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NOMINATING/ GOVERNANCE COMMITTEE FUNDAMENTALS GUIDE

The Nominating/Governance Committee Fundamentals Guide was created for Corporate Board Member's Board Leadership Program with content provided by Spencer Stuart.

Table of Contents

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03 About This Guide

SECTION 1

Committee Responsibilities

- 06 Listing Requirements
- 08 Key Responsibilities
- 10 Disclosure Requirements
- 12 Disclosure Trends

SECTION 2

Committee Operations

- 16 Composition & Onboarding
- 18 Role of the Chair
- 20 Meetings & Agendas
- 22 Increasing Effectiveness

SECTION 3

Oversight of Board & Committee Composition

- 28 Recruitment & Nomination
- 30 Requirements & Considerations
- 32 Diversity
- 34 Onboarding New Directors
- 36 Board Leadership
- 38 Spotlight on Board Composition

SECTION 4

Oversight of Board Function & Evaluations

- 42 Corporate Governance Principles
- 44 Continuing Education
- 46 Evaluations: Board
- 48 Evaluations: Individual Directors
- 50 Evaluations: Disclosure and Engagement

SECTION 5

Succession Planning

- 54 CEO Succession
- 56 CEO Succession: Best Practices
- 60 Board Succession

62 Conclusion

65 For More Information

Nominating/Governance Committee Fundamentals Guide

The Nominating/Governance Committee Fundamentals Guide was created for Corporate Board Member's Board Leadership Program with content provided by Spencer Stuart's North American Board Practice. The material in this guide is drawn from Spencer Stuart research, the *Spencer Stuart U.S. Board Index* and other Spencer Stuart board governance publications.

In addition to extensive work with clients on director recruitment, board succession and board assessments, Spencer Stuart has long played an active role in corporate governance by exploring—both on its own and with other prestigious institutions—key concerns of boards and innovative solutions to the challenges they face. In addition, Spencer Stuart sponsors and participates in several acclaimed director education programs, including programs for first-time and next-generation directors.

Director Fundamentals Knowledge Center

The Nominating/Governance Committee Fundamentals Guide is part of Corporate Board Member's Director Fundamentals Knowledge Center, an innovative resource for public company boards that provides directors with a multi-faceted learning experience through concise guidebooks and interactive training courses. The goal of the knowledge center is to arm new directors with the fundamental training needed to be an effective director from day one.

The Director Fundamentals Knowledge Center consists of the following suite of resources:

- **Director Fundamentals Guide & Training Course**
- **Audit Committee Fundamentals Guide & Training Course**
Content provided to you with support from PwC
- **Compensation Committee Fundamentals Guide & Training Course**
Content provided to you in partnership with FW Cook
- **Nominating/Governance Committee Fundamentals Guide & Training Course**
Content provided to you in partnership with Spencer Stuart

SECTION 1:

COMMITTEE RESPONSIBILITIES

Expectations of the nominating/governance committee have grown, as investors step up demands for greater transparency into boards' approaches to optimizing their composition. This section looks at listing and disclosure requirements related to the nominating/governance committee, the committee's key responsibilities and the trends we're seeing in disclosure.

