



# Board Diversity – Shareholder Hot Button Issue

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Board diversity is important to investor groups.

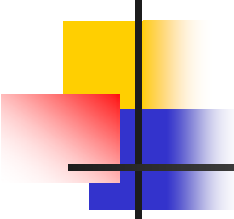
- Commentators on the SEC's rule proposals indicated that disclosure relating to board diversity "would provide investors with information on corporate culture and governance practices that would enable investors to make more informed voting and investment decisions."
- According to influential proxy advisory group RiskMetrics Group:
  - Only two shareholder proposals regarding board diversity were submitted last year to public companies for purposes of inclusion in companies' proxy statements. As of April 8, 2010, seventeen shareholder proposals had been submitted to public companies (sixteen were withdrawn). These shareholder proposals typically focus on increased board representation of women and minorities.
  - Risk Metrics will generally recommend "vote for" requests for reports on a company's efforts to diversify the board, unless (1) the board composition is reasonably inclusive in relation to companies of similar size and business, and (2) the board already reports on its nominating procedures and diversity initiatives.

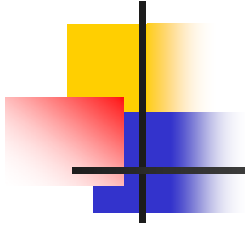


# Item 407(c) of Regulation S-K

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- Regulation S-K Item 407(c)(2)(vi) requires the following disclosure:
  - Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder, and whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy (emphasis added)

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- Rule requires disclosure of whether, and if so how, a company's nominating/governance committee or board considers diversity in identifying director nominees
  - If the nominating/governance committee or board has a "policy with regard to the consideration of diversity" (even if *unwritten*), disclosure about how the policy is implemented and how the board or committee assesses the effectiveness of the policy is required
    - The SEC staff takes a broad view of what constitutes a "policy."



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- Rule does not define “diversity” so companies can develop and disclose their own standards and address matters, ranging from gender and ethnicity to diverse business experience.
  - The SEC release adopting the rule indicated that companies “may define diversity in various ways, reflecting different perspectives” and that companies “may conceptualize diversity expansively to include differences of viewpoint, professional experience, education, skill and other individual qualities and attributes that contribute to board heterogeneity, while others may focus on diversity concepts such as race, gender and national origin.”

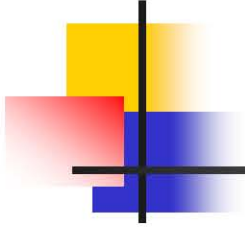




# Considerations in Drafting Disclosure

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- Based on filings seen to date, few companies likely have formal diversity policies specifically related to the board. Some companies may have diversity considerations in their corporate governance guidelines.
- Companies without diversity policies may indicate that, while the company does not have a formal policy regarding board diversity, it is one of a number of factors that the committee (or board) typically takes into account in identifying nominees.
- Alternatively, nominating committees or boards may decide to adopt formal diversity policies or to revise their committee charters or corporate governance guidelines to specifically address diversity.



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## II. What are companies reporting?



# Diversity Disclosure in Recently-Filed Statements

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- As noted, the SEC has not defined what “diversity” means for purposes of proxy statement disclosures.
- A number of the companies that have filed proxy statements since the effective date of the rule have focused on diversity of backgrounds and skills of directors (see following examples), rather than race, gender or ethnicity.



# Examples

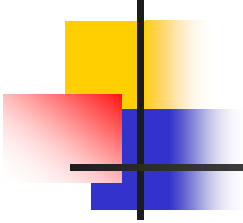
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## The Boeing Company

When assessing a director candidate's qualifications, the GON Committee considers the candidate's expertise (including international experience and industry background), independence, and integrity, as well as skills relating to operations, manufacturing, finance, marketing, technology and public policy...In addition to the considerations described above, our Corporate Governance Principles mandate that the GON Committee consider diversity in its evaluation of candidates for Board membership. The Board believes that diversity with respect to factors such as background, experience, skills, race, gender and national origin is an important consideration in board composition.

## Chevron Corporation

The Committee uses a skills and qualifications matrix to ensure that the overall Board maintains a balance of knowledge and experience. The Committee carefully reviews all Director candidates, including current Directors, in light of these qualifications based on the context of the current and anticipated composition of the Board, the current and anticipated operating requirements of the Company, and the long-term interests of stockholders. In conducting this assessment, the Committee considers diversity, education, experience, length of service and such other factors as it deems appropriate given the current and anticipated needs of the Board and the Company. The Committee and Board define diversity broadly to include diversity of professional experience (policy, business, government, education, technology or public interest), geographical location and viewpoint, as well as diversity of race, gender, nationality and ethnicity.

