Beyond the Numbers: Substantive Gender Diversity in Boardrooms

Yaron Nili

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BEYOND THE NUMBERS: SUBSTANTIVE GENDER DIVERSITY IN BOARDROOMS

YARON NILI

ABSTRACT

The push for gender diversity on public companies’ boards has been gaining traction. Advocacy groups, institutional investors, regulators and companies themselves have all recognized the need for more diverse boards. However, gender parity is still absent from most public companies’ boards, and a significant number of companies still have no women on their boards.

Current public and academic discourse has focused on the number of women serving on the board and their percentage compared to men as the litmus test for gender diversity. However, academic studies and the public push for more diversity have mostly failed to account for another important measure of board gender diversity – the actual role and clout that female directors have within the boardroom. This is what the Article terms as substantive gender diversity.

Substantive gender diversity matters. It is at the core of both the social cause and the business case for gender diversity on boards. This Article explores this substantive component of board gender diversity through empirical data relating to the role that men and women play on corporate boards. The Article finds statistically significant differences between the roles of female and male directors. Building on these findings, the Article asserts that regulators, investors and companies must focus not only on increasing the number of women on boards but also on ensuring that female directors enjoy similar parity once elected. The Article then proposes a shift towards a Substantive Gender Diversity Disclosure regime, which would measure and report the substantive aspect of gender diversity in boardrooms.

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Introduction

She appeared in the middle of the night on the eve of Women’s Day, 2017. Staring defiantly at one of the most iconic symbols of corporate America in Manhattan, the “Fearless Girl” statue by Kristen Visbal is a symbol of the increased attention by investors and the public to the lack of gender diversity within corporate boardrooms in the U.S. Though the statue is temporary, State Street Advisors, who commissioned the statue, took a more long-lasting step towards promoting board diversity by voting against 400 corporate boards with no female directors. While the $2.47 trillion asset manager will not require a female director quota, companies must now show concrete attempts to remedy their nominating procedures to encourage female nominees in order to avoid a negative vote. This resolute act mirrors what has steadily become a new focus for boardrooms and investors: gender diversity.

Calls for increased gender diversity in boardrooms are not new, but the effort to achieve better gender parity has come to the forefront of corporate governance discourse in recent years. On the heels of mandatory quotas for female directors in many European countries, and with increasing evidence suggesting that boardroom diversity increases

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5 See, e.g., ROSE BETH KANTER, MEN AND WOMEN OF THE CORPORATION, (1977) (arguing in 1977 for critical mass theory and the need for boards to have at least 35% of directors be female to introduce new perspectives, and increase corporate performance).

company performance, the push for diversity has gained traction within the investor community. In addition to State Street, Vanguard and Blackrock have also taken public steps to promote and advocate for greater board diversity. Even more recently, the New York City Comptroller and the New York City Pension Funds launched their own initiative focusing on board diversity disclosure and ISS and Glass Lewis, the two largest and most influential proxy advisory firms have announced a new focus on gender diversity.

Congress is also becoming more involved in the efforts to improve board diversity. In May 2017, Representatives Carolyn B. Maloney and Donald S. Beyer, sent a letter to newly-confirmed Securities and Exchange Commission (“SEC”) Chair Jay Clayton urging him to take action on women’s under-representation on corporate boards, stating that “[t]he SEC has the opportunity and ability to enforce the transparency that is critical to securing gender balanced corporate leadership. Boardrooms with gender parity lead stronger, healthier companies, return more to their shareholders, and help our economy grow.”

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8 Healy, supra note 2.


11 GLASS LEWIS, POLICY GUIDELINES UPDATED: UNITED STATES, CANADA, SHAREHOLDER INITIATIVES (Nov. 22, 2017), http://www.glasslewis.com/policy-guidelines-updated-united-states-canada-shareholder-initiatives/ (stating an increased discussion of board gender diversity in our reports, including a phased policy that will see nomination committee chairs targeted with against/withhold recommendations if boards do not include a female director, or provide a cogent explanation for their absence, by 2019); ISS, ISS ANNOUNCES 2018 BENCHMARK POLICY UPDATES (Nov. 16, 2017), https://www.issgovernance.com/iss-announces-2018-benchmark-policy-updates/ (adopting a new policy on board gender diversity in Canada).

According to a recent study, companies with the highest percentage of women on their boards had a rate of return nearly 53% higher than companies with the lowest percentage of female board members.\textsuperscript{13} Indeed, while the social duty to promote equality remains paramount to diversity initiatives, the emerging empirical evidence suggesting better rates of return with more diverse boardrooms has transformed the public discourse in a profound way. Diversity is no longer just a desirable social cause, advocated for by advocacy groups and third sector actors;\textsuperscript{14} it is now also a matter of better corporate governance and thus can enjoy, and harness, the support of the investor community – in particular large institutional investors.\textsuperscript{15}

Yet, even with the recent pressure from legislatures and investors, as of 2016, women comprised merely 16.2% of corporate boards.\textsuperscript{16} Many companies still have no female directors on their board,\textsuperscript{17} with some companies failing to have had any female directors over the past decade.\textsuperscript{18}

The lack of gender diversity in boardrooms is further exacerbated by the lack of sufficient turnover at the board level.\textsuperscript{19} With very few board seats opening to new directors each year,\textsuperscript{20} improving diversity is even more difficult. However, boards and investors are intent on addressing this

\textsuperscript{13} CATALYST, supra note 7.

\textsuperscript{14} Lublin & Krouse, supra note 3.

\textsuperscript{15} An ISS recent survey found that more than two-thirds (69 percent) of investor respondents consider it problematic if there are zero female directors on a public company board. https://www.issgovernance.com/iss-announces-results-2018-benchmark-voting-policy-survey/


\textsuperscript{18} Lublin, supra note 16.

\textsuperscript{19} See AARON A. DHIR, CHALLENGING BOARDROOM HOMOGENEITY 44 (2015) (describing the refreshment problem); NYSE: CORPORATE GOVERNANCE GUIDE iv (Steven A. Rosenblum et. al. eds., 2014).

Concern. Existing trends towards board refreshment, as part of the growing emphasis on director independence, will certainly present boards with more opportunities to appoint new female directors in an effort to improve gender diversity in the boardroom.\textsuperscript{21} Indeed, women and minorities accounted for half of the 397 newest independent directors at S&P 500 companies in 2017.\textsuperscript{22}

Still, these opportunities must be utilized appropriately and advance meaningful gender diversity and equality in the boardroom. The now-infamous incident at Uber, when David Bonderman, the co-founder of the acclaimed private equity firm TPG, said that more women on the board means “more talking,”\textsuperscript{23} points to a larger concern: do women get a fair and equal chance to contribute? Indeed, when it comes to gender diversity in corporate boardrooms, numbers matter, but so do the specific roles that women take on while on the board.

As this Article argues and empirically demonstrates, there is a fundamental difference between solely meeting numerical diversity “targets” and achieving true diversity in the boardroom. Therefore, investors and advocates of gender diversity must not only account for the ratio of gender diverse directors in the boardroom. They must also account for the roles and functions that these directors serve once elected to the board – what in other contexts is often termed as \textit{substantive equality}.\textsuperscript{24}

Contemporary academic discourse on the topic of gender diversity on boards can be divided into three main strands. First, there are studies that survey the current landscape of board gender diversity.\textsuperscript{25} These

\textsuperscript{21} Id.

\textsuperscript{22} According to a recent survey released by Spencer Stuart of 397 independent director slots open in the 2017 proxy season, 36 percent went to women. \textit{See} Spencer Stuart \textit{supra} note 20. \textit{See also} Jeff Green, \textit{Women & Minorities Are the Majority of New Board Seats for the First Time}, BLOOMBERG (Dec. 6, 2017), \url{https://www.bloomberg.com/news/articles/2017-12-06/women-minorities-capture-most-new-board-seats-for-first-time}.


studies examine the number of women currently filling board directorships, as well as historical trends related to gender diversity.\textsuperscript{26} A second strand examines the impact of gender diversity on the financial performance of a company, attempting to determine whether boards that are more diverse improve performance or other observable characteristics of companies.\textsuperscript{27} Finally, a third strand centers on the social understanding of board diversity, asking how gender effects board dynamics and operation.\textsuperscript{28} Taken together, many of these studies ultimately conclude that either economic or moral forces (or both) support the push for increasing board diversity.\textsuperscript{29}

Until this point, however, current academic discourse has had a dearth of empirical data dissecting the specific roles of women once they are elected to serve on a board and contrasting them with their peer male directors.\textsuperscript{30} For instance, information is still lacking concerning important...
questions such as: what board committees do women tend to sit on; do they hold similar leadership roles; what is their tenure compared to their male counterparts; and what industries have higher percentages of female participation? Such details help reveal whether the metaphorical glass ceiling is truly broken for an individual woman once she enters a boardroom or whether female directors are still subject to disparities even while serving as directors.

The answer to this question is central to gender diversity discourse. As this Article demonstrates, substantive gender diversity on boards matters. It matters if you believe in gender diversity on boards as part of a social cause. It also matters if you believe that gender diverse boards lead to better company performance.

This Article is the first to examine this question in detail, and to provide data on both an absolute as well as relative level of female participation in the boardroom. The Article, for the years 2007 to 2015, examines the ratio of women on boards within the S&P 1500 companies, their board leadership roles, whether these women would be classified as “busy directors,” the length of their tenure, and their likelihood of key board committee participation. Additionally, these numbers are compared with similar metrics for their male counterparts.

The empirical findings reveal significant differences between male and female directors, extending from their tenure to the roles they hold while on the board. Women have shorter tenures, are less likely to hold leadership roles and are stretched more thinly than their men counterparts. These previously unexplored differences highlight that in addition to the highly addressed quantitative gender disparity on U.S. boards lies an equally concerning substantive gender disparity that has yet to be addressed. Accordingly, current calls for board diversity and the current disclosure regime must internalize the lessons these new empirical data

31 Board committee service correlates with the ability of directors to exert influence on corporate policy. See infra note 51 and accompanying text.

32 See infra Part I.D. (discussing the importance of substantive gender diversity to both strands of justifications for gender diversity on boards).

33 Busy directors are directors who participate on multiple boards and therefore may be “too busy” engaging in their various director activities.

34 This article uses the term “substantive gender diversity” in a manner that varies from the usage of “substantive equality” in the literature in other contexts, in particular the antidiscrimination literature. Specifically, in this Article the term “substantive gender diversity” is focused on ensuring gender inclusion beyond the numerical ratio of women. Broad discussion of substantive equality as defined in the antidiscrimination literature is beyond the article’s scope, see supra note 24.
Gender diversity discourse, therefore, must look beyond the numbers of female directors on the board and account for the roles that these directors take once appointed.

Underscoring the fact that current disclosure practices of companies does little to provide investors with information regarding the board’s gender diversity, the Article then brings together these two strands – the importance of substantive gender diversity and the deficiencies in the current disclosure regime – by calling for a shift towards an enhanced disclosure regime. Specifically, the Article advocates for the SEC to require companies to provide investors with both substantive and quantitative measures of gender diversity on the boardroom through the adoption of a Substantive Gender Diversity Disclosure (“SGDD”) form.

Part I of this Article provides an overview of the importance of gender diversity in the boardroom, the different justifications for improving gender diversity and the importance of substantive gender diversity to these justifications. Part II provides the results of the empirical analysis and an interpretation of the findings. Part III discusses the current regulatory framework and the current flaws in it and Part IV discusses the policy implications, advancing a call for an improved gender diversity disclosure regime.

I. Gender Diversity in the Boardroom – What’s at Stake

A. The Board of Directors’ Important Role in the Governance of the Corporation

Gender diversity in the boardroom is of particular interest due to the important role of boards in modern U.S. corporate governance.

As the core organ of the modern corporation,35 the board is tasked with several different important roles in the governance of the corporation. First, while most of the operational decision-making can be, and is, delegated to management, the board is still required to be an active participant in some of the more important managerial business decisions, such as mergers, stock issuance and change of company governance.

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documents. Second, the board is a resource for management to utilize. The board provides insight and advice as well as networking benefits, and facilitates the firm’s access to various resources.

Third, the board is charged with a monitoring role. The dispersed ownership structure of U.S. publicly held corporations presents a severe agency cost between management and shareholders. Shareholders’ lack of incentive to supervise management due to their dispersed ownership, coupled with free riding concerns, effectively leads to a managerial controlled corporate structure. One of the first institutions asked to mitigate this agency issue was the board of directors. The board is expected to represent shareholders’ interest vis-à-vis management, curtailing management’s ability to extract private benefits or act in a suboptimal way with respect to shareholder interests.

Importantly, while boards meet regularly, often 8-12 times a year, many important board decisions are delegated to specific board committees that are tasked with a particular mandate. Board committees meet separately from the full board, are composed of subsets of board members, and tend to have specific, narrowly defined functions. While boards may have various committees, there are several key committees

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36 See STEPHEN BAINBRIDGE, CORPORATE GOVERNANCE AFTER THE FINANCIAL CRISIS 45 (2012).
37 Id. at 47.
40 Agency cost can be defined as the “costs of structuring, monitoring, and bonding a set of contracts among agents with conflicting interests.” See Eugene F. Fama & Michael C. Jensen, Separation of Ownership and Control, 26 J. L. & ECON. 301, 304 (1983).
42 See BAINBRIDGE, supra note 38 (detailing the role of the board and its importance in the governance of the firm).
43 See Michelle M. Harner, Corporate Control and the Need for Meaningful Board Accountability, 94 MINN. L. REV. 541, 583–84 (2010) (focusing on the boards’ broader duties in the context of a controlling shareholder); See also Arthur B. Laby, The Fiduciary Obligation as the Adoption of Ends, 56 BUFF. L. REV. 99, 104 (2008) (describing directors’ fiduciary duty to adopt shareholders’ ends).
44 See Spencer Stuart supra note 20 (stating that in 2017 boards met an average of 8.2 times).
that all publicly traded companies must maintain\textsuperscript{45} and that are often cited as having the greatest influence on corporate governance.\textsuperscript{46} These key committees are the audit committee,\textsuperscript{47} the nominating committee,\textsuperscript{48} the corporate governance committee\textsuperscript{49} and the compensation committee.\textsuperscript{50} Research has shown that directors have a stronger, more direct impact on executive compensation, new director selection, and other important board actions if they serve on board committees that are tasked with the primary responsibility for these functions.\textsuperscript{51} Consequently, accounting for a director’s specific board committee membership provides a more accurate picture of the director’s role on the board.

\textbf{B. Gender Diversity on Corporate Boards}

The board’s importance as a corporate organ has led to increased scrutiny regarding its composition and structure.\textsuperscript{52} In recent years, board

\footnotesize
\begin{itemize}
\item \textsuperscript{45} See Yaron Nili, \textit{The “New Insiders”: Rethinking Independent Directors’ Tenure}, 68 HASTINGS L. J. 97 (2016); see also Spencer Stuart, \textit{Id}.


\item \textsuperscript{47} The audit committee is charged with ensuring the quality and integrity of the company's financial statements and regulatory compliance. Under NYSE Listing Rules the committee must be comprised solely of independent directors. See N.Y.S.E. Listed Company Manual § 303A.07, N.Y.S.E., http://nysemanual.nyse.com/lcm/ (last visited January 1, 2018).