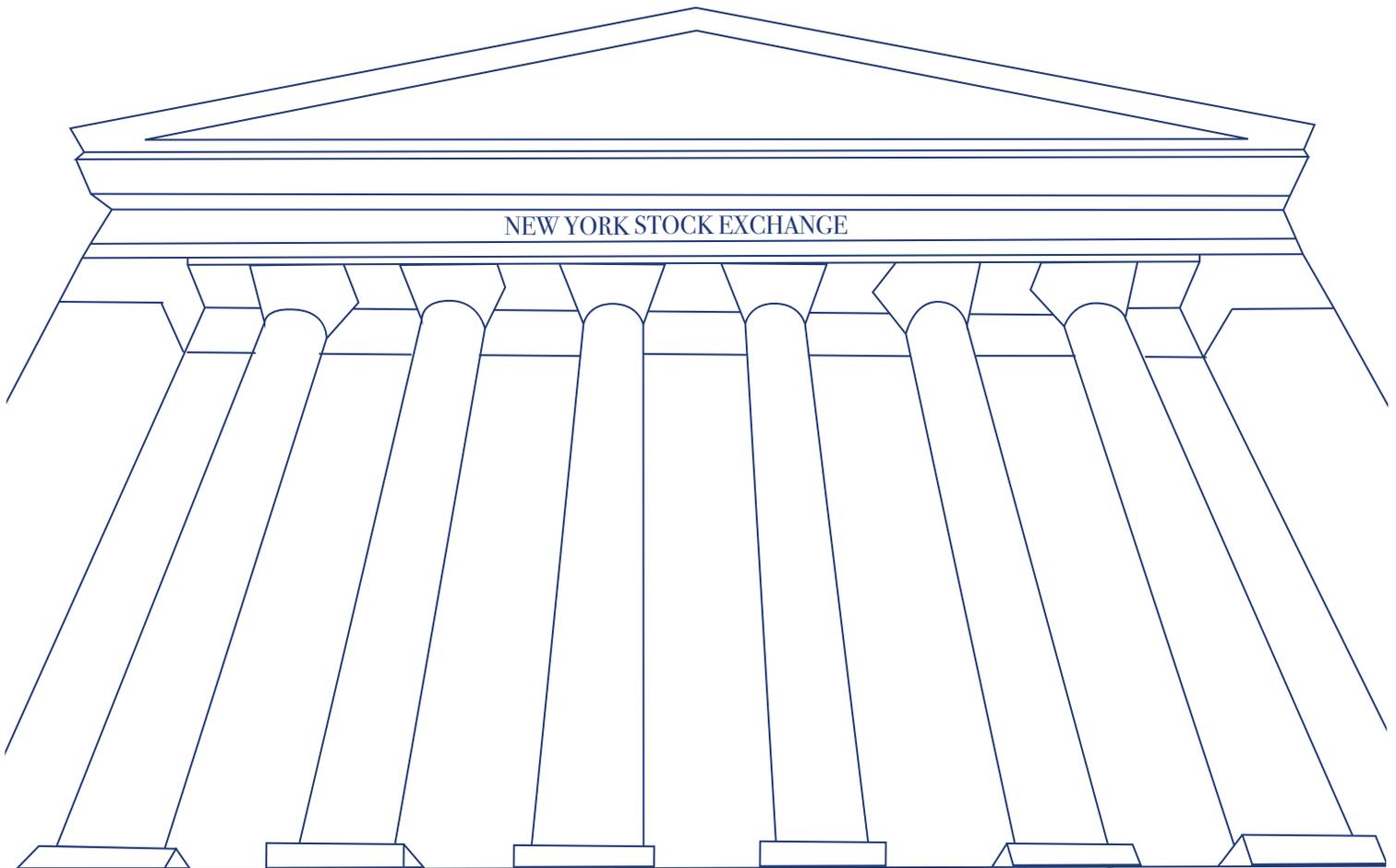


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Listing Requirements

With institutional and activist investors increasingly scrutinizing the composition, diversity and quality of boardrooms, the spotlight is on the directors responsible for nominating individuals to serve on the board. Today, investors want to understand why directors are the best fit for a company's current and forward-looking risks and strategies, and they want evidence that the board has robust processes and strategies for optimizing the board composition. The result: expectations of nominating/governance committees are on the rise.



U.S. publicly traded companies, with limited exceptions, are generally required to have some form of independent oversight of director nominations. However, the requirements for the underlying structure for director nominations vary by exchange.

LISTING REQUIREMENTS

New York Stock Exchange

Listed companies must have a nominating/governance committee composed entirely of independent directors.

Exception: NYSE-listed controlled companies are exempt from certain corporate governance listing standards, including rules requiring that nominating/governance committees consist of independent directors.

NASDAQ Stock Market

Director nominees must be selected or recommended for the board's selection, either by:

- (A) independent directors constituting a majority of the board's independent directors in a vote in which only independent directors participate, or
- (B) a nominations committee comprised solely of independent directors.

