



LEGAL ALERT

July 27, 2020

Should You Respond to the ISS Survey on Board Diversity?

The proxy advisory firm of Institutional Shareholder Services (“ISS”) is encouraging public companies to provide greater insight concerning the diversity of their board of directors and Named Executive Officers (“NEOs”).

To this end, a public company’s investor relations office or corporate secretary may receive a copy of the attached letter from ISS requesting information on the self-identified race/ethnicity of the company’s directors and its NEOs to the extent that the company is willing to provide such information.

As indicated in the letter, ISS is not seeking any confidential information or material non-public information or any other information that the company is not authorized to disclose.

If a company would elect to provide information to ISS that is not subject to the foregoing caveats, ISS states, ***“it does not agree to maintain in confidence any information that you may provide.”***

Conversely, if a company elects not to respond to the request from ISS for this information, it should expect that ISS may disclose the company’s election not to respond, either as part of an aggregate number of non-respondents or in a listing of companies that did not respond.

If you receive this letter from ISS, you should carefully consider the following issues:

- Should the company respond to the ISS request?
- What are the consequences to the company if it doesn’t respond?
- If the company responds, what is the source of the data provided, particularly as the information requested is the “self-identified race/ethnicity” of each board member and NEO?
- If the company has not previously disclosed such data, would the data constitute “material non-public” information?

Should you require any assistance in evaluating responding to an ISS inquiry, please contact:

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Dear Investor Relations Officer:

On behalf of Institutional Shareholder Services, I am writing to request your assistance in obtaining certain information related to [REDACTED] board of directors and other leaders.

Specifically, we are seeking information on the self-identified race/ethnicity of each of the company's directors and named executive officers (NEOs), to the extent that the company and the individual directors or NEOs are willing to provide this. This can be done using the attached Excel file which allows you to choose from multiple categories that are largely drawn from the OMB Standards for the Classification of Race and Ethnicity. The file allows for up to three classifications per individual as well as a free-text field to provide supplemental information as needed. If the list of individual directors and NEOs shown are not up to date (for example, a recently added or departed board member), modifications may be reflected in the file, should you wish to do so.

Once the categorization of your board members and NEOs is recorded in the Excel file, we then ask you to save and return the information to: Iss_Data_Support@issgovernance.com.

You may know that there is much focus on the area of race and ethnicity currently, including by many institutional investors. Data accuracy is paramount for ISS, our clients and for the companies that we cover, including in this important area. We intend to use this information within our product sets to provide our clients with a more holistic picture of board and leadership diversity across their investment portfolios and, more broadly, to help ensure that all stakeholders have accurate and complete information as they consider the wider debate concerning the state of corporate diversity beyond gender. On this last point, ISS intends to engage with a broad cross-section of stakeholders on the potential need to expand the use of self-identified race and ethnicity director data within our ESG ratings methodologies, voting research and policies, and other offerings as it applies to this topic. We look forward to receiving your input alongside that from institutions, professional services firms, other corporations, academics, and others over the coming months.

In conducting this outreach, ISS does not seek to receive any confidential information, any material non-public information, or any information that you are not authorized to disclose to us. ISS may use and does not agree to maintain in confidence any information that you may provide in response to this outreach. ISS' clients include investors who trade in publicly-traded securities and no information that is provided as part of this outreach shall in any way restrict ISS' business and operations nor the securities trading activities of our clients.

We appreciate your time and effort to provide us with an accurate profile of the race and ethnicity of your board members and NEOs, to the extent you are able to do so. Should you have any questions, please contact us at Iss_Data_Support@issgovernance.com

Sincerely,

Marija Kramer
Head of ESG
Institutional Shareholder Services