\item \textsuperscript{48} The nominating committee is in charge of nominating director candidates, and often also selects new CEOs and peer directors to the other board committees. Joseph V. Carcello et al., \textit{CEO Involvement in Selecting Board Members, Audit Committee Effectiveness, and Restatements}, 28 CONTEMP. ACCT. RES. 396, 401 (2011).

\item \textsuperscript{49} The corporate governance committee is responsible for assisting a corporate board in matters related to the corporation's governance structure. See Corporate Governance Committee Charter, DIRTT, (Oct. 17, 2013), available at https://www.dirtt.net/pages/company/investor/_assets/2014/01/DIRTT-Governance-Committee-Charter_201401.pdf.

\item \textsuperscript{50} The compensation committee is tasked with setting the compensation of senior executives and generally oversees the corporation's compensation policies. Under NYSE Listing Rules the committee must be comprised solely of independent directors. See N.Y.S.E. Listed Company Manual § 303A.05, N.Y.S.E., http://nysemanual.nyse.com/lcm/ (last visited January 1, 2018).

\item \textsuperscript{51} See Klein, \textit{Supra} note 46.

\end{itemize}
gender diversity has become one of the biggest issues looming over corporate boardrooms, with some dubbing it “the” issue of 2017. As such, perhaps unsurprisingly, in 2017 the number of board diversity proposals reached an all-time high. These proposals are also gaining stronger support from investors. Institutional Shareholder Services Inc. (“ISS”), a leading shareholder advisory firm, recommended that shareholders vote “for” all but two of the diversity proposals voted on in 2017. Furthermore, diversity proposals that were voted on received, on average, 28.3% of votes cast, as compared to only 19.1% of votes cast in 2016, with 25% of such proposals passing and many more that settled prior to a vote.

Most of these proposals requested that the board increase the diversity of its candidate pools, provide reports on actions taken by the board to increase diversity, or both. Additionally, the California State Teachers Retirement System (“CalSTRS”) submitted letters to 125 California corporations without female directors strongly suggesting the inclusion of women on the board. Subsequently, 35 of these boards added at least one female to their boards.


54 Thirty-five proposals calling for the adoption of a policy on board diversity or a report on steps to increase board diversity were submitted in 2017 as compared to 28 proposals submitted in 2016. As in 2016, a substantial number of board diversity proposals were withdrawn, likely due to commitments made by companies to the proponents of these proposals, such as adopting board recruitment policies inclusive of race and/or gender. See Ronald O. Mueller and Elizabeth Ising, Shareholder Proposal Developments During the 2017 Proxy Season, HARV. L. SCH. F. CORP. GOVERNANCE & FIN. REG. (Jul. 12, 2017), https://corpgov.law.harvard.edu/2017/07/12/shareholder-proposal-developments-during-the-2017-proxy-season. See also, Jeff Green & Emily Chasan, Investors Push Corporate Boards to Add Women, People of Color, BLOOMBERG (Mar. 2, 2017, 11:15 AM CST), https://www.bloomberg.com/news/articles/2017-03-02/shareholders-target-pale-male-and-stale-corporate-boards (noting that According to ISS Analytics, 2017 shareholder proposals regarding diversity are on pace to meet or exceed the number of similar proposals from 2016).


56 Green & Chasan, supra note 54. See generally, GEORGESON, 2016 ANNUAL CORPORATE GOVERNANCE REVIEW (2016), http://www.georgeson.com/us/resource/Pages/acagr.aspx. Though influential institutional investors such as the California Public Employees Retirement System (“CalPERS”) strongly support such proposals, some fund managers prefer to vote against such proposals and engage directly with the board. See, e.g., Green & Chasan, supra note 54.

57 Katz & McIntosh, supra note 55.

58 Id.
Yet, while 86% of directors participating in PwC’s annual director survey stated they felt that women should comprise between 21 and 50% of the board, only 28% of Russell 3000 boards have more than one-fifth of their board comprised of women.\footnote{PwC, 2016 ANNUAL CORPORATE DIRECTORS SURVEY (Oct. 2016), http://www.pwc.com/us/en/corporate-governance/annual-corporate-directors-survey/data-explorer.html?040011&elqTrackId=75139ae3dd5f48358e540a777bc8823b&elq=370f98abc884e6d8589d4a80f8d000a&elqaid=414&elqCampaignId=275.} Indeed, as of October 2017, on average, women comprise 16.2% of Russell 3000 boards.\footnote{See EQUILAR, Equilar Gender Diversity Index: Q3 2017 (Nov. 8, 2017), http://www.equilar.com/reports/52-gender-diversity-index-q3-2017.html.} The outlook is slightly better at the larger companies where women represent 19.7% of directors on Fortune 1000 boards.\footnote{2020 WOMEN ON BOARDS, 2016 Gender Diversity Index Key Findings, https://www.2020wob.com/companies/2020-gender-diversity-index (last visited August 3, 2017)}

Further, some boards in the United States have failed to even attempt to promote gender diversity.\footnote{Lublin, supra note 16.} A recent report noted that of the 1,500 largest Russell 3000 companies, 76 companies failed to have any female directors over the past decade.\footnote{Id.} An additional 13 companies added a female director for the first time in 2016.\footnote{Id.}

At this current rate, projections show that corporate boards will not reach gender parity until 2055.\footnote{Green & Chasan, supra note 54.} In reaction to this slow growth, groups such as “2020 Women on Boards” have organized in an attempt to increase female board participation at an even quicker rate.\footnote{2020 Women on Boards seeks to make all boards composed of at least 20% women by the year 2020. 2020 WOMEN ON BOARDS, https://www.2020wob.com/ (last visited July 8, 2017).} These organizations seek to refocus the criteria considered for directorships to increase the number of women considered for directorships.\footnote{2020 WOMEN ON BOARDS, Learn, https://www.2020wob.com/learn (last visited July 8, 2017).}

One of the key hurdles to improving diversity is the low turnover of directors. If companies appoint new directors infrequently, the ability to increase the gender diversity of the board is significantly reduced.\footnote{See, e.g., Yaron Nili, “The “New Insiders”: Rethinking Independent Directors’ Tenure, 68 HASTINGS L. J. 97 (2016); DHIR supra note 19, at 44.} Aside from the refreshment problem, lack of leadership experience is often cited as one of the main barriers to increased gender diversity in the
Because women, as well as minorities, have yet to hold leadership positions within corporate America on the same scale and level as white men, this prerequisite for nomination limits the number of diverse candidates. Because many companies seek operational and executive experience in their board nominees in order to raise investor confidence in the board, the underrepresentation of female executives in corporate America also limits the opportunities available to women to serve as directors. However, the limited pool argument does not seem to explain the current disparities. Further building on the issue is the limited ability to network or add meaningful director experience for women. As this Article will later develop, a majority of directors serves on multiple boards. Whether due to the same nomination criteria, the ability to network within boards, or the additional qualification of prior experience, the limited upper-management positions held by women severely limits the growth in gender diversity within the boardroom.

C. The Two-Headed Case for Gender Diversity on Corporate Boards

Why does gender diversity in boardrooms matter and what are the justifications supporting investors and regulator’s push for a change in board composition? These questions are at the core of the gender diversity debate. Broadly, the push for gender diversity on boards rests on two distinct pillars. The first is grounded in social cause. The second makes an instrumental case for gender diversity.

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71 See DHIR supra note 19, at 40 (stating, “CEO experience has become the litmus test for qualified board candidates”).

72 See Amanda K. Packel, Government Intervention into Board Composition: Gender Quotas in Norway and Diversity Disclosures in the United States, 21 STANFORD JOURNAL OF LAW, BUSINESS & FINANCE, 192, 199-200 (2016).

73 A 2012 study of 1000 directors from 58 countries found that while men tend to attribute lack of diversity to a “small pool” argument, women mostly attributed it to the male network argument. See HEIDRICK & STRUGGLES, 2012 BOARD OF DIRECTORS SURVEY 15 (2012), http://www.heidrick.com/~media/Publications%20and%20Reports/WCD_2012BoardSurvey.pdf
1. The Social Cause Case for Gender Diversity

The social cause case for gender diversity is rooted in the larger gender equality, anti-discrimination and feminist movement of the 1960s. Gender diversity on boards provides equal opportunity to women who historically were excluded from positions of power. Advocates of board gender diversity—like advocates of gender equality in other sectors—therefore rely on moral or social justifications in their push for gender diversity on the board.

Their case is premised on the intrinsic notion that increasing diversity is the “right thing to do,” predominantly because the efforts to improve diversity are aimed at correcting the lingering effects of discrimination. The public has a “strong interest in ensuring that opportunities are available to all, . . . that women [and minorities] entering the labor market are able to fulfil their potential, and that we make full use of the wealth of talented women . . . available for board service.”

Accordingly, some scholars argue that the rationale for improving diversity should reside in the justifications related to social benefits and duties. That is, social justice, equal opportunity and corporate reputation should be enough to promote gender diversity within the board. Indeed, this social argument seems to carry some weight even within boards themselves. However, historically advocacy efforts based solely on

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77 HOUSE OF LORDS [H.L.], EUR. UNION COMM., WOMEN ON BOARDS: REPORT 13-14 (Nov. 9, 2012) (U.K.).

78 Rhode & Packel, supra note 69. See also DHIR, supra note 19, at 64–68.

79 Id.

80 As noted in the PwC study, almost 83% of directors feel that having females represent more than 20% is a good thing both commercially and morally. Yet, as seen in the same study and in practice, even
moral and social justice justifications have mostly failed to gain much traction with Main and Wall Street investors, leaving boards free to maintain their male dominated composition.

2. The Instrumental Case for Gender Diversity

In recent years, many gender diversity advocates have shifted the core of their advocacy from social and moral justifications to a more instrumental case for diversity.\footnote{See Fairfax supra note 76 at 884; DHIR, supra note 19 at 58.} This second pillar is focused on the benefits that gender diverse boards provide to companies and investors and therefore on the “corporate governance case” for improving diversity on boards.

Two rationales exist to explain the instrumental value of gender diverse boards. The first suggests that groups that are more diverse generally make better decisions. Studies have shown that a group of high-functioning diverse individuals tends to outperform a non-diverse group of the best performing individuals.\footnote{See, e.g., Lu Hong and Scott E. Page, \textit{Groups of diverse problem solvers can outperform groups of high-ability problem solvers}, \textit{Proceedings of the National Academy of Sciences of the United States of America} 101, no. 46 (2004).} The second rationale suggests that boards focused on gender diversity within the boardroom are also more likely to utilize talent pools more effectively, have a better understanding of the employee and customer bases, and that signaling that the company cares about diversity may be effective in bolstering economic arguments.\footnote{See Packel supra note 72. Importantly, more women in the boardroom is also associated with more women in senior management positions and below. Similar to boardroom gender diversity, gender diversity within senior levels of management correlates with better company performance, and female board member participation may pave the way for a more gender diverse management.}

The instrumental case for gender diversity encompasses a large spectrum of benefits. Broadly speaking, it could be divided into two main strands. The first focuses on corporate performance in its narrow sense – the corporate bottom line. The second focuses on performance in the broader sense – the way boards work, group dynamics, risk taking, accounting integrity, and other less quantifiable governance measures.\footnote{\textit{Id.} See also DHIR, supra note 19; Fairfax supra note 76; Rhode & Packel, supra note 69.}

a. Bottom Line Performance

coupled with the “business case for diversity” the number of women on boards has yet to materialize to these numbers. PWC, supra note 59.
A growing body of studies has linked gender diverse boards and improved corporate performance. For example, MSCI conducted a study in 2015 to test the hypothesis that increased gender diversity within the boardroom correlates with increased corporate performance for that year. This study analyzed companies with “strong female leadership.” In 2016, it conducted a similar study, however, this time analyzing returns over a 5-year period and separated companies into those that reached the “tipping point” of women in the boardroom, with those with no women on the board. Thus, the MSCI study attempted to test whether having this critical mass positively impacted company performance. Both studies returned the same result: companies with “strong female leadership” enjoyed better rates of return than their counterparts without a female board director.

These recent studies join earlier studies finding a relationship between gender diversity and performance. Referencing these studies allows gender diversity supporters to “pitch” their concerns to an otherwise skeptical public.

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86 Id.

87 “Strong female leadership” was categorized as a company having a female CEO, three or more women on the board, or a higher than country average percentage of women on the board. Id.

88 Id. The theory behind the “tipping point” is that having three or more similar “minorities” within a group provides a critical mass to present opposing and additional viewpoints. By reaching this number the gender parity on the board is seen as an actual change as opposed to the mere ability to state that the board itself is diverse. However, the study does not provide evidence that merely having one or two female directors does not positively affect corporate performance as well.

89 Id. Companies with “strong female leadership” had a Return on Equity (“ROE”) of 10.1% whereas companies without female directors had a ROE of 7.4%. The 2016 5-year study narrowed the focus to U.S. companies and the results suggested an even more drastic discrepancy between companies who had reached the “tipping point” of female board inclusions and those without a female director. The “tipping point” group had a median ROE of ten percentage points and an Earnings Per Share (“EPS”) increase over the time-period of 37%. The group devoid of female directors, on the other hand, had a ROE of one percentage point and an EPS of -8%.

90 See Rhode & Packel, supra note 69, at 383-93

However, the business case in its narrowest sense—a positive effect on accounting measures or stock price—has yet to definitively establish that gender diversity is the cause of an increase in the bottom line.92

Linking corporate performance to specific board attributes is inherently difficult, and therefore it is not surprising that the case for bottom line performance has produced a mixed bag of empirical results. First, while positive correlations have been seen with increased gender diversity, researchers acknowledge that “correlation does not imply causation.”93 For example, the recent MSCI studies failed to establish a statistically significant causal link between the presence of women and their performance metrics.

Second, despite the recent wave of studies supporting a positive correlation between gender diversity and bottom line performance, other conflicting studies show that diverse boards fail to truly outperform the market,94 and that there had been a drop in corporate performance after the initiation of a quota in certain countries.95 These findings, and the difficulties inherent with linking corporate performance to specific board attributes, have led some scholars and gender advocates96 to refocus the instrumental case on corporate performance in its broader sense.

92 See Rhode & Packel, supra note 69, at 383-93 (reviewing the issues with the narrow business case for diversity and discussing the explanations for the varied results); Renée B. Adams & Daniel Ferreira, Women in the Boardroom and Their Impact on Governance and Performance, 94 J. FIN. ECON. 291, 308 (2009) (“Although a positive relation between gender diversity in the boardroom and firm performance is often cited in the popular press, it is not robust to any of our methods of addressing the endogeneity of gender diversity.”).


94 The Virtcom Consulting study shows that over a 5-year period, diverse boards did outperform the NASDAQ 100 and the Dow Jones Industrial Average, but failed to outperform the Standard & Poor’s 500. Id. Because the NASDAQ 100 and Dow Jones incorporate only some of the largest firms, it begs the question of establishing the proper benchmark to analyze gender diversity against. Additionally, it raises the issue of properly segmenting the different types of companies between diverse and not diverse.


96 See Packel supra note 72; Dhir, supra note 19.
b. Board Dynamics and Governance.

Empirical evidence on board processes and socio-psychological research on small-group dynamics have supported the argument that diverse boards are associated with better decision-making and governance. The basic premise of these arguments is that diversity—whether through representation of different strengths, consideration of different concerns and questions based on varying life experiences—will counteract groupthink. Indeed, there has been a growing body of evidence that diversity on boards is associated with improved governance.