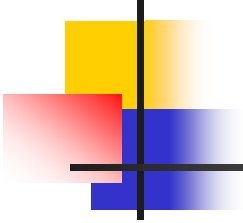


### Exxon Mobil Corporation

“ExxonMobil recognizes the strength and effectiveness of the Board reflects the balance, experience, and diversity of the individual directors; their commitment; and importantly, the ability of directors to work effectively as a group in carrying out their responsibilities. ExxonMobil seeks candidates with diverse backgrounds who possess knowledge and skills in areas of importance to the Corporation.” ***In addition to seeking a diverse set of business or academic experiences, the Committee seeks a mix of nominees whose perspectives reflect diverse life experiences and backgrounds, as well as gender and ethnic diversity. The Committee does not use quotas but considers diversity along with the other requirements of the Selection Guidelines when evaluating potential new directors.*** The Committee has also instructed its executive search firm to include diversity as part of the candidate search criteria.

### CVS Caremark Corporation

Although there is no specific policy on diversity, the Committee values diversity, which it broadly views in terms of gender, race, background and experience, as a factor in selecting members to serve on the Board, and believes that the diversity of the Board’s current composition provides significant benefits to the Company.

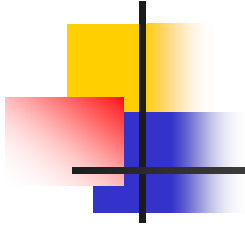


Merck & Co., Inc.

While the Committee on Corporate Governance does not have a formal diversity policy, diversity is a factor considered when identifying prospective Nominees. Nominees are selected so that the Board of Directors represents a diversity of expertise in areas needed to foster Merck's business success, including science, finance, operations, manufacturing, commercial activities, marketing, international business, and governance. ***In addition, nominees are selected so that the Board of Directors represents a diversity of personal characteristics, including gender, race, ethnic origin and national background.***

PepsiCo, Inc.

***In addition, while not a formal policy, PepsiCo's director nomination processes call for the Nominating and Corporate Governance Committee, during the review and selection process, to seek diversity within the Board and adhere to the Company's philosophy of maintaining an environment free from discrimination based upon race, color, religion, national origin, sex, age, disability, sexual preference or orientation, marital status or any unlawful factor.***



### III. How do companies evaluate board & director diversity?



# Governance & Diversity: differing global standards

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Board governance practices differ based on nation and industry sector  
governance codes

- Recommended diversity requirements in some regions
- US SEC requires disclosure of board make-up effective 2/2010
- Norway mandated 2008 corporate board quota
- Netherlands mandated permanent education requirements for all supervisory board members
- European banking codes mandate continuing education annually for all supervisory board members

Debates about diversity

- Early vs. long-term impact of required diversity
  - Fulfillment; is there truly a limited candidate pool?
  - German comments about unintended consequences
- Does diversity increase board effectiveness and corporate performance?





# Reason for interest in diversity

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Mix of skills, experience, gender, thinking styles creates:

- a tensile strength for improved decision-making
- a check and balance for debate and discussion