Exception: if the nominations committee is comprised of at least three members, one director, who does not qualify as an independent director and is not currently an executive officer or employee or a family member of an executive officer, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders. A company that relies on this exception must disclose, either on or through the company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

Key Responsibilities



New York Stock Exchange requirements set a baseline for the roles and responsibilities of nominating/governance committees of its listed companies. It requires nominating/governance committees to have a written charter (posted on the company's website) detailing roles and responsibilities, which at minimum must address:

- Identifying individuals qualified to become board members, consistent with criteria approved by the board;
- Selecting, or recommending that the board select, the director nominees for the next annual meeting of shareholders;
- Developing and recommending to the board a set of corporate governance guidelines applicable to the corporation;
- Overseeing the evaluation of the board and management; and
- Overseeing an annual performance evaluation of the committee.

The NYSE suggests that nominating/governance charters also address the qualifications, appointment and removal of committee members, committee structure and operations, and committee reports to the board.

The NASDAQ Stock Exchange requires its listed companies to certify that they have adopted a formal written charter or board resolution, as applicable, addressing the nominations process and any related matters required under federal securities laws.

TODAY, THE ROLES AND RESPONSIBILITIES OF NOMINATING/GOVERNANCE COMMITTEES FREQUENTLY ENCOMPASS THE FOLLOWING AREAS:

- **Board composition:** Evaluate the expertise, qualifications, skills, attributes, diversity, contributions and independence of incumbent directors and director candidates; oversee ongoing director succession planning; develop and recommend criteria for board composition and director candidates; lead searches for new director candidates; recommend individuals for election or re-election to the board.
- **Committee structure and composition:** Review and recommend the structure, composition and leadership of standing or ad hoc board committees.
- **Corporate governance:** Develop and recommend corporate governance guidelines; oversee and recommend changes to the corporate governance framework (including board procedures and practices, bylaws, certificate of incorporation and corporate governance guidelines).
- **Evaluations:** Develop, recommend and oversee the evaluation processes of the board, board committees and individual directors.

OTHER RESPONSIBILITIES THAT MAY BE HANDLED BY THE NOMINATING/GOVERNANCE COMMITTEE INCLUDE:

- **Business conduct and ethics:** Develop, oversee and recommend changes to the code of ethics for executives and directors; review and recommend waivers from the code of conduct for executives and directors.
- **CEO succession planning:** Oversee CEO and senior management development and succession planning.
- **Director compensation:** Review and recommend changes to director compensation.
- **Corporate social responsibility:** Oversee strategy and risks related to company sustainability and environmental/social/governance (ESG) issues, including political and campaign contributions.

Disclosure Requirements

Disclosures related to the nominating/governance committee, its roles and responsibilities and individual directors are set by stock exchange requirements and rules promulgated by the U.S. Securities and Exchange Commission (SEC). Companies should engage qualified legal counsel to navigate the rules and ensure compliance with the requirements.

The intent of the SEC disclosure rules is to provide shareholders sufficient information to evaluate the board and individual directors and make informed voting decisions. The rules do not mandate the format of the disclosures. As a result, companies have the flexibility to use a variety of presentations to provide the information to investors.

As a start, all U.S. public companies must disclose if they have a standing nominating/governance committee (or a committee serving a similar function), and, if so, they must list the names of committee members, detail the number of meetings held during the last fiscal year and provide a brief description of the committee's functions. Companies without a standing nominating/governance committee must disclose the board's rationale for not having such a committee and identify the directors participating in the consideration of director nominations.

SEC RULES ALSO MANDATE A VARIETY OF DISCLOSURES ABOUT THE PROCESS FOR NOMINATING DIRECTORS, INCLUDING:

- **Does the nominating/governance committee have a charter?**
 - IF YES:** Disclose whether the charter is available on the company website (and include the website address) or is disclosed as an appendix to the proxy statement at least once every three years (with year of disclosure provided) or after any material amendment.
- **Does the nominating/governance committee have a policy regarding the consideration of director candidates recommended by shareholders?**
 - IF YES:** Describe the material elements of the policy, including whether the committee will consider candidates recommended by shareholders. If the committee will consider shareholder-recommended candidates, describe the procedures to be followed by shareholders submitting recommendations.
 - IF NO:** State that fact and disclose the board's basis for not having such a policy.
- **What, if any, are the specific minimum qualifications that must be met by committee-recommended director nominee(s) and the specific qualities/skills necessary for one or more directors?**
- **What is the process for identifying and evaluating director nominees, including shareholder-recommended nominees, and are there any differences in how the nominating/governance committee evaluates shareholder-nominated candidates?**
- **Is diversity considered in identifying nominees or directors?**
 - IF YES:** Describe how diversity is considered. If there is a policy regarding the consideration of diversity, disclose how the policy is implemented and how its effectiveness is assessed.
- **What are the source(s)—shareholder, non-management director, CEO or other executive officer, third-party search firm or other—of each first-time nominated, non-executive nominee approved by the nominating/governance committee for inclusion on the proxy card?**
- **What function(s) are performed by any third party paid to identify or evaluate nominees (or assist with the identification or evaluation of nominees)?**
- **What are the names of any nominees submitted for consideration by a shareholder or group owning at least 5 percent of the stock for at least one year and the identity of the 5 percent shareholder or group—provided both give their consent—and did the nominating/governance committee choose to nominate any of the potential candidates?**