Some legal studies have also attempted to quantify the personal impact of gender diversity within the boardroom through interviews with former corporate directors. Through these studies, scholars have noted two almost unanimous observations. First, directors believe that board diversity is important and boards should attempt to improve diversity. Second, when pressed for tangible examples of how gender diversity made

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98 For example, studies have found evidence that women are more financially risk averse, more trustworthy, and more collaborative. See IRVING L. JANIS, VICTIMS OF GROUPTHINK, 9 (1972) (defining groupthink as phenomenon in which members’ efforts to achieve consensus can override their ability to “realistically appraise alternative courses of action”). See also Marleen A. O’Connor, The Enron Board: The Perils of Groupthink, 71 U. CIN. L. REV. 1233, 1306-08 (2003) (discussing how diversity on corporate boards can discourage groupthink).

99 See Rhode & Packel, supra note 69, at 393-401. See also Fairfax, supra note 70 at 586; Rosenblum & Roithmayr, supra note 95; Sandeep Gopalan & Katherine Watson, An Agency Theoretical Approach to Corporate Board Diversity, 52 SAN DIEGO L. REV. 1, 20 (2015) (“Some of the most persuasive evidence about the ability of diverse boards to improve firm performance concerns the role of the board in monitoring management.”); Adams & Ferreira, supra note 92, at 298-301 (finding that firms with higher proportions of female directors hold more meetings, have higher attendance rates, decision making, engage in tougher monitoring, and more likely to replace a CEO after poor stock performance).

100 See generally, Kimberly D. Krawiec et. al., Diversity and Talent at the Top: Lessons from the Boardroom, in DIVERSITY IN PRACTICE: RACE, GENDER, AND CLASS IN LEGAL AND PROFESSIONAL CAREERS 81 (Spencer Headworth et al. eds., 2016).

101 However, the study did note one adamant dissenter. Id. at 82.
a difference, respondents struggled to provide responses. These findings further crystalize the difficulty in directly attributing the benefits of diversity.

Finally, gender diversity can have a positive impact on the monitoring role of the board. According to a study of the Norwegian quota regime, female directors tend to bring to the boardroom more vigilant and probing approach, and women “may be particularly adept at critically questioning, guiding and advising management without disrupting the overall working relationship between the board and management.” Similarly, a study of Israeli boards found that “[b]oards with at least 3 directors of each gender are found to be at least 79% more active at board meetings than those without such representation” and that “[g]ender-balanced boards are also more likely to replace underperforming chief executive officers (CEOs) and are particularly active during periods when CEOs are being replaced.”

In sum, moral and social reasons, corporate finance justifications, and corporate governance findings have all been raised to support the case for more gender diversity in boards.

D. The Missing Dimension: Substantive Gender Diversity

Academic and public discourse has too often focused on the idea of achieving some minimum representation of women – sometimes as few as one. Yet, increasing the number of women on boards is only a partial step in the achievement of a truly gender diverse board. A truly diverse board gives women more than a seat at the table – it grants them the ability to have a voice and an impact. Therefore, academic and public discourse must also examine whether the roles that women are tasked with as directors afford them equal opportunity to make an impact.

The answer to this question requires a deeper, truer measure of gender equity. It is also central to both strands of gender diversity justifications, as it is a key component in the case they each make for advancing gender diversity. Indeed, as explained below, substantive

\[^{102}\text{Id. See also, Kimberly D. Krawiec et al., The Danger of Difference: Tensions in Directors’ View of Corporate Board Diversity, 2013 U. ILL. L. REV. 919 (2013).}\]

\[^{103}\text{DHIR, supra note 19, at 35.}\]

\[^{104}\text{Id.}\]

\[^{105}\text{Miriam Schwartz-Ziv, Gender and Board Activeness: The Role of a Critical Mass, 52 J. FIN. & QUANTITATIVE ANALYSIS 751 (2017).}\]

\[^{106}\text{See supra note 3 and accompanying text.}\]
gender diversity matters whether you believe that gender diverse boards perform better or whether you believe that women are entitled to equal treatment.

Clearly, if the motivation for better gender diversity on boards is rooted in the anti-discrimination notion, then ensuring equal treatment within the boardroom is as important a goal as ensuring that women get better representation on boards. If women are denied an equal voice and are shunned from leadership roles, they are denied equal treatment.

Advocates of the instrumental case for gender diversity must also turn their focus to the question of substantive gender diversity. If the presence of women on boards improves corporate performance, in its narrow or broader sense, then we must gain insight with respect to the ability of women to truly influence and transform the way boards work. Acknowledging the instrumental value that gender diversity brings to the board must necessarily also lead to an examination of the ways through which women are able to contribute to the board’s work.

It is, therefore, imperative that gender diversity discourse turn its attention to the question of substantive diversity. Whether advocating for gender diversity out of social cause agenda or due to the belief that diversity improves the board’s work and therefore company performance, substantive diversity in the boardroom is an important dimension in ensuring such goals. Importantly, this Article does not stake a claim regarding the proper justification for gender diversity on boards. Rather, given the existing push for gender diversity, the Article underscores the import of the substantive data on gender diversity for current gender diversity discourse.

Despite the importance of substantive gender diversity, investors, regulators and academic discourse have left this dimension unattended, focusing on the quantitative dimension instead. Redirecting the attention of gender diversity discourse to this important facet is the first goal of this Article.

But recognizing the value of substantive gender diversity also means that we need to know more on the current picture of the substantive diversity of boards in the U.S. Furthermore, if differences do exist, we need to know why, and we need to understand the costs that these differences might cause. In the next Part, this Article takes a first step in informing the current academic discourse with novel findings regarding substantive gender diversity in boardrooms.
II. Gender Diversity – Empirical Findings

This Part provides insight into the question of substantive diversity on boards by examining the substance of female directors’ participation on boards: relative to their male peers, as well as over time.

The study examines the S&P 1500 companies during the years 2007 to 2015.\textsuperscript{107} Because the study spans multiple years, some companies moved into the index while other companies moved out. Thus, 1,868 individual companies appear at least once throughout the sample period. The data for this sample was originally compiled from Wharton Research Data Services and was subsequently augmented with data from Bloomberg, FactSet and Equilar BoardEdge.\textsuperscript{108} On average, there were 13,872 directors in each data year with an average of 11,980 male and 1,892 female directors. Both descriptive statistics as well as regression models were used in this study. The former provides insight into absolute and relative numbers whereas the latter shows how certain numbers or levels are impacted by other variables.

This Part begins with a presentation of the empirical findings regarding quantitative and substantive gender diversity in Sections A and B, respectively. Section C then ties the results together, underscoring the key lessons that can be derived from the findings.

A. Quantitative Gender Diversity

As a first step, this section follows the prevalent “quantitative” approach to gender diversity, examining the current ratios and percentages of women on S&P 1500 companies’ boards, both across different

\textsuperscript{107} Based on the data, the regression models analyzed the impact of year, market capitalization, age of the company, and industries on the dependent variables. This study looked at the timeframe spanning 2007 to 2015, providing the ability to measure the change of any given variable throughout the study period. Market capitalization was measured in thousands of dollars as reported at the end of the calendar year. While each index represents a proxy for the size of any given company, market cap allows an evaluation on the size of a company on each variable. The age of the company was measured in years from the founding of the company. While the year provides information regarding the change in a given dependent variable, the age of the company attempts to look at the differences between older and newer companies. Finally, to limit the number of industries, the data were limited to the following classifications: Consumer Services, Electronic Technology, Finance, Industrial Services, Retail Trade, Technology Services, Utilities, and Other. The “Other” variable includes all companies within the study not included in any of the other industries and is the reference or baseline category in the multivariate regression models.

\textsuperscript{108} Available data for each director: Data Year; Date Started; Age; Total Number of Male & Female Directors; Number of Other Directorships; Company Industry; Market Capitalization; Title within the Company (if applicable); and whether the director was on the Audit, Compensation, Corporate Governance, or Nominating Committee.
companies and over time. These quantitative results are an important foundation, setting the stage for the substantive analysis that the study centers on in the following section.

Overall, the S&P 1500 followed a similar trend to the one seen in other indices with respect to the gender composition of boards. As a whole, the percentage of female directors on boards has increased from 11.9% in 2007 to 16.5% in 2015. At the start of the study, the ratio of men to women was 7.4:1. This ratio decreased to 5.07:1 in 2015.

While during the study period more men were added to corporate boards than women, the rate of adding women to boards has increased over time. The retail industry has the top gender parity with 19.2% of directorships represented by women. On the other hand, Industrial Services and Electronic Technology lag behind other industries with only 7.7% and 8.9%, respectively, of total female board participation. 

*Figure 1: Percentage of Female Board Directors in the S&P 1500 for the years 2007 and 2015*

<table>
<thead>
<tr>
<th>Year</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>11.9%</td>
<td>88.1%</td>
</tr>
<tr>
<td>2009</td>
<td>12.3%</td>
<td>87.7%</td>
</tr>
<tr>
<td>2011</td>
<td>13.1%</td>
<td>86.9%</td>
</tr>
<tr>
<td>2013</td>
<td>14.5%</td>
<td>85.5%</td>
</tr>
<tr>
<td>2015</td>
<td>16.5%</td>
<td>83.5%</td>
</tr>
</tbody>
</table>

Table 1 presents regression results of the percentage of women on boards on several independent variables. The percentage of women increased on average by .5 percentage points for every additional year of the study. Additionally, the size of a company is positively correlated with better boardroom gender parity. That is, for every one-million-dollar increase in a company’s market capitalization, the percentage of women on a board increased by .5 percentage points. Finally, older companies tend to have more women relative to their younger counterparts. For each additional year since formation, the percentage of women a given board increased by .04 percentage points.
Table 1: Regression Results

<table>
<thead>
<tr>
<th></th>
<th>Average</th>
<th>Female Ratio</th>
<th>Female Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year (2007 = Year 0)</td>
<td>4.1</td>
<td>.005***</td>
<td>.005***</td>
</tr>
<tr>
<td>Market Cap (in thousands of $)</td>
<td>10112.34</td>
<td>4.54 x 10^{-7}***</td>
<td>4.67 x 10^{-7}***</td>
</tr>
<tr>
<td>Age of Company (years)</td>
<td>17.02</td>
<td>.0005***</td>
<td>.0004***</td>
</tr>
<tr>
<td>Consumer Services (industry)</td>
<td>.149</td>
<td>.021***</td>
<td></td>
</tr>
<tr>
<td>Electronic Technology (industry)</td>
<td>.089</td>
<td>- .039***</td>
<td></td>
</tr>
<tr>
<td>Finance (industry)</td>
<td>.133</td>
<td>.006**</td>
<td></td>
</tr>
<tr>
<td>Industrial Services (industry)</td>
<td>.077</td>
<td>-.050***</td>
<td></td>
</tr>
<tr>
<td>Retail Trade (industry)</td>
<td>.192</td>
<td>.051***</td>
<td></td>
</tr>
<tr>
<td>Technology Services (industry)</td>
<td>.105</td>
<td>-.026***</td>
<td></td>
</tr>
<tr>
<td>Utilities (industry)</td>
<td>.191***</td>
<td>.058***</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>.095***</td>
<td>.096***</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>12,167</td>
<td>12,167</td>
<td></td>
</tr>
<tr>
<td>R^2</td>
<td>.0549</td>
<td>.1152</td>
<td></td>
</tr>
</tbody>
</table>

Table 1: This Table presents the results from ordinary least squares (“OLS”) regressions where the dependent variable is female board percentage. The first column presents the averages for each independent variable. Industry averages are proportions. The second column presents OLS results for Year, Market Cap, and Age. The third column presents regression results after accounting for industry. *** (**,*) indicates statistical significance at the 1% (5%, 10%) levels.

These results confirm the conclusions of previous studies, showing a general trend towards increased board gender diversity, at least as measured by the ratio of men to women. Importantly, the results also highlight that significant differences between companies exist, depending on industry, size, and age of the company. These differences are often underexplored in current scholarship.

B. **Substantive Gender Diversity**

This section starts where prior studies have ended, examining a set of substantive measures of gender diversity in the boardroom. These variables are important factors when determining the level of parity that female directors enjoy.

By examining all available information from the compiled data regarding the age, tenure, leadership roles, service on other boards and specific workload and responsibilities within the boardroom, this section sheds light on observed differences between male and female directors. Importantly, while many unobserved dynamics may influence board parity, this study has narrowly focused on observable metrics. In part, the focus stems from lack of available data regarding unobserved board dynamics. Yet, it is also shaped by the practical need for measurable substantive variables that can be easily and neutrally collected and compared.
1. Tenure

Director tenure has become an important factor in corporate governance. Yet, while most studies look at director tenure as a whole, the relative tenure of men and women could be important in the context of substantive gender diversity. If companies appoint more women but retain them for shorter tenures than their male counterparts, this could counteract the increased representation of women on the board. Particularly, shorter tenure may limit the ability of a director to gain clout within the boardroom, and the company, and marginalize her vis-à-vis the longer tenured male directors in the room. If men and women have significant and systematic differences in their tenure, a concern may arise as to the true level of substantive equality in the boardroom.

As shown in Table 2, the data indeed reveals systemic differences in the tenure of men and women. In total, men had an average tenure of between 1.99 (22%) and 2.64 (27%) years longer than women. This overall disparity is more than a byproduct of recent board appointments for more women as it has persisted over time, across measures of industry and market size.

Table 2: Average Tenure Length by Gender and Year (2007-2015)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>6.87</td>
<td>7.14</td>
<td>7.48</td>
<td>7.60</td>
<td>7.73</td>
<td>7.80</td>
<td>7.79</td>
<td>7.67</td>
<td>7.42</td>
</tr>
<tr>
<td>Difference</td>
<td>2.35</td>
<td>2.24</td>
<td>1.99</td>
<td>2.07</td>
<td>2.12</td>
<td>2.23</td>
<td>2.25</td>
<td>2.39</td>
<td>2.64</td>
</tr>
</tbody>
</table>

In 2007, women had an average tenure of 6.87 years. This number increased to 7.8 years in 2012, but subsequently fell to 7.42 in 2015. Men, on the other hand, had an average tenure of approximately 10 years from 2012-2016. Figure 2 shows that differences between men and women are even starker as one moves from the S&P 500 (large-cap companies) to the S&P 400 (mid-cap) and subsequently to the S&P 600 (small-cap). The difference in 2015 between men and women for the S&P 500 was 1.94 years (9.61 years v. 7.67 years). In the S&P 400 and S&P 600, the differences were 3.06 years (10.27 v. 7.21) and 3.15 years (10.36 v. 7.21) respectively. This suggests that the gap between men and women is much closer in larger companies.

109 See Nili, supra note 68 (discussing the impact of director tenure on corporate governance).

110 Importantly, the median tenure of women is 2 years lower than that of men, even during the last few years. The standard deviation of the tenure of women has also not changed dramatically, reducing the concern that the disparity is driven by the recent influx of women to boardrooms.
Looking at the difference in the tenure of female directors across industries, Utilities had the longest tenured women at an average of 8.39 years of service. Technology Services represents the shortest average tenure of female directors with an average of only 5.57 years of service. According to the regression results displayed in Table 3, even after controlling for age of the company under the assumption that companies in the utilities industry are older than technology services, these two industries remained at the extremes of the tenure spectrum.