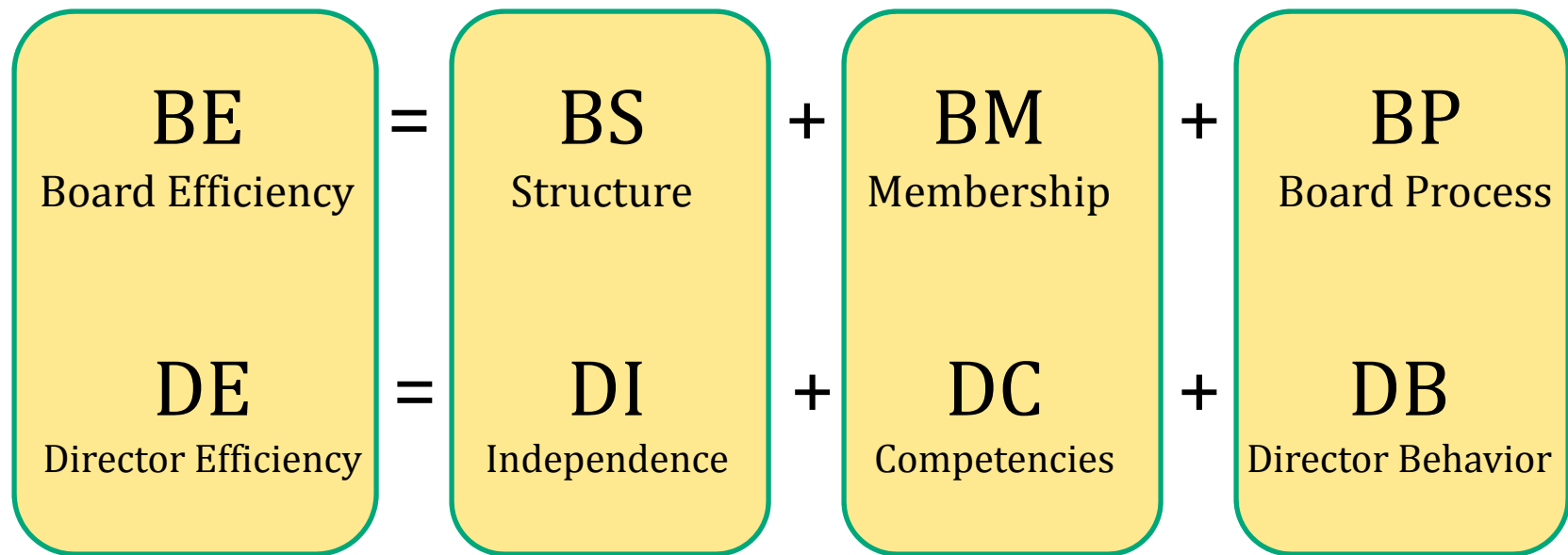
Data exists to support this within management and teams at work

- Mix increases innovation and creativity

*Provided.....*

- Group dynamics operate with clear rules of engagement

# Board Dynamics: board and director effectiveness



# Board Process & Director Behavior

High IQ	High IQ
High IQ	High IQ
High IQ	High IQ
High IQ	High IQ
High IQ	High IQ
High IQ	High IQ