IN ADDITION TO INFORMATION ABOUT THE NOMINATING PROCESS, U.S. PUBLIC COMPANIES MUST ALSO PROVIDE DETAILS ABOUT INDIVIDUAL DIRECTORS, INCLUDING:

- Names and ages of all current and nominated directors;
- All positions and offices within the company held by each director/nominee, the term of office and the periods served in each position;
- Any arrangements or understandings between any director/nominee and any other person under which the director/nominee was or is to be selected to serve on the board;
- Any family relationships between any directors/nominees and executive officers;
- Brief description of the past five years of business experience of each director/nominee, including occupations and employment;
- Other public company directorships held by each director/nominee during the past five years;
- Description of certain legal or regulatory proceedings during the past 10 years involving any director/nominee; and
- Specific experience, qualifications, attributes or skills supporting the conclusion that the director/nominee should serve on the board.

For More Information

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The information in this guide is by no means exhaustive. If you wish to dive deeper into the topics in this guide, we encourage you to visit Spencer Stuart's website, where you can find more information and also request a meeting for your board or nominating/governance committee. We also recommend that you discuss questions and issues with your company's general counsel or corporate secretary.

CONTACT SPENCER STUART



Julie Daum

Leader,
North American Board Practice
212.336.0263
jdaum@spencerstuart.com



Kevin Connelly

Leader, Board Advisory Services
312.321.8326
kconnelly@spencerstuart.com



George Anderson

Leader,
Board Effectiveness Services
617.531.5748
ganderson@spencerstuart.com



Ann Yerger

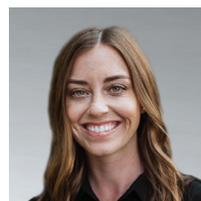
Corporate Governance Expert
202.741.8359
ayerger@SpencerStuart.com

CONTACT CORPORATE BOARD MEMBER



Scott Budd

Managing Director
203.889.4981
sbudd@chiefexecutive.net



Leigh Townes

Program Director
615.592.1213
ltownes@chiefexecutive.net

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At Spencer Stuart, we know how much leadership matters. We are trusted by organizations around the world to help them make the senior-level leadership decisions that have a lasting impact on their enterprises. Through our executive search, board and leadership advisory services, we help build and enhance high-performing teams for select clients, ranging from major multinationals to emerging companies to nonprofit institutions.

Privately held since 1956, we focus on delivering knowledge, insight and results through the collaborative efforts of a team of experts—now spanning 57 offices, 30 countries and more than 50 practice specialties. Boards and leaders consistently turn to Spencer Stuart to help address their evolving leadership needs in areas such as senior-level executive search, board recruitment, board effectiveness, succession planning, in-depth senior management assessment and many other facets of organizational effectiveness. For more information on Spencer Stuart, please visit www.spencerstuart.com.

CORPORATE BOARD MEMBER®

Corporate Board Member, a division of Chief Executive Group, has been the market leader in board education for 20 years. The quarterly publication provides public company board members, CEOs, general counsel and corporate secretaries decision-making tools to address the wide range of corporate governance, risk oversight and shareholder engagement issues facing their boards. Corporate Board Member further extends its thought leadership through online resources, webinars, timely research, conferences and peer-driven roundtables. The company maintains the most comprehensive database of directors and officers of publicly traded companies listed with NYSE, NYSE Amex and NASDAQ. Learn more at: www.BoardMember.com