Table 3: Regression Results

<table>
<thead>
<tr>
<th></th>
<th>Average</th>
<th>Female Tenure Length</th>
<th>Female Tenure Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year (2007 = Year 0)</td>
<td>4.26</td>
<td>.035*</td>
<td>.039***</td>
</tr>
<tr>
<td>Market Cap (in thousands of $)</td>
<td>12733.04</td>
<td>5.73 x 10^-7</td>
<td>1.5 x 10^-6</td>
</tr>
<tr>
<td>Age of Company (years)</td>
<td>18.6</td>
<td>.034***</td>
<td>.034***</td>
</tr>
<tr>
<td>Consumer Services (industry)</td>
<td>7.419</td>
<td>-.221</td>
<td></td>
</tr>
<tr>
<td>Electronic Technology (industry)</td>
<td>6.597</td>
<td>-1.167***</td>
<td></td>
</tr>
<tr>
<td>Finance (industry)</td>
<td>7.681</td>
<td></td>
<td>.135</td>
</tr>
<tr>
<td>Industrial Services (industry)</td>
<td>6.472</td>
<td>-1.193***</td>
<td></td>
</tr>
<tr>
<td>Retail Trade (industry)</td>
<td>7.230</td>
<td>-.566***</td>
<td></td>
</tr>
<tr>
<td>Technology Services (industry)</td>
<td>5.570</td>
<td>-2.122***</td>
<td></td>
</tr>
<tr>
<td>Utilities (industry)</td>
<td>8.397</td>
<td></td>
<td>.180</td>
</tr>
<tr>
<td>Constant</td>
<td>6.70***</td>
<td>6.929***</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>9,038</td>
<td>9,038</td>
<td></td>
</tr>
<tr>
<td>R^2</td>
<td>.0216</td>
<td>.0354</td>
<td></td>
</tr>
</tbody>
</table>

Table 3: This Table presents results from OLS regressions where the dependent variable is female tenure length. The first column presents averages for each independent variable. The second column presents OLS results for Year, Market Cap, and Age. The third column presents results after accounting for industry. *** (**, *) indicates significance at the 1% (5%, 10%) levels.
2. Age

Age disparity between groups of directors might affect different boards in various ways. In some cases, boards may enjoy the added level of age heterogeneity while in others age disparity may be a cause of friction. Figure 3 presents the observed information regarding the gender and age disparity. Until 2015 when the average age of women serving on corporate boards decreased (likely due to the increased additions of women), the average age of directors of both genders steadily increased throughout the study period. On average, male directors tended to be older than their female counterparts. In 2007, the difference between men and women was 4.38 years (61.86 v. 57.48). This difference shrank substantially to 2.49 years in 2014, but rose again in 2015. As of 2015 male directors were on average 64 years old while female directors were, on average, 60.51 years old. Looking at women individually, the average director was older in the large cap companies, but little difference exists between mid- and small-cap stocks.

Figure 3: Average Age of Directors by Gender and Year (2007-2015)

3. Chair Positions

A key indicator for influence in the boardroom is the position of the chair of the board. As chair, a director has control of the board’s agenda in addition to other formal and informal powers. While in many companies the CEO is also the chairperson of the board, recent trends have led to a separation of these roles with many companies appointing independent directors as board chair.\footnote{See Ryan Krause and Matthew Semadeni, Sharing the Lead: Examining the Causes and Consequences of Lead Independent Director Appointment, HARV. L. SCH. F. CORP. GOVERNANCE & FIN. REG. (Sep. 20, 2017), https://corpgov.law.harvard.edu/2017/09/20/sharing-the-lead-examining-the-causes-and-consequences-of-lead-independent-director-appointment/}
Examining the ratio of men to women as non-CEO chairs of boards, while controlling for their relative size, the data show a significant disparity between female and male directors. First, in absolute numbers the differences are striking. In 2015, there were only 27 female directors who served as chair compared to 769 males. As a ratio of the total number of directors the disparity is still striking. Women serving as chairwoman were only one percent out of the entire female director sample, while men were six times more likely to serve as chairman, standing at 6.5 percent of the male director sample.\(^{113}\)

4. **Lead Independent Director Role**

When the CEO also serves as the chair of the board, or when the chair is not an independent director, many companies name a “lead independent director.” This director has a leadership role among the independent directors on the board and often serves as counterweight to the CEO/Chair.\(^{114}\) Examining the ratio of men to women serving as lead independent directors, while controlling for their relative size, the data, again, show significant disparity between the genders. In 2015, only 57 female directors served as lead independent directors compared to 539 males. As a ratio of the respective total number of directors, women serving as lead independent directors were only 3.6 percent out of the entire female director sample, while men were more than two times more likely to serve as lead directors, standing at 7.4 percent of the male sample.

<table>
<thead>
<tr>
<th>Year</th>
<th># Female Lead Independent Directors</th>
<th>% of the Entire Sample</th>
<th>% of Female directors</th>
<th># Male Lead Independent Directors</th>
<th>% of Entire Sample</th>
<th>% of Males</th>
<th>Total Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>28</td>
<td>0.39%</td>
<td>2.73%</td>
<td>434</td>
<td>6.08%</td>
<td>7.09%</td>
<td>7143</td>
</tr>
<tr>
<td>2011</td>
<td>39</td>
<td>0.50%</td>
<td>3.38%</td>
<td>492</td>
<td>6.33%</td>
<td>7.43%</td>
<td>7777</td>
</tr>
<tr>
<td>2012</td>
<td>43</td>
<td>0.54%</td>
<td>3.51%</td>
<td>516</td>
<td>6.45%</td>
<td>7.61%</td>
<td>8002</td>
</tr>
<tr>
<td>2013</td>
<td>44</td>
<td>0.52%</td>
<td>3.30%</td>
<td>521</td>
<td>6.21%</td>
<td>7.39%</td>
<td>8384</td>
</tr>
<tr>
<td>2014</td>
<td>49</td>
<td>0.57%</td>
<td>3.40%</td>
<td>534</td>
<td>6.18%</td>
<td>7.42%</td>
<td>8639</td>
</tr>
<tr>
<td>2015</td>
<td>57</td>
<td>0.65%</td>
<td>3.64%</td>
<td>539</td>
<td>6.10%</td>
<td>7.42%</td>
<td>8833</td>
</tr>
</tbody>
</table>

\(^{112}\) To prevent skewing of the results by the subset of chairs who are also CEOs (and are overwhelmingly men), the study only examined chair roles held by independent directors.

\(^{113}\) Similarly, according to a recent Equilar report, in 2016, only 7.6% of non-executive chair, CEO/Chair or lead director roles were occupied by women. See *Equilar, Boardroom Indicator: 18.9%* (Oct. 27, 2016), https://boardintelligence.equilar.com/2016/10/27/boardroom-indicator-18-9/.

\(^{114}\) See Krause and Semadeni, *supra* note 111 (stating that “many have argued that the CEO and chair positions must be separated to prevent the conflict of interest inherent to the CEO leading the board”).
Some may argue that the gap in leadership roles may be explained by the fact that women have yet to achieve sufficient tenure, especially due to the increased addition of women to boards in recent years. Therefore, as their tenure increases in the next 5-10 years so would their leadership representation. The data contradicts this line of reasoning. First, as discussed above, the tenure gap is not merely a result the addition of women in greater numbers.\(^{115}\) Second, when examining the leadership percentages of each gender, the gap is not a function of tenure. According to the results displayed in Table 5, the data shows consistent gaps in leadership likelihood even after controlling for tenure. In each of the four tenure quartiles women lag men in their likelihood to take the role of chair or lead independent director.

### Table 5: Leadership Roles and Tenure

<table>
<thead>
<tr>
<th></th>
<th>Leadership Role Likelihood (as a percentage of the respective sample)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0 - 4 Years of Tenure</td>
</tr>
<tr>
<td></td>
<td>Female</td>
</tr>
<tr>
<td>2007</td>
<td>0.63%</td>
</tr>
<tr>
<td>2008</td>
<td>0.88%</td>
</tr>
<tr>
<td>2009</td>
<td>0.99%</td>
</tr>
<tr>
<td>2010</td>
<td>1.00%</td>
</tr>
<tr>
<td>2011</td>
<td>0.49%</td>
</tr>
<tr>
<td>2012</td>
<td>0.47%</td>
</tr>
<tr>
<td>2013</td>
<td>0.49%</td>
</tr>
<tr>
<td>2014</td>
<td>0.37%</td>
</tr>
<tr>
<td>2015</td>
<td>0.35%</td>
</tr>
</tbody>
</table>

5. **Service on Other Boards**

One of the criteria in looking for new directors is prior experience.\(^{116}\) With fewer women holding existing directorship experience, these women might be more likely to serve on multiple boards. In other words, with a smaller potential pool of candidates, boards may be tapping the same women to fill diversity initiatives, instead of expanding the pool altogether. The data presented in Figure 4 support this argument. The average number of boards on which female directors sit on has

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115 See supra Part II.B.1.

remained relatively constant throughout the time period starting at 1.97 boards in 2007 to 1.95 boards in 2015. For men, however, the average number of boards has decreased from 1.88 to 1.78 over the same period.

*Figure 4: Average Number of Boards Directors Sit On by Gender and Year (2007-2015)*

Table 6 breaks out this information by S&P index. Looking across the indices, on average, the smaller cap stocks have fewer “busy directors.”\(^\text{117}\) That is, both men and women are less likely to serve on multiple boards in smaller cap indices. Further, the gap between the number of boards each gender sits on shrinks when moving from the S&P 500 to the S&P 600. For example, in 2015 the difference in average number of boards between women and men in S&P 500 companies was .15 boards whereas in the S&P 600 the difference was only .06 boards.

*Table 6: Average Number of Boards Directors Sit On by Gender, Year, and Index (2007-2015)*

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>S&amp;P 500</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>2.25</td>
<td>2.16</td>
<td>2.09</td>
<td>2.18</td>
</tr>
<tr>
<td>Male</td>
<td>2.17</td>
<td>2.06</td>
<td>2.03</td>
<td>2.03</td>
</tr>
<tr>
<td>S&amp;P 400</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>1.82</td>
<td>1.76</td>
<td>1.87</td>
<td>1.93</td>
</tr>
<tr>
<td>Male</td>
<td>1.87</td>
<td>1.77</td>
<td>1.75</td>
<td>1.75</td>
</tr>
<tr>
<td>S&amp;P 600</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>1.64</td>
<td>1.56</td>
<td>1.58</td>
<td>1.61</td>
</tr>
<tr>
<td>Male</td>
<td>1.62</td>
<td>1.58</td>
<td>1.56</td>
<td>1.55</td>
</tr>
</tbody>
</table>

\(^{117}\) “Busy Directors” are characterized as individuals who serve on multiple boards. This term generally has a negative connotation in that busy directors spend so much time on different boards that they are unable to devote their full time to any give board. Evidence of directors after mergers suggests that busy directors are associated with worse corporate performance and lower earnings. *See*, Ma Hu & Pei Ni Huynh, *How Do Cross-Border Mergers and Acquisitions Affect Firms’ Management and Stakeholders? Part 2*, CORP. FIN. REV. 2015 WL 8182787 1, 10.
6. **Service on Board Committees**

What roles do women and men hold on the various key committees in the boardroom? Examining the membership on specific board committees provides a more accurate picture of each director’s role on the board and the impact they may have on the corporation. This substantive aspect can enable us to better detect whether women are equal partners on the board, whether women are relegated to a secondary role within the boardroom, or whether women take an increased workload due to their lower numbers.

**a. Average Number of Committees**

Throughout the entire sample period, women sat on between .25 (2009) and .20 (2014) more board committees than their male counterparts. This suggests that female directors have an increased workload on the board as compared to male directors.

*Figure 5: Average Number of Committees per Board Directors by Gender and Year (2007-2015)*

<table>
<thead>
<tr>
<th>Year</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>1.83</td>
<td>1.65</td>
</tr>
<tr>
<td>2008</td>
<td>1.93</td>
<td>1.64</td>
</tr>
<tr>
<td>2009</td>
<td>1.94</td>
<td>1.67</td>
</tr>
<tr>
<td>2010</td>
<td>1.94</td>
<td>1.68</td>
</tr>
<tr>
<td>2011</td>
<td>1.90</td>
<td>1.70</td>
</tr>
<tr>
<td>2012</td>
<td>1.90</td>
<td>1.67</td>
</tr>
<tr>
<td>2013</td>
<td>1.93</td>
<td>1.67</td>
</tr>
<tr>
<td>2014</td>
<td>1.93</td>
<td>1.66</td>
</tr>
<tr>
<td>2015</td>
<td>1.93</td>
<td>1.64</td>
</tr>
</tbody>
</table>

**b. Percent of Men and Women on At Least One Board Committee**

Because directors sitting on more than two board committees can skew the average number of committees higher, looking at the relative pools of directors who sit on more than one board can help confirm the conclusions of the previous section. Figure 6 presents the data. In 2015, 84% of women directors compared to 71% of men directors served on at

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118 These are the Audit, Compensation, Corporate Governance and Nominating committees. See supra notes 46-50 and accompanying text.

119 See Klein, supra note 46.
least one committee. Thus, female directors outpace their male counterparts, both in terms of average committees and involvement on at least one committee.

*Figure 6: Percentage of men and women on at least one committee by year (2007-2015)*

![](image)

**c. Likelihood of Sitting on a Given Number of Committees**

Men are much more likely to participate on zero committees while women are more likely to participate on one, two or three committees throughout the sample period. A woman had a 31% chance of sitting on three committees, 19% chance of sitting on two committees and 29% chance of sitting on one committee. A man, on the other hand, had a 25% chance of sitting on three committees, 18% chance of sitting on two committees and 23% chance of sitting on one committee. Accordingly, women directors seem to be tasked with more committee work than their male counterparts are. Table 8 breaks down the percentages of female board directors by industry and number of committees.

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120 This percentage point difference existed in 3 of the sample years where in the other 6 years the difference was 14 percentage points.