However, this can happen

Low Collective EQ

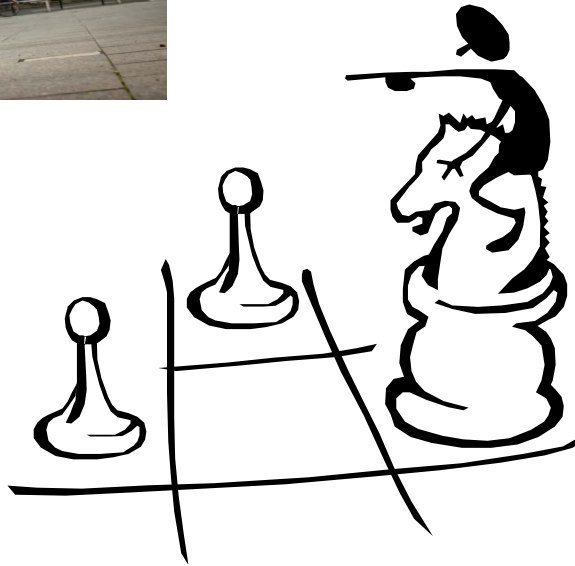
# Influence of Personality



Action



Process



Strategy

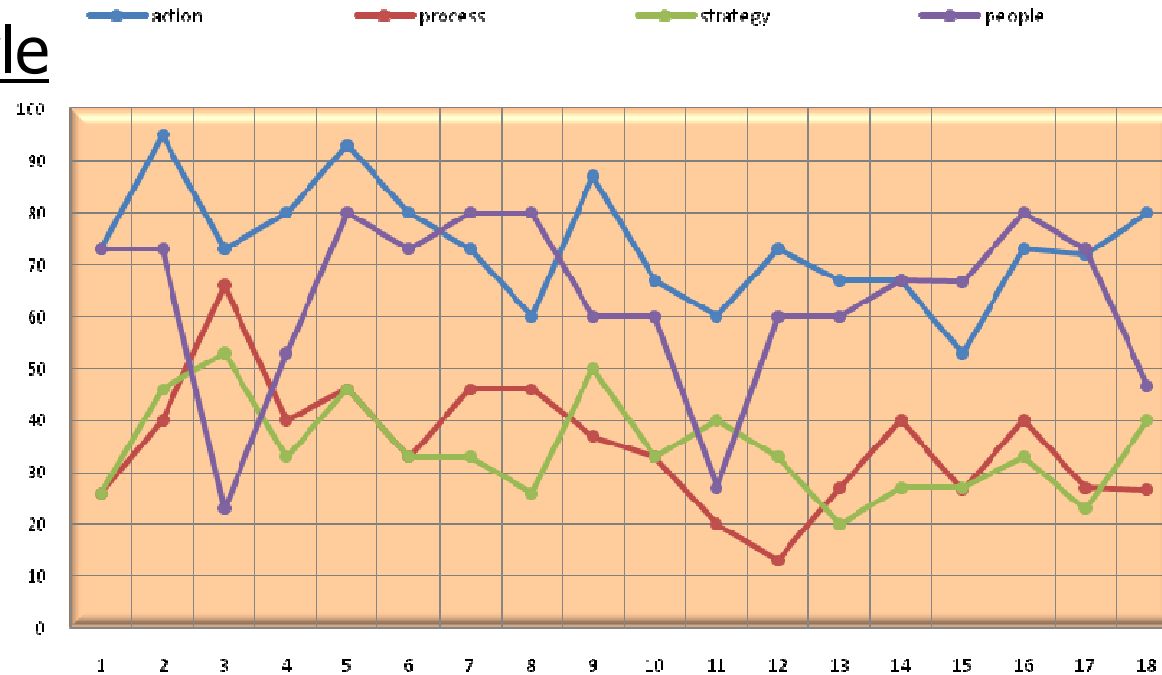


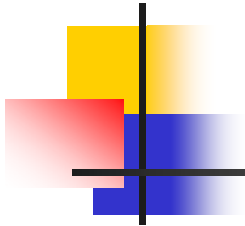
