

**Insights**

# **FCA CONSULTATION ON DIVERSITY AND INCLUSION ON BOARDS**

29 July 2021

## **SUMMARY**

Due to a lack of standardised and mandatory transparency about diversity on listed company boards, particularly those outside of the FTSE 350, and in response to the demand from investors to focus on topics around ESG, the FCA is proposing further changes to the Listing Rules and DTRs to introduce a comply or explain statement on diversity and inclusion at board level.

## **Background**

The final report of the Hampton-Alexander Review (February 2021) showed that significant progress has been made and that women now make up around 40%, in aggregate, of the non-executive directors of FTSE 350 boards. However, the Review showed that progress fell short in respect of its second goal regarding women in the highest executive roles, such as CEO - there are only 17 female CEOs across the FTSE 350 and only four companies in the FTSE 350 with a woman CEO and Chair duo. Broader data from the Gender Equality Index shows the UK is fourth on the (European) index but lags badly on some indicators such as the percentage of women or those self-identifying as women who are chairs of Boards.

The Parker Review 2020 reported that targets for representation of 'persons of colour' on boards have not been met - there are 172 Directors 'of colour' in the FTSE 350, this amounts to only 7.5% of the total number of Directors. In the FTSE 100, 31 out of 83 companies (37%), and 119 out of 173 companies (69%) who provided data from the FTSE 250, had no persons of colour on their boards.

In terms of the international picture around diversity, the EU previously rejected draft legislation which would have required a quota of 40% for women's representation on listed boards. Since this proposal, there have been no other proposals in the EU for other forms of diverse representation such as ethnicity or social mobility. However, in the US, NASDAQ proposed in December 2020, a new listing rule to require all companies on NASDAQ's US Exchange to publicly disclose consistent and

transparent diversity statistics on their board of directors. The US SEC is expected to announce this summer whether it accepts or rejects the proposal.

## Proposals

The FCA is consulting on proposed changes to the Listing Rules to require UK and overseas companies with equity shares and GDRs, which are listed on the premium or standard segments of the Main Market of the London Stock Exchange (other than 'shell companies' and open-ended investment companies) to publish annually in their annual financial reports:

- A 'comply or explain statement' on whether they have achieved the following targets:
  - At least 40% of the board should be women (including those self-identifying as women). This goes beyond the 33% target set by the Hampton-Alexander Review.
  - At least one of the senior board positions (Chair, Chief Executive Officer, Chief Financial Officer or Senior Independent Director) should be a woman (including individuals that self-identify as a woman).
  - At least one member of the board should be from a non-white ethnic minority background. Note that this aligns with the targets set out in the Parker Review.
- Standardised data on the composition of their board and most senior level of executive management by gender and ethnic background.

These changes are designed to create better, comparable information on the diversity of company boards and executive management and enable shareholders and investors to understand how companies are progressing in this area. The FCA is also seeking views on whether it should consider, in future, requiring data on representation by sexual orientation at these levels and/or extending the diversity data to those just below executive-level management.

Currently under DTR 7.2, companies in-scope must disclose in their corporate governance statement the diversity policy applied to their board with regard to matters such as age, gender, or educational and professional backgrounds, or explain where no such diversity policy is applied. The FCA is also proposing to expand these rules by requiring companies to disclose, in their corporate governance statement, how any diversity policy applies to key board committees i.e. audit, remuneration and nomination committees, and to consider broader aspects of diversity, for example sexual orientation, disability and socio-economic background. The expansion of the definition of diversity is likely to be well-received as the previous version was considered quite limited and will provide additional information for investors to consider as part of their investment decisions.

In essence, these proposed changes would bring UK Government targets within the regulatory framework of the UK Listing Rules and the purview of the FCA. It will build on and enhance the existing recommendations under the Hampton-Alexander and Parker Reviews and reinforce existing

targets by making them regulatory requirements. It is clear that diversity on boards is becoming of increasing importance not only to institutional investors but regulators as well.

This [consultation](#) closes on 20 October 2021.

[Previous blog on the findings of the final Hampton-Alexander Review](#)

## RELATED PRACTICE AREAS

- UK Public Company
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## MEET THE TEAM



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