121 Table 8 statistical results are from a univariate regression model used to break down the averages from Table 7 by industry. Unless otherwise noted, the average of each industry was statistically significantly different from the average of the rest of the sample at the 5% level. The average likelihood for women to sit on zero committees was 13%. Given the female was in Consumer Services, that likelihood rose to 20.5%, while for Industrial Services that likelihood declined to 10.4%. The average likelihood for any given female director to sit on one committee was 30%. If a given female was on Technology Services, that likelihood rose to 33.7%, however for Consumer Services that likelihood declined to 22.6%. The average likelihood of a female sitting on 2 committees across all industries was 20%. If that female was on a Consumer Services board, the likelihood was 29.1% whereas an Industrial Services female board member had a 15.2% chance of being on 2 committees. Next, the average likelihood for a female to sit on 3 committees is 32%. At the top end, if a female is on a Retail Trade board, the likelihood rises to 35.9% and on the low end a female on a Consumer Services board has a 25.3% chance of sitting on 3 committees. Finally, the likelihood for a female to sit on 4 committees is
Table 7: Percent of Directors Participating on Multiple Committees by Number of Committees and Gender

<table>
<thead>
<tr>
<th></th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>16%</td>
<td>29%</td>
<td>19%</td>
<td>31%</td>
<td>5%</td>
</tr>
<tr>
<td>Male</td>
<td>28%</td>
<td>23%</td>
<td>18%</td>
<td>25%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Table 8: Percent of Female Board Directors Participating on Multiple Committees by Number of Committees and Industry

<table>
<thead>
<tr>
<th>Industry</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer Services</td>
<td>.205***</td>
<td>.226***</td>
<td>.291***</td>
<td>.253***</td>
<td>.026***</td>
</tr>
<tr>
<td>Electronic Technology</td>
<td>.129</td>
<td>.315</td>
<td>.168***</td>
<td>.346*</td>
<td>.042</td>
</tr>
<tr>
<td>Finance</td>
<td>.155***</td>
<td>.320***</td>
<td>.174***</td>
<td>.281***</td>
<td>.069***</td>
</tr>
<tr>
<td>Industrial Services</td>
<td>.104</td>
<td>.332</td>
<td>.152**</td>
<td>.332</td>
<td>.080**</td>
</tr>
<tr>
<td>Retail Trade</td>
<td>.155**</td>
<td>.238***</td>
<td>.174***</td>
<td>.359***</td>
<td>.074**</td>
</tr>
<tr>
<td>Technology Services</td>
<td>.124</td>
<td>.337**</td>
<td>.207</td>
<td>.299</td>
<td>.033**</td>
</tr>
<tr>
<td>Utilities</td>
<td>.111</td>
<td>.302</td>
<td>.224</td>
<td>.325</td>
<td>.038*</td>
</tr>
<tr>
<td>Average</td>
<td>.13</td>
<td>.3</td>
<td>.2</td>
<td>.32</td>
<td>.05</td>
</tr>
<tr>
<td>Difference from</td>
<td>.101</td>
<td>.111</td>
<td>.139</td>
<td>.106</td>
<td>.054</td>
</tr>
<tr>
<td>Largest to Smallest</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 8: Statistical significance determined using univariate regression. *** (**,*) indicates statistical significance at the 1% (5%, 10%) levels.

Next, the analysis examined the likelihood that an individual director sits on a specific number of board committees (ranging from 0-4). The regression results are presented in Table 9. For example, all coefficients for Female are positive, suggesting that being a female has a stronger influence on serving on one or more committees than it does on serving on zero committees. Being a female has the strongest effect for serving on three committees. The effect of age increases as we move from zero to four committees. Industry type also matters at times. For example, Industrial Services directors are more likely to serve on four committees than on zero committees. For other industries, directors are less likely to serve on more committees.

5%. Again, a female on a Consumer Services board only has a 2.6% chance of sitting on 4 committees while a female on an Industrial Services board has an 8% chance of the same.

122 The process of estimating the likelihood took three steps. First, a multinomial logistic regression analysis was used to model the number of committees a board member participated on as a function of the director’s gender, age, and the industry of company (A multinomial logistic regression is preferred when the dependent variable consists of multiple related binary categories. Here the dependent variable is whether a director served on 0, 1, 2, 3, or 4 committees). Next, a number of hypothetical scenarios were created. Finally, coefficients from the regression analysis were used to estimate the probability of a member serving on specified numbers of committees for each scenario.
Table 9: Regression Results

<table>
<thead>
<tr>
<th></th>
<th>One committee</th>
<th>Two committees</th>
<th>Three committees</th>
<th>Four committees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>0.951***</td>
<td>0.866***</td>
<td>1.027***</td>
<td>0.623***</td>
</tr>
<tr>
<td>Company Age</td>
<td>0.033***</td>
<td>0.053***</td>
<td>0.059***</td>
<td>0.079***</td>
</tr>
<tr>
<td>Consumer Services (industry)</td>
<td>-0.271**</td>
<td>-0.255*</td>
<td>-0.403***</td>
<td>-0.985***</td>
</tr>
<tr>
<td>Electronic Technology (industry)</td>
<td>-0.077</td>
<td>-0.199**</td>
<td>-0.130</td>
<td>-0.147</td>
</tr>
<tr>
<td>Finance (industry)</td>
<td>-0.229***</td>
<td>-0.316***</td>
<td>-0.405***</td>
<td>0.002</td>
</tr>
<tr>
<td>Industrial Services (industry)</td>
<td>-0.263</td>
<td>-0.209</td>
<td>-0.231</td>
<td>0.521***</td>
</tr>
<tr>
<td>Retail Trade (industry)</td>
<td>-0.205*</td>
<td>-0.489***</td>
<td>-0.289***</td>
<td>0.047</td>
</tr>
<tr>
<td>Technology Services (industry)</td>
<td>-0.011</td>
<td>-0.157</td>
<td>-0.181</td>
<td>-0.054</td>
</tr>
<tr>
<td>Utilities (industry)</td>
<td>0.180</td>
<td>0.050</td>
<td>-0.065</td>
<td>-0.245</td>
</tr>
<tr>
<td>Constant</td>
<td>-2.176***</td>
<td>-3.664***</td>
<td>-3.726***</td>
<td>-6.634***</td>
</tr>
</tbody>
</table>

N 12,432
AIC 37135

Table 9: This Table presents results from a multinomial logistical regression where the dependent variable is whether the director served on 0, 1, 2, 3, or 4 committees. *** (**,*) indicates statistical significance at the 1% (5%, 10%) levels. The zero committee category is the reference category, so coefficients are relative to their estimated influence on serving on zero committees.

The regression results were next used to estimate the likelihood or probability of the number of committees directors sit on as a function of relevant variables. For example, a 64 year-old male in the Consumer Services industry has a 32 percent likelihood of sitting on zero committees while a female of the same age and industry is half as likely to sit on zero committees. On the other hand, the same female has a 31 percent likelihood of sitting on three committees while the equivalent male only has a 23 percent likelihood of doing the same. Both individuals would have a 3 percent likelihood of sitting on four committees. Table 10 uses these likelihood estimates to make predictions for a number of hypothetical scenarios.

Table 10: Predicted Number of Committees by Gender and Industry

<table>
<thead>
<tr>
<th></th>
<th>Other Cons. Serv.</th>
<th>Elec. Tech.</th>
<th>Finance Industrial Services</th>
<th>Retail Trade</th>
<th>Tech. Services</th>
<th>Utilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Male</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 10: Predictions based on likelihood estimates using regression coefficients and assuming director is 64 years old.

d. Likelihood of Sitting on a Given Committee

One potential gender parity concern is that women may be excluded from specific important board committees. The descriptive
statistics in Table 11 mostly alleviate such a concern as women are serving in large numbers on all of the key board committees.123

Table 11: Percent of Board Directors that are Female in Each Industry of Each Committee Type

<table>
<thead>
<tr>
<th>Industry</th>
<th>Nominating</th>
<th>Corp. Gov.</th>
<th>Compensation</th>
<th>Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer Services</td>
<td>.421***</td>
<td>.418***</td>
<td>.448</td>
<td>.384***</td>
</tr>
<tr>
<td>Electronic Technology</td>
<td>.47</td>
<td>.47</td>
<td>.453</td>
<td>.464</td>
</tr>
<tr>
<td>Finance</td>
<td>.45***</td>
<td>.442***</td>
<td>.407***</td>
<td>.488***</td>
</tr>
<tr>
<td>Industrial Services</td>
<td>.477</td>
<td>.477</td>
<td>.496***</td>
<td>.501*</td>
</tr>
<tr>
<td>Retail Trade</td>
<td>.509</td>
<td>.508</td>
<td>.472**</td>
<td>.468</td>
</tr>
<tr>
<td>Technology Services</td>
<td>.46</td>
<td>.451</td>
<td>.42</td>
<td>.48</td>
</tr>
<tr>
<td>Utilities</td>
<td>.479</td>
<td>.474</td>
<td>.458</td>
<td>.464</td>
</tr>
<tr>
<td>Average</td>
<td>.49</td>
<td>.48</td>
<td>.44</td>
<td>.46</td>
</tr>
<tr>
<td>Difference from Largest to Smallest</td>
<td>.088</td>
<td>.09</td>
<td>.089</td>
<td>.094</td>
</tr>
</tbody>
</table>

Following these descriptive statistics, the study modeled whether an individual is on each of the four committees using a logistic regression.124 The independent variables remain age, gender, and industry. The results of the four logistic regressions are displayed in Table 12.125 Females are more likely than their male colleagues to serve on the Corporate Governance and Compensation committees and less likely than males to serve on the Audit committee after controlling for Age and Industry. When it comes to serving on these specific committees, however, there is little variation by industry. The lone exception is that individuals in the Retail Trade industry are slightly less likely to serve on Corporate Governance committees than those in other industries. Older individuals are more likely to serve on the Corporate Governance committee while younger individuals are less likely to serve on the Audit committee.

---

123 Unless otherwise indicated, the differences between industries were statistically significant at the 5% level.

124 A logistic regression is appropriate when the dependent variable is a single binary outcome.

125 The few individuals serving on Nominating committees make the coefficient estimates for this regression highly uncertain.
Table 1: This Table presents results from four separate logistic regressions where the dependent variables are whether the director served on the Nominating, Corporate Governance, Compensation or Audit committees. *** (**, *) indicates statistical significance at the 1% (5%, 10%) levels.

Table 12: Regression Results

<table>
<thead>
<tr>
<th></th>
<th>Nominating Committee</th>
<th>Corp. Gov. Committee</th>
<th>Compensation Committee</th>
<th>Audit Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>-1.037</td>
<td>0.254***</td>
<td>0.128**</td>
<td>-0.214***</td>
</tr>
<tr>
<td>Company Age</td>
<td>0.041</td>
<td>0.012***</td>
<td>0.004</td>
<td>-0.008***</td>
</tr>
<tr>
<td>Consumer Services (industry)</td>
<td>-16.223</td>
<td>0.152</td>
<td>0.039</td>
<td>-0.091</td>
</tr>
<tr>
<td>Electronic Technology (industry)</td>
<td>0.102</td>
<td>-0.077</td>
<td>-0.010</td>
<td>0.038</td>
</tr>
<tr>
<td>Finance (industry)</td>
<td>0.435</td>
<td>0.028</td>
<td>-0.073</td>
<td>0.049</td>
</tr>
<tr>
<td>Industrial Services (industry)</td>
<td>-16.359</td>
<td>-0.199</td>
<td>-0.028</td>
<td>0.106</td>
</tr>
<tr>
<td>Retail Trade (industry)</td>
<td>-16.194</td>
<td>-0.284*</td>
<td>0.000</td>
<td>0.107</td>
</tr>
<tr>
<td>Technology Services (industry)</td>
<td>-16.197</td>
<td>-0.039</td>
<td>0.012</td>
<td>0.011</td>
</tr>
<tr>
<td>Utilities (industry)</td>
<td>-16.263</td>
<td>0.168</td>
<td>-0.019</td>
<td>-0.046</td>
</tr>
<tr>
<td>Constant</td>
<td>-8.857***</td>
<td>-2.939***</td>
<td>-0.938***</td>
<td>0.783***</td>
</tr>
<tr>
<td>N</td>
<td>16</td>
<td>995</td>
<td>3049</td>
<td>5122</td>
</tr>
<tr>
<td>AIC</td>
<td>243</td>
<td>6299</td>
<td>11685</td>
<td>12601</td>
</tr>
</tbody>
</table>

Table 12: This Table presents results from four separate logistic regressions where the dependent variables are whether the director served on the Nominating, Corporate Governance, Compensation or Audit committees. *** (**, *) indicates statistical significance at the 1% (5%, 10%) levels.

e. Committee Chair Position

As shown in Part 0, board leadership positions tilt heavily in favor of male directors. Looking at leadership at the board committee level, the Article finds that female directors are also underrepresented in board committee leadership. Yet, there has been a steady improvement in female committee leadership over time. Table 13 below illustrates the improvement in the percentage of female committee chair over time while also showing that the ratio of women chairs still lags behind their relative representation on these committees. For instance, while in 2007 only seven percent of Audit committee chairs in the sample were women (102 directors), that ratio doubled to 14% in 2015 (210 directors). However, in both years the percentage of Audit committee members that were women was significantly higher compared to their committee chair representation. In 2007, 12 percent of the Audit committee members were women while only seven percent served as chairs and in 2015, 18 percent of the Audit committee members were women with only 14 percent serving as chairs. These disparities are statistically significant and hold across committees and over time.
Table 13: Comparison of Committee Chair Position

<table>
<thead>
<tr>
<th>Year</th>
<th>Nomination Committee</th>
<th>Governance Committee</th>
<th>Compensation Committee</th>
<th>Audit Committee</th>
<th>Any Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>.16/.17 (235/1002)</td>
<td>.16/.17 (236/994)</td>
<td>.13/.16* (187/924)</td>
<td>.14/.17* (211/968)</td>
<td>.15/.17* (658/1855)</td>
</tr>
</tbody>
</table>

Table 13: This Table presents the percentage of female committee chairs compared to their ratio on the committee. The first number in each cell is the proportion of companies with a female chair on given committee and year. The second number is the average proportion of female directors on given committee and year for all companies in the data. The star indicates that the second number in a cell is statistically distinguishable from the first. The first number in the parentheses is the raw number of female chairs and the second number is the raw number of female directors on these committees.

C. Key Lessons from the Findings

Several broad observations can be drawn from the empirical findings. First, it is clear that important differences exist between genders, not only in the quantitative numbers of each gender in the boardroom, but also in the substantive characteristics and roles within the boardroom that each gender is more likely to hold.

Second, the data show that differences between genders vary both across different industries and across market cap sizes. These differences highlight the need to examine companies on an individual level, rather than through an aggregate ratio, for a true and more complete assessment of the gender parity on boards. The variation the data show is also important for future academic research. As discussed above, a large body of empirical literature is focused on the link between gender diversity and company performance. These studies have yet to use data on substantive diversity, such as the data presented in this paper. Combining this new data with the quantitative data analyzed in prior studies can better reveal...
gradations between female participation in the boardrooms and the impact on company performance.

Third, the data on substantive diversity are full of nuance, and are subject to interpretation. While some of the results may more clearly suggest a concern regarding gender parity, other findings are less clear-cut and some of the findings provide a more optimistic depiction of substantive parity.

Finally, it is important to underscore that the findings are limited to available data regarding director participation in the boardroom. The aforementioned variables are, of course, not an exhaustive list, and they do not reflect less observable data such as board dynamics and other measures of clout that are important factors for a more complete picture of the gender parity in each boardroom.

Moving to some of the specific findings, several trends suggest a potential lack of substantive gender parity. First, the shorter tenure of women on boards should be of potential concern. Tenure has been recognized to play an important role in the influence that one possesses.126 Since longer tenured directors arguably carry more clout and influence in the board room,127 they might inhibit and restrain, intentionally or inadvertently, the ability and willingness of less tenured directors to act independently, and might jeopardize the ability of the boardroom to foster an “open to all ideas” atmosphere.128 If there is a significant tenure disparity along gender lines, as the findings suggest, then women might face an uphill battle to have their voice heard in a boardroom controlled by long tenured male directors.129 The fact that women are already a minority in the boardroom further magnifies the impact of tenure disparity. Studies have found that without a critical mass130 women encounter “social isolation, heightened visibility … and pressure to adopt

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126 See Einer R. Elhauge, Are Term Limits Undemocratic?, 64 U. CHIC. L. REV. 83 (1997) (describing the impact tenure has on power, clout, and influence in the political sphere).