People

# Defining Diversity as balance in personal style

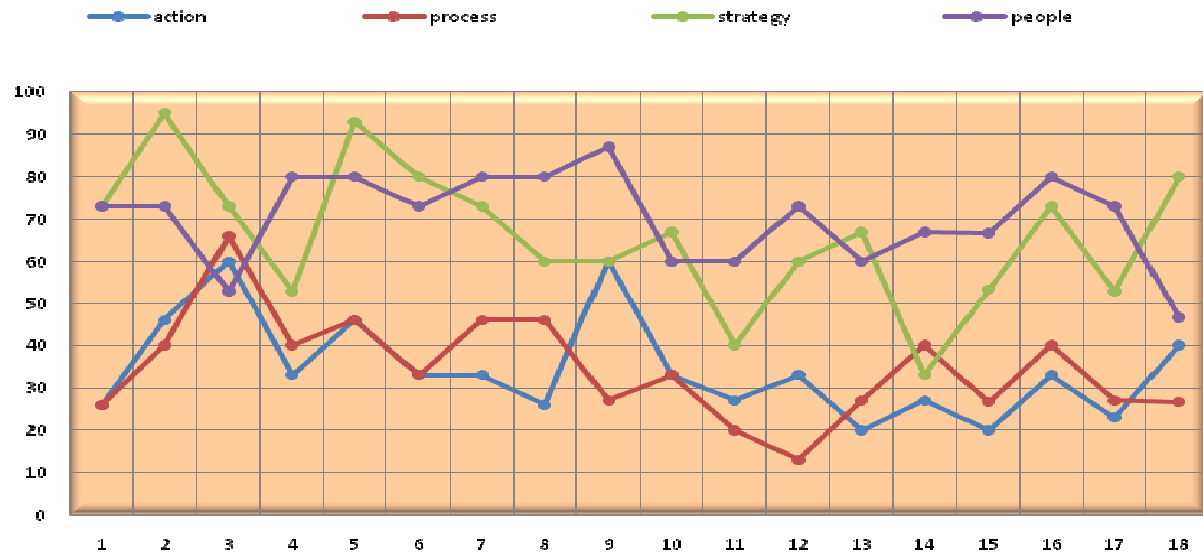
## Natural Style

Action  
Process  
Strategy  
People

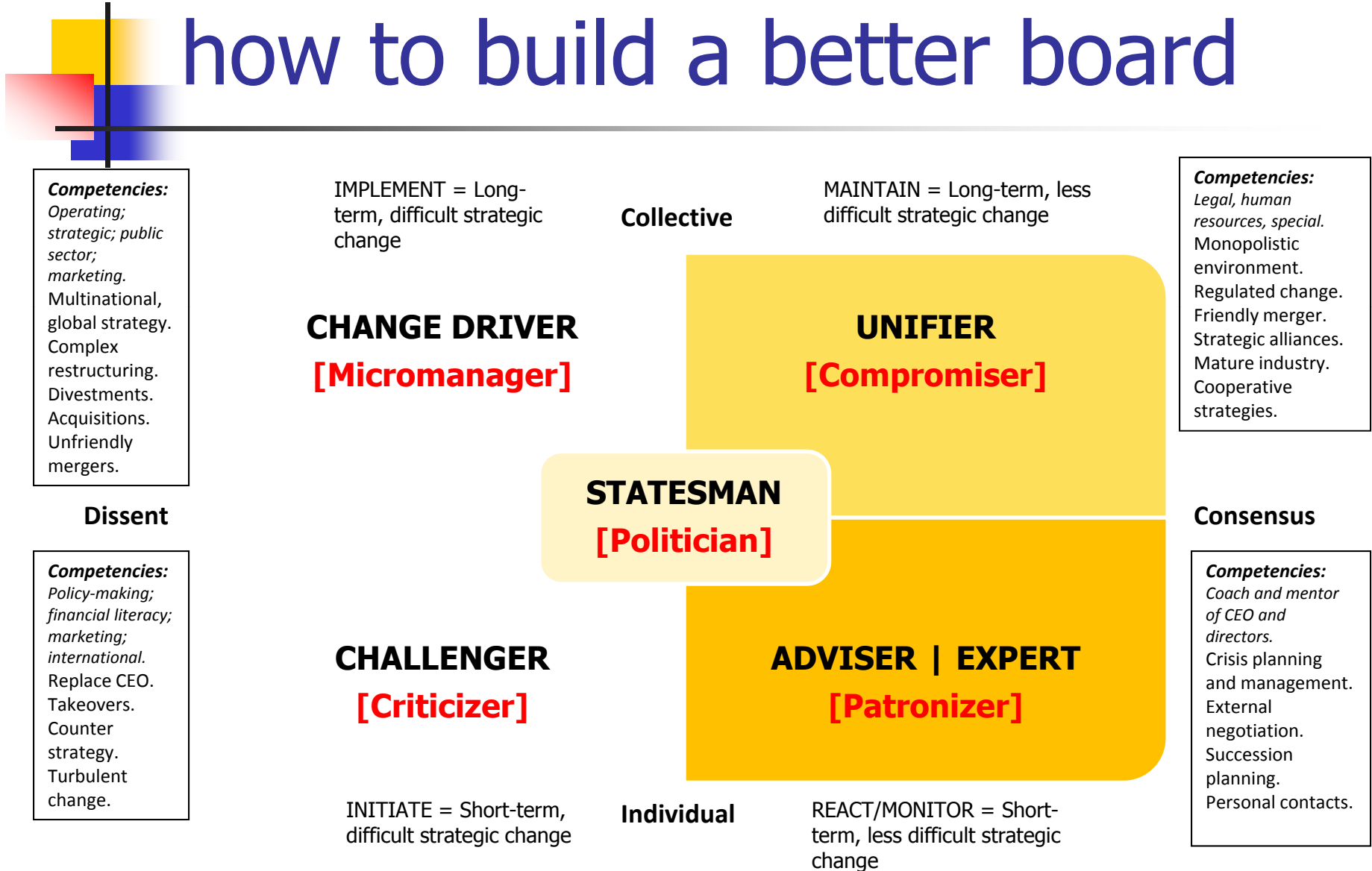