127 See Nili, supra note 68 (discussing the impact of director tenure on the board dynamics)

128 Id.

129 Of course, in some instances, long tenured directors are less involved in the boardroom work, or newer directors exert more influence than their longer termed peers do. However, generally tenure correlates with greater clout.

130 Rhode & Packel, supra note 69, at 408-411(discussing the issues with token directors and reviewing the studies finding that a critical mass is needed).
stereotyped roles.” Tenure disparity may exacerbate these concerns, making women even less likely to overcome these obstacles.

Importantly, the article finds that director tenure is positively correlated with the likelihood of having a leadership role. If women systematically serve for shorter terms, then their opportunities to take these leadership roles is negatively effected. Clearly, the tenure disparity is concerning as it may influence the intra-board dynamics. It is also important to understand why women leave boards faster than men. Are they pushed out (explicitly or implicitly)? Do they suffer from over-extension and over-commitment to board committees? Or do they have more options to choose from, resulting in more frequent moves between boards?

Second, the underrepresentation of women in leadership roles, both as chairwomen, as lead independent directors, or as committee chairs, is a potential signal regarding the level of substantive parity on the board. Women are less likely to hold leadership roles, either as chair of the board/lead independent director, or as chairs of the various board committees. These formal leadership roles carry significant formal powers. As chair, the director has control of the board or committee’s agenda in addition to other formal and informal powers. In addition, these formal leadership roles carry a symbolic value, signaling the importance and value of the director. The fact that women do not hold these leadership positions in equal numbers, even relative to their current low ratio on the board, is a potential indication that they have yet to climb sufficiently high on the board’s totem pole.

Third, the data reflect that the pool of female directors serving on public boards is smaller than the pool of males, and that women serve on more than one board in greater numbers. The data also show that women are also more likely to serve on more board committees on each board. The smaller pool of women directors may reflect entry barriers to joining a board. It may be the case that some women are not considered for board positions due to nomination metrics that may overemphasize as requisite


\[132\text{ The article finds that leadership is positively correlated with a 1.51 years increase for males and a .62 years increase for females. Females in leadership roles have 1.96 fewer years of service than males (for non-leaders; females serve 2.85 fewer years among leaders).}\]
work experience, positions that men are currently holding in much greater numbers. At the same time, the data indicate that women might be taking on more board work compared to their fellow directors. While this can stem from an attempt to ensure diversity in the many board committees, it may also lead to women to being “overworked.”

On the other side, the fact that women sit on multiple boards in greater numbers and the fact that they serve, on average, on more committees, can also be viewed in a positive light. Women enjoy greater exposure to the company (or different companies), which potentially allows them to enrich the board discussions and increase their clout within the board.

The data reflect better parity between the genders, or at least movement in the right direction, in some of the other metrics examined as well. The ratio of women on boards is on the rise. There has also been a positive movement in the ratio of women as committee chairs, signaling an overall positive trend. Finally, women seem to gain access to all of the important board committees, albeit in lesser numbers on the key audit committee.

In sum, the data exemplify the importance of a more detailed examination of the roles of women on boards. Women are clearly gaining ground in their representation on boards, but at the same time, significant disparities still exist between the genders regarding the roles and attributes of directors.

III. The Regulatory Framework and Its Current Flaws

This Part reviews the current regulatory approach to gender diversity in boardrooms in the U.S. In Section A, the Article describes the development of the current disclosure regime in the U.S. Section B provides novel data on the gender diversity disclosure practices of companies, against the backdrop of the current regulatory framework. Section C then brings the two previous sections together, underscoring the flaws in the current regulatory approach.

133 See Rhode & Packel, supra note 69 at 404 (discussing the bias that might lead to underrepresentation of women on boards).
A. The Evolution of Diversity Disclosure Requirements

The U.S. has taken a soft regulatory approach\textsuperscript{134} to the issue of gender diversity, requiring companies to disclose only whether they have a diversity policy in place,\textsuperscript{135} and to provide a description of the policy to investors.\textsuperscript{136} This approach stands in sharp contrast to the mandatory diversity quotas many European countries have recently adopted, requiring companies to maintain a specific ratio of women to men on the board.\textsuperscript{137}

Prior to 2009, boards in the U.S. were not required to make any disclosures regarding the nominating procedures related to diversity. In fact, Item 407 at the time made no mention at all of diversity.\textsuperscript{138}

In its announcement of a 2009 amendment to Regulation S-K, the SEC noted it received numerous comments regarding the need for diversity disclosure within boards.\textsuperscript{139} Among the main advocates were two of the largest, and most socially active, pension funds: California Public Employees’ Retirement System (“CalPERS”) and CalSTRS.\textsuperscript{140} The announcement noted that many of these commenters desired disclosure of diversity to provide insight into corporate governance practices.\textsuperscript{141} This, in turn, would provide additional information during proxy season when determining whether to vote for or against board nominees.\textsuperscript{142}

In response to these communications, the SEC adopted Item 407(c) “requir[ing] disclosure of whether, and if so how, a nominating committee considers diversity in identifying nominees for director.”\textsuperscript{143} The regulation then requires that “if the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, disclosure would be required of how this policy is implemented, as well as how the nominating committee (or the board)
assesses the effectiveness of its policy.” The regulation, however, does not define the term “diversity” and it left it to companies to define what they mean by diversity in their policies and disclosures.

B. Current Company Disclosures

The regulatory framework, laid out in Section A, leaves a broad spectrum of parameters that constitute compliance with the SEC’s diversity disclosure requirements, including making no diversity disclosure at all. Not surprisingly, companies vary in their board diversity disclosure practices. Some companies provide detailed information to investors regarding their diversity policies. Other companies merely recite the words necessary to comply with Item 407(c)(vi) and no more.

This section explores director diversity disclosures in practice. To do so, using a hand-collected data set, the disclosure statements of one hundred public companies for the years of 2008, 2012, and 2016 were analyzed. To account for both large, high profile, companies as well as smaller, less visible public companies, fifty of the companies make up the Fortune 50 and the remaining fifty are Fortune 2000 small-cap companies. Some companies did not have proxy statements available in all of the three examined years, bringing the sample to 94 companies in 2008 and 98 companies in 2012 and 2016 respectively.

As Figure 7 below shows, in 2008, only 55 of 94 companies disclosed that they considered diversity, in a general sense, at all. In 2012 and 2016, following the amendment to regulation S-K, those numbers increased to 93 and 95 companies respectively. However, corporations’

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144 Id.
145 Id.
146 See DHIR supra note 19; Packel supra note 72 at 223-227; Thomas Lee Hazen & Lissa Lamkin Broome, Board Diversity and Proxy Disclosure, 37 U. DAYTON L. REV. 39, 59-66 (2011) (reviewing filings for 2010 for the fortune 100 companies); Tamara S. Smallman, Note, The Glass Boardroom: The SEC’s Role in Cracking the Door Open So Women May Enter, COLUM. BUS. L. REV. 801, 817 (2013) (concluding that disclosures were “largely superficial and uninformative, and failed to comply with the SEC requirements). Dhir has conducted a similar survey of company disclosures for the years 2010-2013. While our findings are similar in some aspects, we focus on different aspects of the disclosures, in addition to differences in the sample of companies and years covered.
149 See infra Part III.A.
consideration of diversity did not necessarily specifically include gender as part of the criteria for creating a more diverse board. In 2008, for instance, only five corporations specifically disclosed in their proxy statement that they consider gender as criteria for selecting director nominees. Although, this number significantly increased to 42 in 2012 and 53 in 2016, still only barely a majority of corporations indicated that they specifically considered gender when selecting director nominees.

**Figure 7: Trends in Gender Diversity Disclosure**

![Trends in Gender Diversity Disclosure](image)

Importantly, many of the companies that do not have a formal policy in place have noted that while they lack a formal diversity policy, they consider the diversity of perspectives, experiences, and backgrounds of director nominees when slating a new board. For example, Quanex (NYSE: NX) uses the language, “[a]lthough the company has no formal policy on diversity for board members, the board considers diversity of experience and background in an effort to ensure that the composition of our directors creates a strong and effective board.”

While such language is compliant with the SEC rule, it illustrates the vagueness that companies can use when addressing diversity.

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151 Contrast this approach with General Motors’ (GM) statement “Although GM does not have a formal policy governing diversity among Board members, we continually strive to add directors of diverse backgrounds. We recognize the value of overall diversity and consider members’ opinions, perspectives, personal and professional experiences, and backgrounds, including gender, race, ethnicity, and country of origin, when considering Board candidates. We believe that the judgment and perspectives offered by a diverse board of directors improves the quality of decision-making and enhances the Company’s business performance. We also believe such diversity can help the Board respond more
Quanex is not an outlier. Only six out of the 100 companies reviewed currently have a definition of diversity laid out in their disclosures. Thus, even though corporations may have diversity policies, and at times they may explicitly seek gender diversity, an overwhelming majority of such policies lack the desired clarity and focus, instead crafted in a manner that dilutes any specific diversity criteria.

Concerns regarding the ability of current disclosure to truly promote gender diversity can be illustrated through the case of Emcor (NYSE: EME). In 2008, not unlike many of the other corporations in the study, Emcor had no reference to diversity in its disclosure, nor any women on its board. All eight directors on Emcor’s board were men. More striking, however, was that both in 2012 and 2016 Emcor disclosed under the SEC requirements, that it considers diversity in its nomination process but indicated that its focus is on obtaining a diversity of professional expertise rather than a diversity of personal characteristics. Not surprisingly, Emcor failed to add any women to the board even while increasing the total board size to 10 directors.

On the other hand, there are examples of companies that have made meaningful changes to their nomination process as well as to their boardroom diversity disclosure practices. One such example is Children’s Place (NSDQ: PLCE). Although female directors in 2008 and 2012 only composed 13% of Children’s Place’s board, the percentage of the board held by female directors jumped to 36% in 2016. These increases correlated with substantive changes in the corporation’s policy towards board refreshment and diversity. In 2010, after the SEC regulation took effect, Children’s Place added a consideration of gender as criteria when nominating directors. The company continued to improve its diversity policies and, in 2016, provided a clear graphic to investors detailing the gender composition of its board of directors. Further, Children’s Place specifically stated that it seeks a board that has “an appropriate balance in terms of gender. Four of our Board members are women.”152 This combination of clear visual information with an explicit and measurable policy provides a blueprint for effective and tangible gender diversity policies and disclosure practices.

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152 Children’s Place, Inc., Proxy Statement (Schedule 14A) (Apr. 6, 2016) at 9.
More broadly, SEC disclosures reflect company policies that may be leading to concrete outcomes when it comes to a company’s gender diversity. Indeed, the connection between what a company discloses to investors and its gender diversity ratio is not merely anecdotal. Examining the correlation between company disclosures and the ratio of women on the board, this Article found a statistically significant positive correlation. Specifically, as Table 14 below illustrates, companies that specifically addressed gender in their diversity disclosure also were also more likely to have higher ratio of females on their board, compared to companies without a diversity policy or one that solely refers to difference in viewpoints.

*Table 14: Regression Results*

<table>
<thead>
<tr>
<th>Type of Disclosure</th>
<th>Year</th>
<th>Percentage of Female Directors (correlation coefficient (p-value))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consider diversity at all</td>
<td>2008</td>
<td>0.213 (0.038)</td>
</tr>
<tr>
<td>Consider diversity at all</td>
<td>2012</td>
<td>-0.070 (0.489)</td>
</tr>
<tr>
<td>Consider diversity at all</td>
<td>2016</td>
<td>-0.031 (0.756)</td>
</tr>
<tr>
<td>Use gender as a factor in their decision-making</td>
<td>2008</td>
<td>0.043 (0.677)</td>
</tr>
<tr>
<td>Use gender as a factor in their decision-making</td>
<td>2012</td>
<td><strong>0.286 (0.004)</strong></td>
</tr>
<tr>
<td>Use gender as a factor in their decision-making</td>
<td>2016</td>
<td><strong>0.352 (0.0003)</strong></td>
</tr>
<tr>
<td>Define diversity to include diverse perspectives/viewpoints</td>
<td>2008</td>
<td><strong>0.230 (0.025)</strong></td>
</tr>
<tr>
<td>Define diversity to include diverse perspectives/viewpoints</td>
<td>2012</td>
<td>-0.05596334 (0.5842)</td>
</tr>
<tr>
<td>Define diversity to include diverse perspectives/viewpoints</td>
<td>2016</td>
<td>0.05038617 (0.6222)</td>
</tr>
</tbody>
</table>

In sum, although the current state of diversity disclosures is reflective of the “soft” regulatory approach, it also exemplifies the value of meaningful disclosure to investors and the potential that a potent disclosure regime can provide.

C. *The Flaws with Current Disclosures*

The current regulatory approach, if truly intended to promote better gender diversity disclosure, suffers from several flaws. First, under the current rules diversity is an open-ended concept. Boards can include anything from gender, race, to age, and life experiences in defining

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153 Note that while the study found a correlation, it does not assert that there is a causation. In other words, companies may be willing to disclose that they consider gender because they have more women on the board.
diversity. In turn, many companies comply with the letter of the regulation by defining diversity broadly enough to incorporate any possible difference between people.

Second, one of the major noted flaws of Regulation S-K is that it only applies to boards who have diversity policies in place, but does not affirmatively require anything on behalf of boards without such policies. It has been suggested that one unintended consequence of this lack of an affirmative policy is to dis-incentivize companies from creating a diversity policy. A company that creates a policy must not only explain how the policy is enacted and its results, but also must describe how the policy works in practice. While some may argue that investors would nonetheless pressure companies into creating a policy, until recently that has not been the case. Instead of increasing disclosure and transparency, Regulation S-K has ironically restricted a company’s incentive to draft diversity policies and increase the gender diversity of its board.

Third, beyond these effectively voluntary disclosures, the SEC requires no additional information with respect to boardroom gender diversity. This seems inconsistent with the intention of Item 407(c) as explicitly stated by the SEC. Investors expressed desire for information regarding diversity, yet a company can easily obscure its views on diversity. Thus, the requirements under Regulation S-K and the information provided by companies fail to adequately disclose the desired information.

When amending regulation S-K in 2009, the SEC could have also included requirements for diversity in Item 407(c)(2)(v), which requires the company to:

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156 Fairfax, supra note 76, at 874–75.
157 Id.
160 Id.
Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant’s board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant’s directors to possess….162

However, not only did the SEC not add diversity to Item 407(c)(2)(v), but the SEC also explicitly excluded this section from the diversity requirement163 and in fact included the diversity requirement directly after this section.164 By specifically stating that the above requirement did not apply to diversity, companies without strong diversity policies have lacked an incentive to create one.

In 2016, then SEC Chairwoman Mary Jo White described the role of the SEC in gender diversity,165 within the traditional focus of the SEC on disclosure.166 Stating that “boards with diverse members function better and are correlated with better company performance…[t]his is precisely why investors have—and should have—an interest in diversity disclosure about board members and nominees.”167 However, as she has noted and as this Article demonstrates,168 company policies remain vague. Further, very few companies have produced formal diversity policies making it hard to evaluate the effectiveness of diversity policies.169 While Chairwoman White noted that the SEC had researched and prepared a recommendation to require companies to include in their proxy statements more meaningful board diversity disclosures on their board members and

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166 Id.
167 Id.
168 See infra Part III.B.
169 Mary Jo White, supra note 165.
nominees,\textsuperscript{170} no rule was ever formally announced and the often criticized Item 407(c)(2)(vi) remains investors’ only regulatory means of ascertaining diversity information in the boardroom.