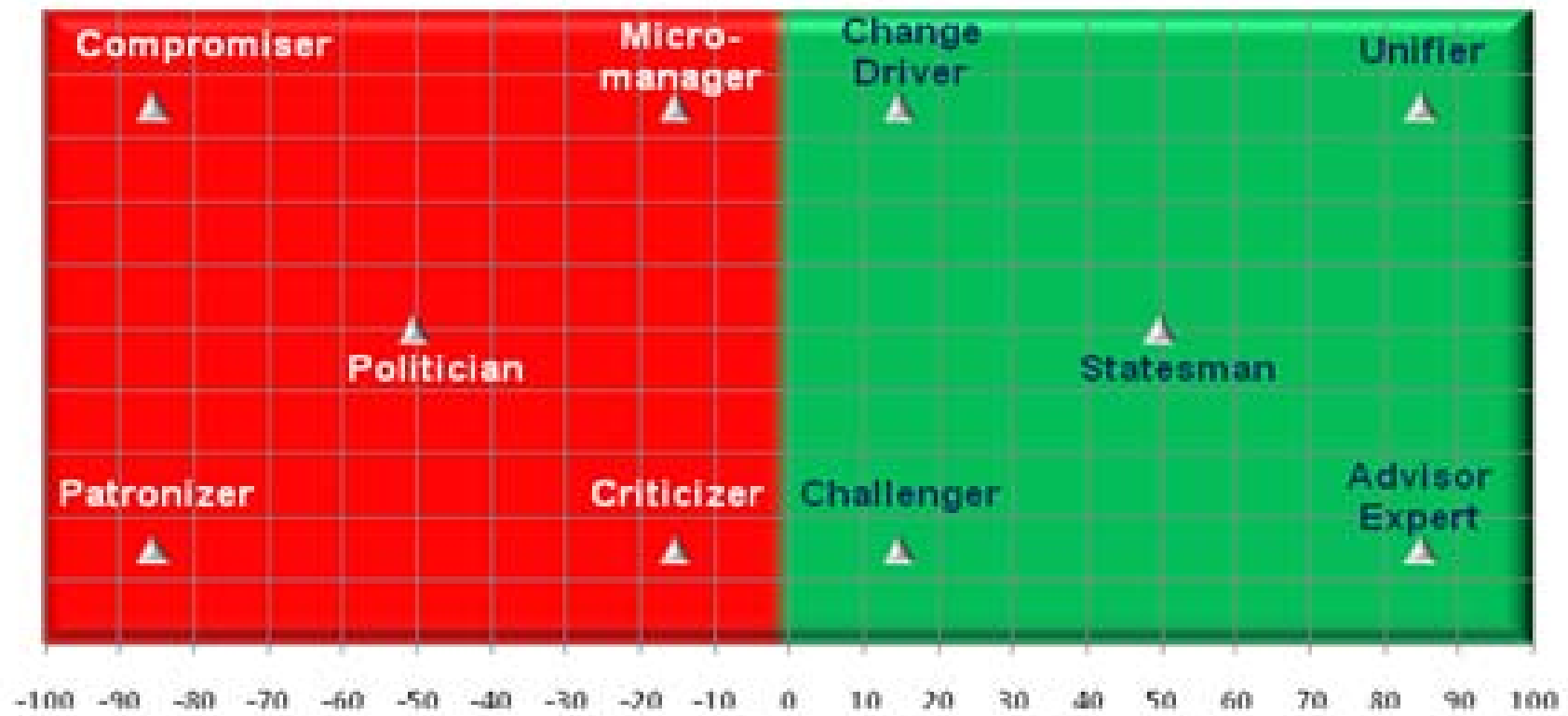
Work  
Demands  
Can  
Transform  
Natural Style



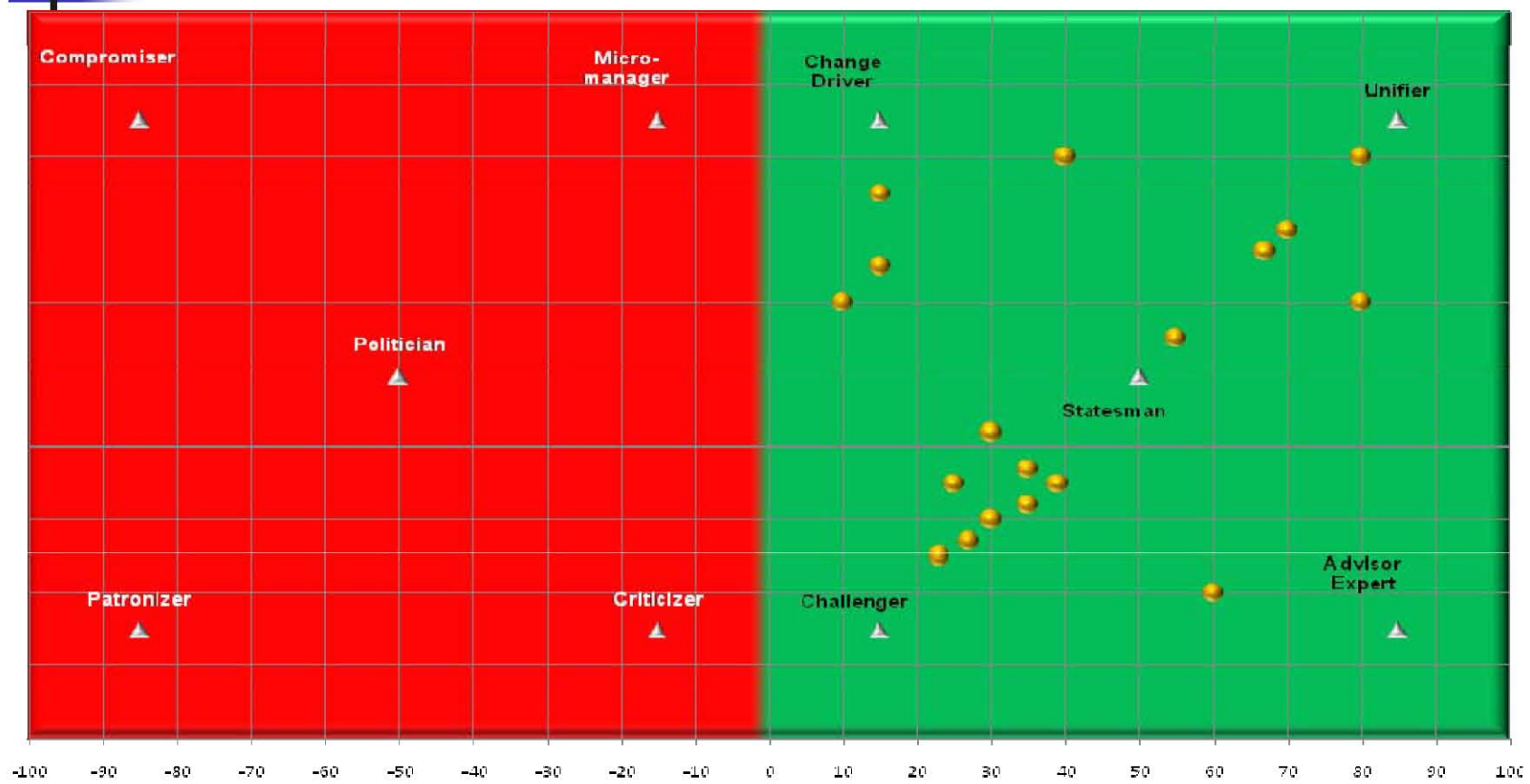
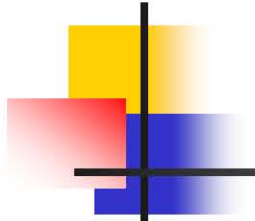
# Governance Style: how to build a better board