This regulatory failure has led investors such as State Street and BlackRock to create comply-or-explain policies regarding gender diversity on the board, which are tied to their votes for board elections.\textsuperscript{171} In essence, these investors have effectively initiated a gender diversity “threshold” for companies to meet in order to avoid investor backlash.\textsuperscript{172} With the threat of upsetting these investors and opening the gates for activist shareholders to court these votes, companies are likely to meet the minimum requirements to comply with State Street and BlackRock’s demands.

* * * *

The SEC’s amendment in 2009 was a move in the right direction. At a minimum, it provided some information to investors regarding public companies’ diversity policies and—as the data in section B shows—it has clearly increased the number of companies that disclosed their diversity policies. It may have also influenced some companies to create diversity policies, where there were absent and it has directed attention to the issue of gender diversity. However, the flaws in the current framework provide clear areas for potential reform that could make company disclosures even more effective and valuable. In the next Part, the Article discusses these potential reforms as part of a broader discussion of the policy implications stemming from the Article’s findings regarding substantive gender diversity.

IV. Policy Implications

In Part II, the Article presented data on the composition and roles female directors hold on S&P 1500 boards. The data show that differences between genders are reflected not only in the ratio of women to men but also in their roles once elected to the board. Furthermore, as with all

\textsuperscript{170} Id.


\textsuperscript{172} Atmeh et. al., supra note 171; REUTERS, supra note 171. Granted, in many cases these investors have left the door open for companies to rebuff this presumption through engagement.
averages, some companies perform better or worse than average in gender parity – potentially leading to cases where the quantitative parity of the board is not indicative of the substantive parity.

In other words, a company may have a higher than average number of women on the board but may relegate them to less important positions on the board while another company may have a lower number of women who are in key leadership positions on the board. While this might seem an unlikely scenario, similar issues exist in countries with mandated quotas.173

Furthermore, the composition of a company’s board is fluid. In any given year, a company may lose or add a female director, therefore temporarily changing its gender ratio. It does not mean, however, that such company changed (for better or for worse) the level of substantive parity in its boardroom. These findings demonstrate that substantive diversity is important and that attention needs to be paid to the differences in substantive diversity between men and women on boards.

Part III then examined the current SEC disclosure regime with respect to gender diversity on boards. The Article demonstrated that companies provide very little diversity information to their investors and discussed the current flaws in the disclosure regime.

This Part aims to bring together these two strands – the importance of substantive gender diversity and the deficiencies in the current disclosure regime – by discussing the policy implications of these findings. First, regulators, investors and companies themselves should direct their attention to the question of substantive gender diversity. If women bring value to boardrooms as companies and investors alike believe, then ensuring that they are able to contribute equally must become an integral part of the current discourse. Second, the Article discusses the regulatory implications and suggests a shift towards an enhanced disclosure regime that would require companies to provide investors with both substantive and quantitative measures of gender diversity with respect to the boardroom.

A. A Focus on Substantive Diversity

Prior studies, investor demands, and policy arguments have focused on quantitative measures or a diversity threshold. That is, existing literature has recommended that companies either meet some gender diversity threshold, disclose their plans to reach some set number of female directors or explain their failure to do so. Though an increase in the absolute number of women on boards is clearly important, and does provide more “diversity,” the findings in Part II illustrate the need to augment this information with data on the specific roles that women perform on any given board.

Granted, the appeal of the quantitative approach is understandable. Quantitative measurements of diversity can provide a bird’s eye view of boardroom diversity. They are easier to analyze and monitor. They are less murky or subject to interpretation. Their strength is in their simplicity and straightforwardness. The focus on increasing the ratio of women on boards also has undeniable benefits. Female directors provide a new or different perspective on board decisions. These additional viewpoints provide a better opportunity for thoughtful business decisions. A higher number of female directors could also help improve the general gender diversity in the company. The more women on the board, the more likely that the company promotes gender diversity from within.

However, a sole focus on quantitative measurements misses the mark in assessing and promoting true corporate board diversity. Corporations required to meet quantitative diversity metrics can focus on achieving that metric without changing the board’s culture or the board’s nomination procedures. That is, a nominating committee whose continued directorship is dependent on nominating an additional woman (due to the threat of withhold campaigns by investors) will do just that.

174 See MSCI, supra note 85.
175 See e.g., Rosenblum & Roithmayr, supra note 95; DHIR, supra note 19.
176 Hong & Page, supra note 82.
177 Id. See also EQUILAR, Exclusive Interview: Empowering Board Evaluation and Refreshment Diverse (June 13, 2017), http://www.equilar.com/blogs/273-semler-brossy-board-diversity-interview.html (“board representation leads to more conversation and questioning that can lead to better answers and outcomes”).
179 MSCI, supra note 85 Hunt et. al., supra note 178.
180 Sehgal, supra note 173; INSTITUTIONAL SHAREHOLDER SERVICES, INC. supra note 173.
However, it does not necessarily follow that the company will enact a policy to include more women in their future searches or afford women, directly and indirectly, with equal power within the boardroom, or attempt to increase diversity throughout the corporation.

Substantive measurements add color to the monochrome image that the number and ratio of women provides us. They move away from solely asking companies to meet a specific number of positions to be filled by gender diverse candidates. Instead, it also allows for fluidity among companies to focus on the diversity aspects within the boardroom work it, or its investors, finds important.

Importantly, the inclusion of substantive measures does not take away from the ability, and need, of boards to increase the number of women or diverse directors on the board. Rather, it incentivizes these companies to increase gender diversity quantitatively while also ensuring that ample attention is given to the substantive gender parity within the boardroom. Because the absolute number of diverse candidates on the board will still likely be dispositive towards any measure of diversity, a company will still be incentivized to increase the number of women on the board. However, it provides well-intentioned companies the opportunity to organically grow their gender diversity.\textsuperscript{181}

Indeed, the data highlights the ties between these metrics. For example, women are more likely to stay on the board for longer if the ratio of women on the board is higher. Similarly, the presence of female directors in leadership roles is positively correlated to longer tenure of the rest of the female directors on the same board.

As a result, investors should expect companies to do more than just add an additional female to the board. For example, if the tenure of women is correlated with their likelihood to take-on leadership roles, as this Article finds, then investors must scrutinize companies in which women’s tenure is low. Similarly, if the presence of a woman in a leadership role can influence the willingness of women to stay longer, then investors must account for that in their valuation of the company’s gender diversity. If the fact that women are stretched too thin prevents them from taking on leadership roles, then investors should consider asking companies to limit the committee work that each director can do.

\textsuperscript{181} For example, if a board does not find a female director within the next year or two, but attempts to cultivate diversity within the board by affording women stronger voice it can explain this process to investors, allowing more time to increase the actual number of women.
Companies themselves must also take a proactive approach. Companies must examine their corporate culture, and make sure that women are not stretched too thin in their committee work, which could keep them from taking more active leadership roles. Companies may also want to consider term limits for leadership roles, allowing more women on the board to get an opportunity to serve in these roles. Companies should also promote structured and clear opportunities for women to move up into leadership roles, including mentorship.\footnote{182}

Public attention and regulatory emphasis should also take account of the substantive measures of board diversity. A focus on substantive measures of board diversity in addition to quantitative data on companies’ current and historic gender diversity ratios would accomplish the core of gender diversity initiatives by asking a simple, yet under-addressed, question: how do corporate policies and corporate governance truly advance gender diversity?

B. Regulatory Reform

What, regulatory intervention, if any, should be advocated for implementation in the United States?\footnote{183} Different jurisdictions around the world have approached the issue in diverse ways.\footnote{184} First, some countries have placed hard quotas on board composition, requiring either progressive representation by board size or simply requiring some minimum number of female directors.\footnote{185} Second, some countries have adopted softer laws otherwise known as comply-or-explain provisions.\footnote{186} These laws require boards to either meet a specific quota or state the

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183 See DHIR, supra note 19, at 71-94. Similarly, of a panel of five professors, researchers and administrators at the University of Wisconsin Journal of Law, Gender & Society Symposium in Spring of 2017, each panelist had either a different opinion on the necessity of quotas, as well as the implantation thereof. Symposium, Women in the Boardroom: The Social and Business Arguments that Challenge Executive Board Homogeneity, Panel Discussion, WIS. J. L. GENDER & SOCIETY (Feb. 10, 2017).


185 Id. See also DHIR, supra note 19, at 71-94

186 Id.
affirmative reasons for failing to comply with the law.\textsuperscript{187} Third, some
countries (including the United States) have placed minimal to no
regulations regarding gender diversity.\textsuperscript{188} As expected, the fewer or softer
the regulations, the lower the female board participation rate.\textsuperscript{189}

Though, generally speaking, tougher regulations lead to better
female board participation, other factors, including societal views towards
gender, have a significant impact on women’s board participation.\textsuperscript{190}
Sweden, for example, has no required quota for board participation, yet
still has some of the highest parity between the genders on boards.\textsuperscript{191} On
the other hand, a country like India has a hard law requiring at least one
female on every board.\textsuperscript{192} However, in complying with the regulation
83.5\% of Indian corporations have only one female on the board.\textsuperscript{193}
Further, only 59\% of boards have an independent female director.\textsuperscript{194}
Though both show extreme examples of the spectrum, these countries
prove the difficulty in addressing board gender parity. Thus, gender
diversity activists disagree as to whether a quota enacts the meaningful
change sought.

As a practical matter, quotas are an unlikely regulatory avenue in
the U.S., as they would face legal hurdles\textsuperscript{195} and are unlikely to garner
investor or regulatory support.\textsuperscript{196} Scholars point to University of
California \textit{v}. Bakke, in which the Supreme Court specifically rejected
quotas in affirmative action policies,\textsuperscript{197} as a likely legal hurdle to potential
gender quota regulation in the U.S.\textsuperscript{198} Equally important, many of the

\begin{footnotes}
\footnotetext[187]{Id.}
\footnotetext[188]{Id.}
\footnotetext[189]{Id.}
\footnotetext[190]{Id.}
\footnotetext[191]{Id.}
\footnotetext[192]{Id.}
\footnotetext[193]{Id.; News articles have documented the extreme examples of CEOs and Chairmen of boards
complying with the law by hiring wives and relatives of board members. Much of these articles suggest
that a substantial number of these directorships have only been extended to remain in compliance with
the regulations and are not due to a belief of any added value. Sehgal, \textit{supra} note 180.}
\footnotetext[194]{INSTITUTIONAL SHAREHOLDER SERVICES, INC. \textit{supra} note 180.}
\footnotetext[195]{See, e.g., \textit{supra} note 137; Darren Rosenblum, \textit{Parity/Disparity: Electoral Gender Inequality on
the Tightrope of Liberal Constitutional Traditions}, 39 U.C. DAVIS L. REV. 1119, 1172-78 (2006)}
\footnotetext[196]{See \textit{supra} note 132; Rosenblum & Roithmayr, \textit{supra} note 95; DHIR, \textit{supra} note 19.}
\footnotetext[197]{See Regents of Univ. of Cal. \textit{v}. Bakke, 438 U.S. 265 (1978).}
\footnotetext[198]{See Magnier & Rosenblum, \textit{supra} note 137.}
\end{footnotes}
changes in countries outside the U.S. that have implemented quotas arose due to public pressure. 199 However, even adamant supporters of affirmative action policies in the U.S. strongly disfavor mandatory quotas as a means for remediation, further undermining a focus on quotas as a remedy to the lack of gender diversity on the board. 200

Indeed, the SEC has mostly opted to use disclosure as a mean to address issues related to corporate governance and social cause. 201 It is not surprising then, that in the context of gender diversity in boardrooms, company disclosure has been the natural first step of many regulatory reform proposals. 202 Moreover, even if gender quotas were on the regulatory table, it is not clear that they would produce sufficient focus on substantive diversity, as quotas are merely an enhanced version of the existing quantitative focus.

The flaws in the current disclosure regime are therefore the logical starting point of any regulatory reform. Recognizing the incongruity between the intention and implementation of the regulation, the SEC under former Chairman Mary Jo White made boardroom diversity a priority 203 and House Representatives have recently urged the incoming SEC Chair to amend the diversity disclosure regime. This recent momentum could make a reconsideration of the current rules more likely, although the current political landscape may present challenges to such reform.

Yet, the current calls for regulatory reform by investors and legislators are focused on the addition of quantitative disclosure regarding the gender/race of directors. While an important step in itself, the findings presented in this Article highlight that a review of the current standards must also consider substantive diversity measurements. Therefore, if disclosure of gender diversity of boards is needed, as investors and

199 Rosenblum & Roithmayr, supra note 95 at 893.
201 See e.g. Hazen & Broome, supra note 144 at 44; Steven M. Davidoff & Claire A. Hill, Limits of Disclosure, 36 SEATTLE U. L. REV. 599, 605 (2013) (“Disclosure is the sine qua non of the federal securities law.”). Yaron Nili, Out of Sight Out of Mind: The Case for Improving Director Independence Disclosure, 43 J. OF CORP. LAW, 101 at 104 (2018) (“in recent years, effective disclosure has taken on an increasingly pivotal role in corporate law. The SEC has attempted to increase transparency for investors in many regulated areas and topics”).
202 See e.g. DHIR, supra note 19, Packel supra note 72 at 219.
regulators alike have indicated, then a more complete overhaul of the current diversity disclosure regime is warranted.

The findings in Part III.C. also underscore the potential intrinsic value of gender diversity disclosure. These findings suggest that the SEC’s disclosure regime, if properly modified to address its current deficiencies, could be an appropriate avenue for addressing diversity issues on boards, including incorporating the concept of substantive diversity.

Consequently, the current calls for a disclosure reform should address two distinct issues. First, the SEC must address the current definition of diversity, to prevent companies from strategically diluting it. Second, any added disclosure requirements should include both quantitative and substantive measures of diversity.

1. The Definition of Diversity

Current SEC disclosure rules focus on whether and how a company considers diversity. As developed above, the current legal framework fails to ensure even this modest task. As discussed in Part III.C, one of the biggest flaws in diversity disclosures is the ability of boards to self-define diversity.\(^{204}\) A company can define diversity broadly, so long as that definition is provided to investors.\(^{205}\) Unfortunately, this provides companies with the opportunity to include any and all potentially diverse characteristics, therefore diluting the specific interest in gender diversity. For example, companies may include “differences of viewpoint” as a measure of diversity.\(^{206}\) If a company defines itself as diverse merely because it has “difference of viewpoints,” then how is an investor expected to evaluate that board?

Permitting companies to define diversity allows the company to include all of the aspects of diversity the company values. However, any regulation should still include a specific set of gender diversity measures,\(^{207}\) for which each company must provide data, in order to promote homogeneity amongst corporate diversity disclosures. By

\(^{204}\) See DHIR supra note 19, at 230 (addressing the issue of the current definition of diversity).


\(^{207}\) The focus of this article is on gender diversity. Clearly, a case can be made for including potentially other diversity areas, but this is not the purview of this article.
requiring companies to define diversity clearly, using a prerequisite list of clear and measurable diversity factors, investors can consciously vote for or against boards meeting their expectation of diversity.

2. Adding a Substantive Gender Diversity Disclosure

The deficiencies in the current disclosure regime extend beyond the open-ended treatment of diversity or the lack of effective disclosure by companies regarding their approach to gender diversity on the board. Investors are also left in the dark regarding the actual diversity in the boardroom. Recognizing the value in accounting for both quantitative and substantive measures, this Article calls for the adoption of a Substantive Gender Diversity Disclosure (“SGDD”) that would be required of each company. The SGDD would require the company to provide a clear table, similar to other disclosures such as director and executive compensation, that summarizes many of the measures highlighted above. The data should include the current ratio of women to men on the board, the specific roles of women on the board compared to men (with a specific breakdown of leadership positions), a comparative breakdown of age and tenure and any additional specific insight into how its board and its corporate structure promote diversity.

Currently, most diversity statements included in proxy forms are drafted in narrative form, and remain vague, simply stating all diversity factors that are potentially relevant into nominating directors. Diversity disclosures should, in addition to the definition of diversity, clearly state how diverse a company is by using both measurable metrics (quantitative and substantive) and company policies promoting diversity within the boardroom and the company. The SGDD, as a concept, is meant to carry this function.

Indeed, requiring companies to provide substantive disclosures of board diversity, in addition to quantitative data on their current and historic gender diversity ratios, would accomplish the core of gender diversity initiatives: do we truly achieve gender diversity?

An SEC amendment to its diversity rules that would potentially include the suggested SGDD table carries several benefits. First, it would

208 For similar proposals see DHIR, supra note 19, at 231-32; Packel supra note 72 at 235-236.
enable the adoption of a unified SGDD that would allow shareholders to easily compare companies and ensure that all companies are playing on the same playing field. It would also ensure that changes to diversity on boards would occur more rapidly, as current shareholder initiatives are only slowly beginning to gain steam. Finally, SEC led change will also carry with it better enforcement of the new rules. Such institutional enforcement would be lacking through other channels.

While the specific design of the SGDD should be crafted after a detailed regulatory rule making process, it is important to underscore that the SEC could create a semi-flexible SGDD. By requiring disclosure regarding certain issues, but allowing companies to experiment with policies, measurements, and other disclosed metrics, this flexibility will allow for some organic growth and improvement.

C. Implementation through Other Means

While a change to the current SEC rules would be the most straightforward route for addressing gender diversity disclosure, the current SEC, under the new chair, may be unwilling to take any regulatory steps in the near future. Therefore, companies could hypothetically adopt a SGDD, or similar initiatives, on their own through two other means. First, companies may voluntarily adopt improved disclosures based on the mounting pressure from large investor groups. Second, SGDD could be advocated via the shareholder proposal mechanism. While both are plausible avenues, each suffers from drawbacks that would make them less effective than a regulatory reform route.

1. Organic Growth

This Article began by showing the drastic change over the first few months of 2017 with regards to the view of diversity within the boardroom.\textsuperscript{210} State Street and BlackRock specifically have drawn a line in the sand regarding gender diversity: promote more women or risk being voted out.\textsuperscript{211} The impact will likely soon be felt as companies actively look to add women onto the board to avoid an inevitable negative vote. The benefits of this route are clear. Companies will organically move towards more gender diversity, with minimum regulatory burdens and without rapid shocks.

\textsuperscript{210} See infra Introduction.

\textsuperscript{211} Atmeh et. al., supra note 171; REUTERS, supra note 171.
However, while this strategy will likely continue to increase the number of women in board directorships, it is not clear that it would lead to better company disclosures. Investors (and very recently Congress) have been advocating for improved quantitative disclosure for several years, with no success.\footnote{212}

2. Shareholder Proposals

Recent years have brought to the forefront the shareholder proposal\footnote{213} as an effective tool for corporate governance changes.\footnote{214} The increasing importance of proxy advisers coupled with the credible threat of “withhold” campaigns against companies that ignore shareholder concerns have led corporations to pay closer attention to precatory (non-binding) shareholder proposals that receive significant support by shareholders. The guidelines of ISS and Glass Lewis, the two largest and most influential proxy advisory firms, require companies to act upon shareholder resolutions that pass.\footnote{215} If management ignores successful shareholder proposals, proxy advisory firms are likely to recommend against votes on individual directors (or the entire board), and such directors could be subject to potential withhold campaigns. In essence, such practice has transferred the so-called “precatory” shareholder proposals into “quasi-binding” resolutions. This suggests that companies nowadays face more severe sanctions if an unwelcomed shareholder proposal passes.\footnote{216}

\footnote{212 See supra note 12 and accompanying text.}
\footnote{213 According to Rule 14(a)(8), an individual shareholder can submit a shareholder proposal if they continuously hold at least $2,000, in market value, or 1% of the company’s stock for at least one year prior to the shareholder meeting. Shareholder Proposals, 17 C.F.R. § 240.14a–8 (2011).}
\footnote{216 See Kobi Kastiel, Against All Odds: Shareholder Activism in Controlled Companies 48-49 (Olin Working Paper, 2015) (discussing the mechanism behind the increasing disciplinary effect of 14a-8 shareholder proposals); Yonca Ertimur et. al., Board of Directors’ Responsiveness to Shareholders: Evidence from Shareholder Proposals, 16 J. CORP. FN. 53 (2010), https://www.researchgate.net/publication/222704004_Board_of_Directors%27_Responsiveness_to_Shareholders_Evidence_from_Shareholder_Proposals (providing empirical evidence that managers and directors who ignore majority vote shareholder proposals are more likely to face sanctions in the labor market).}
Indeed, the ability of shareholders to discipline board members through withholding votes from directors’ nominees has become a major way for passive shareholders to express their voice within the current regulatory framework and to signal to the board that they are dissatisfied with its actions. In light of this new reality, some companies prefer to negotiate and work with the proposing shareholder to enact some change without having it go to a shareholder vote.\textsuperscript{217} If the shareholder is successful with either method, then the company will likely change its corporate governance to avoid future negative votes for failing to enact the proposal.

In the area of diversity disclosure, shareholders can submit proposals that are individualized to each company or, more than likely, in the form of a standard proposal. Shifting the aim of the shareholder-initiated proposals from the gender ratios or quantitative disclosure to substantive disclosure carries an additional benefit. It is a more modest request from the company and one that falls within the core rights of shareholders. By merely requiring the company to provide meaningful backwards looking information on diversity, the company is not necessarily required to change anything other than providing an additional disclosure. It is likely that requiring the disclosure will produce these changes as companies attempt to appease shareholders through their disclosures. However, these changes do not directly arise from the shareholder proposal, but rather are indirect effects of transparency.

Not only will the less stringent requirements of the disclosure offer a better opportunity for adoption, but the support of passive investors will also make these proposals more likely to pass. With CalPERS and CalSTRS highly invested in many passive funds,\textsuperscript{218} their support for gender diversity will flow through to the voters of these passive funds. Thus, a shareholder proposal supporting gender diversity is likely to be viewed and voted positively by these funds. In turn, companies will likely

\textsuperscript{217} Stephen Joyce, \textit{Negotiations Lead to Fall in Proxy Access Proposals}, BLOOMBERG (June 30, 2016) (reporting an increasing number of companies negotiating settlements with shareholders led to a material decrease in the number of shareholder proposals seeking proxy access in 2016), https://www.bna.com/negotiations-lead-fall-n57982076332/.

\textsuperscript{218} See State Street Global Advisors Launches Gender Diversity ETF to Help Investors Seek a Return on Gender Diversity, BUSINESS WIRE (Mar. 7, 2016), http://www.businesswire.com/news/home/20160307005890/en/State-Street-Global-Advisors-Launches-Gender-Diversity ("SSGA was inspired to develop the Index by [CalSTRS] efforts to move the needle on gender diversity in corporate America, especially for women in leadership positions").
be more inclined to adopt shareholder proposals before shareholder vote knowing the likelihood of passive fund support is high.

However, shareholders have yet to focus on the substantive aspect of diversity, opting to focus on the more tangible quantitative issue. Indeed, while shareholders are currently submitting proposals for gender diversity initiatives, most of these proposals suggest a company establish practices for identifying and adding female board directors. However, the focus in these proposals is still more in the nomination process rather than the roles directors take within the board.

Moreover, the shareholder proposal route has yet to garner sufficient support. Gender diversity proposals have struggled to attain the requisite votes to put the proposal into action, partially since some of the largest shareholders of companies routinely withhold votes on social issues, as they prefer to engage directly with the company. In 2016, only 1 in 9 of such proposals received the votes necessary to pass. However, these numbers do not account for submitted proposals that were settled prior to vote. It is possible that some of these proposals were negotiated on or completely enacted by the company before the shareholder vote and therefore never had an opportunity to be voted on.

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219 Katz & McIntosh, supra note 55; Green & Chasan, supra note 54.

220 For example, Discovery Communications received the following proposal in 2016: Shareholders request that the Board of Directors prepare a report by September 2016, at reasonable expense and omitting proprietary information, on steps Discovery Communications is taking to foster greater diversity on the Board over time including but not limited to: (1) The inclusion of women and minority candidates in every pool from which Board nominees are chosen and our company’s plan to advance Board diversity; (2) An assessment of challenges experienced and progress achieved.” Discovery Comm., Inc., Proxy Statement (Schedule 14A) (Mar. 30, 2016). In 2017, Discovery then received the following proposal: “Shareholders request that the Board of Directors of Discovery Communications adopt a policy for improving board diversity (the “Policy) requiring that the initial list of candidates from which new management supported director nominees are chosen (the “Initial List”) by the Nominating and Corporate Governance Committee should include (but need not be limited to) qualified woman [sic] and minority candidates. The policy should provide that any third-party consultant asked to furnish an Initial List will be asked to include such candidates.” Discovery Comm., Inc., Proxy Statement (Schedule 14A) (Apr. 5, 2017).


222 Katz & McIntosh, supra note 55; Green & Chasan, supra note 54.

223 See, e.g., Environmental and Social Concerns, VANGUARD, https://about.vanguard.com/investment-stewardship/social-concerns-investing/ (last visited July 8, 2017) (noting the differences amongst investors and the difficulty to support the views amongst these investors).

224 Katz & McIntosh, supra note 55; Green & Chasan, supra note 54.

225 Joyce, supra note 217.
D. Potential Objections

This section considers and responds to several possible objections to the proposed disclosure reforms, and the focus on substantive disclosure.

1. “Substantive Murkiness”

On its face, substantive diversity disclosures will make it more difficult for investors to determine whether a company has sufficiently increased its diversity. Quantitative measures are simple. A company reaches a pre-defined percentage threshold or some absolute number and is therefore determined to be sufficiently diverse. Therefore, the murkiness that a focus on a substantive disclosure may create might detract from such efforts.

However, this argument misses the mark on several fronts. First, as discussed above, the design of the substantive disclosure can establish easy quantifiable parameters such as tenure, lead roles, committee chairs and etc. These quantifiable measures would allow for more clarity into the substantive parity in the boardroom, while also providing clear benchmarks of comparison. Second, the substantive disclosures are not mutually exclusive with the general push for more diversity in the board nomination process. To the contrary, the suggested SGDD would include the quantitative data. The addition of the substantive data may incentivize companies to take additional substantial steps to prove they have met the requisite diversity.

2. Over-inclusiveness

Some critics may argue that current disclosure requirements are sufficient and that any additional disclosures would lead to over-inclusiveness and to overloading investors with information. Further, to counter the possible concerns of investors, companies may provide information that is clearly immaterial, placing unnecessary costs on the company and for investors who would need to comb through this information.

However, this argument is also lacking in several aspects. First, forcing the board to be over-inclusive, and shining light on substantive diversity disclosure allows for a better assessment of the board substantive diversity. Second, shareholders are more than capable of properly digesting this information, with the help of sophisticated investors and proxy advisers. Third, the general trend in current corporate governance is
for more information rather than less.\textsuperscript{226} There is no reason to deviate from this approach when it comes to diversity.

3. Questionable Diversity Practices Will Persist

A third potential objection is that changing disclosure requirements will not cure the problem of substantive parity in the boardroom. Companies may react by better camouflaging their board practices, and some investors will look differently at different substantive markers, placing different “diversity scores” for each company.

However, the proposed changes are designed to increase investor transparency, rather than force substantive parity on companies. A focus on substantive factors in addition to the quantitative ratios would better educate investors of their company’s board true diversity. In turn, better investor awareness to both quantitative and substantive aspects of diversity might allow each company to strike its own optimal diversity balance, both in terms of quantity and roles that women take on the board.

4. Private Ordering

If substantive disclosure is important, and value enhancing, then supporters of the market view could ask why we do not see companies adopt it without regulatory intervention. There are several reasons, however, to be skeptical of reliance on the market alone to drive these changes. First, companies lack the incentive to provide this information to shareholders, as it may reveal the true diversity gap on the board, even where the number of women director is relatively high. Second, while shareholders could value the substantive aspect of diversity, focusing on the quantitative aspect has seemed to be the focus of their initiatives. As explained above, some of it is a strategic focus on more observable issue, but this Article contends that some of it is also due to the lack of current attention to the roles women take in the boardroom after being elected. Finally, market movement is already happening but it is inherently slow. The Article highlighted two “private ordering” avenues through which we may see a move towards substantive diversity disclosure. However, the Article also highlighted the benefits that a centralized regulatory intervention may provide, one that the market is unlikely to produce.

\textsuperscript{226} Mary Jo White, Statement at an Open Meeting on Regulation S-K Concept Release, SEC (Apr. 13, 2016), https://www.sec.gov/news/statement/white-statement-1-041316.html (highlighting the role and importance of improved and more detailed disclosures to shareholders).
Conclusion

The current SEC regulatory framework fails to adequately disclose to investors the substantive representation of female directors on the board or even provide the ratio of women on the board. While previous studies have introduced evidence that social and economic reasons exist for increasing gender diversity, many companies have lagged behind in introducing policies aimed at searching for and cultivating gender diversity. The key argument developed in this Article is that while a focus on the number of women on boards is important and a central first step in the quest for true gender parity, it cannot be the only lens through which gender diversity is examined. Rather, investors and boards should also focus on a substantive disclosure of female boardroom participation.

Substantive disclosures complement the quantitative data in that they provide a more nuanced account of the substantive diversity in the boardroom, while also providing companies with the ability and flexibility to draft policies and propose corporate changes applicable to their situation. Rather than encouraging companies to meet some specific gender diversity metric, companies will be incentivized to delve deeper into gender diversity and disclose their method for doing so. This provides investors with the possibility of meaningful change they seek and improves transparency into the corporate governance procedures of leading companies. Coupled with prior studies indicating positive correlations between gender diversity and company performance, increased disclosure could provide positive benefits to corporate America and society at large.

Equally important, recognizing the import of substantive gender diversity necessitates further research into the intra-board dynamics. This Article has used available data to examine several disparities between the genders. However, our understanding of substantive diversity would greatly benefit from additional data points on the respective roles that the genders take in the boardroom.

The recent focus on board gender equity has started to move the needle, but gender equity is still sorely missing from most public companies in the U.S. The substantive and leadership gaps between the genders on public companies’ boards must shift gender diversity advocates away from a micro-focus on numbers. The past year proved that change is possible. Now, investors and regulators must turn their attention beyond the numbers to the systematic disparities between
women and men on boards. If women are not moving into positions of power on boards, or are otherwise treated differently on boards, we need to know why, and we need to understand the cost.