# Style & Balance





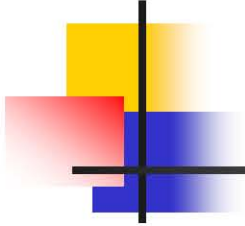




# Theories and Paying Attention

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- Does diversity make a difference?
- If so, what difference?
- Does awareness of styles, skills, experience and knowledge create superior board outcomes?
- What other factors play a role?
- Does culture influence board governance?
- Can paying attention help create higher standards?



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#### IV. What do we currently know about diversity of directors?



# Board Diversity

## race, gender, ethnicity

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- According to a 2008 report by the Alliance for Board Diversity examining the boards of directors of Fortune 100 companies in 2006, approximately 71.5% of board members were Caucasian males while approximately 28.5% of board members were women and minorities.
- Statistics were essentially unchanged from 2004, where approximately 71% of board members were Caucasian males while approximately 29% of board members were women and minorities.



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Nicole Harris is corporate counsel in the law department of the Pacific Gas and Electric Company. Ms. Harris advises business units across the company regarding a broad range of transactional matters such as: licensing, consulting services and key procurement opportunities.

Prior to going in-house, she joined the Department of Justice through the United States Attorney General's Honor Program and subsequently worked in private practice for several years.

Ms. Harris co-chair's the ABA Business Law Section Corporate Counsel Committee as well as the Corporate Director Diversity Committee.

Ms. Harris received her B.A. from the University of California at Berkeley in 1992 and her J.D. from the University of California at Berkeley School of Law in 1995.



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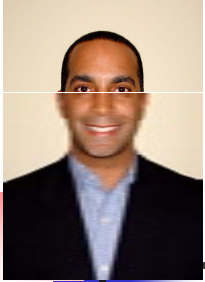
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David C. Lee is of counsel in the Orange County office of Gibson, Dunn & Crutcher and is a member of the Corporate Transactions and Securities Regulation and Corporate Governance Practice Groups. His practice includes advising on capital markets transactions, mergers and acquisitions, tender offers, proxy contests and general corporate matters. Mr. Lee also specializes in the areas of securities regulation and disclosure issues, corporate governance and New York Stock Exchange and NASDAQ listing requirements and regularly advises senior management, boards of directors and board committees on such matters.

Prior to joining Gibson, Dunn & Crutcher, Mr. Lee served as Counsel to SEC Commissioner Roel C. Campos where he advised on corporate finance, accounting and enforcement matters. Mr. Lee was also a Special Counsel in the SEC's Office of Chief Counsel, Division of Corporation Finance where he advised on a variety of issues relating to the Securities Act of 1933, the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act of 2002. Mr. Lee also served as an Attorney-Advisor and reviewed registration statements and other filings made under the Securities Act and the Exchange Act, including initial public offerings, follow-on offerings, mergers and acquisitions, exchange offers and resale transactions.

Mr. Lee received a joint JD/MBA from Loyola Law School, Los Angeles and Loyola Marymount University and a B.A. in History and Psychology from the University of California at Riverside. He has been a frequent speaker at securities law conferences and has published a number of articles in the corporate and securities law areas.

Mr. Lee is admitted to practice in the State of California. He is a member of the Business Law Section of the American Bar Association and a member of Gibson, Dunn & Crutcher's Diversity Committee.



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Tony is a partner in the Boston office of StoneTurn Group LLP, specializing in forensic accounting investigations, issues surrounding Generally Accepted Accounting Principles (GAAP), and general business related disputes.

Tony has extensive litigation consulting, forensic accounting and auditing experience, is a certified public accountant, and has been providing financial consulting advice to clients for over fourteen years. He has been involved in a variety of investigations working on behalf of Special Committees formed by the Board of Directors, named directors and officers and/or senior management. These investigations have included analysis of various Securities and Exchange Commission (SEC) reporting matters including revenue recognition matters (for software companies under SOP 91-1 and SOP 97-2 as well as various manufacturers, distributors and retailers), accounting for promotional marketing allowances, accounting for derivative transactions, accounting for stock options, the adequacy of various reserves, inventory manipulations, and various other issues revolving around the interpretation and application of GAAP. In addition, Tony has participated in a variety of other litigation matters including purchase price disputes, valuations, the preparation and analysis of damage claims, the investigation of employee improprieties and/or defalcations, and royalty audits.

Prior to joining StoneTurn, Tony was the Accounting Branch Chief in the Boston District Office of the United States Securities and Exchange Commission ("SEC"). While at the SEC, Tony oversaw and performed investigations into violations of the securities laws relating to accounting and financial fraud matters. In addition, Tony has participated in audits of companies in a variety of industries including high-tech manufacturing, insurance, real estate, and biotech entities.



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Dr. Hamlin is a corporate executive with twenty-eight years of corporate and consulting experience. As founder of Hamlin Harkins, Ltd., she developed a successful track record in strategy, change management and human performance management, serving clients from Fortune 500 global enterprises to start-up companies in more than 30 countries. She served as global vice-president of human resources and administration for Trident Microsystems, Inc.; as senior vice president of strategic change, executive planning and leadership development for CitiGroup's Associates First Capital Corporation; and as vice president for human and organizational performance for Texaco, Inc. She holds Ph.D. and M.S. degrees from Rensselaer Polytechnic Institute, a B.A. degree from Siena College and has studied at the University of London. She is certified by the National Association of Corporate Directors in the U.S.A. A published author, she writes management articles in the area of human performance management. She holds various board directorships.





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Lissa Lamkin Broome is the director of the school's Center for Banking and Finance, and she serves as faculty advisor to the North Carolina Banking Institute Journal. She also heads the school's Director Diversity Initiative, which works to increase gender, racial, and ethnic diversity on the boards of directors of publicly traded corporations in North Carolina and throughout the United States.

Broome became a member of the Georgia bar in 1982 and practiced until 1984 in the banking area with the Atlanta firm of King & Spalding. In 1984, she joined the UNC-Chapel Hill faculty. Her teaching interests include commercial law and banking law. She teaches contracts in bar review classes for students sitting for the N.C. bar.

Broome was the recipient of the McCall Award for Teaching Excellence in 1986, 1992, 1995, and 1998. In 2009, she was inducted into the newly-created McCall Master Teachers' Society for Teaching Excellence. From 1993 to 1995, Broome served as the law school's associate dean for academic affairs. She is a member of the American Law Institute and the N.C. State Bar's Authorized Practice Committee.

Broome co-authored *Regulation of Bank Financial Service Activities*, with Jerry W. Markham, and its accompanying statutory supplement, which is now in its 3rd edition. She also co-authored *Securitization, Structured Finance and Capital Markets* (LexisNexis, 2004) with Steven L. Schwarcz and Bruce A. Markell. Other publications include: *Narratives of Diversity in the Corporate Boardroom: What Corporate Insiders Say About Why Diversity Matters* (J. Conley, L. Broome and K. Krawiec) (2009) and *Signaling Through Board Diversity: Is Anyone Listening?* (with L. Broome) 77 U. CIN. L. REV. 431 (2008).

Broome is a native of Champaign, Illinois. She majored in finance at the University of Illinois and obtained her J.D. from Harvard Law School, where she served as an editor of the Harvard Law Review. Upon graduation from law school, she clerked for Judge Alvin B. Rubin of the United States Court of Appeals for the Fifth Circuit in Baton Rouge, Louisiana.