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MORE WOMEN ON CORPORATE BOARDS? NOT SO FAST

JAYNE W. BARNARD* 

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INTRODUCTION

Recently, several commentators have suggested that the United States is on the brink of some kind of breakthrough when it comes to gender diversity on corporate boards. In a public appearance last November, for example, Commissioner Cynthia Glassman of the Securities and Exchange Commission (SEC) told a group of women directors that companies searching for new directors “have been forced to look outside the ‘old boys’ network’ to find and retain directors, and they are looking at a far wider and deeper talent pool, including women and minorities, than before.”1 A few weeks later, Andrea Jung, the CEO of Avon Products, Inc., expressed similar optimism about the future. “In the next five years,” said Jung, “I think you’re going to see dimensionally different opportunities for women.”2

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* James Goold Cutler Professor of Law, The College of William & Mary. Thanks to the Journal of Women and the Law, and especially Maren Schmidt, class of 2006, for putting together this excellent symposium. Thanks also to Pat Flynn and Julie Cohen Norris for their helpful support and suggestions.


This article examines the likelihood that within the next few years we will reach some kind of “tipping point” with respect to board diversity. It begins with a review of recent progress on this front, emphasizing the very slow rate at which women have joined corporate boards in recent years. The number of women directors has increased, to be sure, but scores of public companies still do not have any women on their boards and many, many boards still have just one woman director.

The article next examines arguments in support of the notion that boards are now and increasingly will be hospitable to women directors. The passage of the Sarbanes-Oxley Act, new listing requirements mandating director independence, and the increased demand for directors who are “financial experts” are just three of the reasons cited for optimism that women now have more opportunities for board appointments.

The article then explores some of the reasons that boards may continue to be unreceptive to increasing their gender diversity. Some of these reasons include the desire to maintain social comfort levels and board cohesion, narrow search criteria and procedures for selecting new directors, skepticism about the so-called “business case” in favor of appointing women to corporate boards, and plain old-fashioned sex discrimination.

The article describes, in addition, some of the disincentives women now face in considering the possibility of a board appointment when an invitation comes their way. Board service is considerably less attractive than it once was. The hours are long, the reputational risk is high, and liability concerns, though remote, are nonetheless real. Still, there are many reasons why a woman — indeed, any qualified candidate — would find board service an attractive opportunity. There is much to be gained by accepting a board appointment.

3. See infra Part I.
4. Of the 484 companies currently in the S&P 500, fifty-two have no women directors, 187 have one woman director, 180 have two woman directors, and only sixty-five have three or more. Telephone Interview with Julie Cohen Norris, Board Services Practice Specialist, Spencer Stuart, Boston, Mass. (Aug. 22, 2006).
5. See infra Part II.
8. See Glassman, supra note 1.
9. See infra Part III.
10. See infra Part IV.
11. See infra Part V.
Finally, the article will turn to the question, "how can we do better?"\(^{12}\) Even with the passage of the Sarbanes-Oxley Act, new listing requirements, professional searches, rising demand, etc., progress toward gender diversity on American corporate boards has just inched along. What actions by institutional investors, "norm entrepreneurs," government regulators, search firms, or others might jump-start the process of increasing the number of women directors? New regulatory initiatives in Europe might provide one answer,\(^{13}\) while private-sector projects across the United States offer other, perhaps more promising, suggestions.\(^{14}\)

I. RECENT PROGRESS TOWARD GENDER DIVERSITY ON BOARDS — MOVING AT A SNAIL'S PACE

How well have American boardrooms assimilated women in recent years? One answer, albeit a simple one, can be found in the surveys conducted annually by Korn/Ferry International, an executive search firm.\(^{15}\) According to recent survey results, women’s progress in acquiring board membership has barely inched upward over the past ten years.

![Graph showing corporate boards in the United States with one or more women](image)

Source: Korn/Ferry International

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12. See infra Part VI.
13. See infra Part VI(A).
14. See infra Part VI(B).
The consulting firm Catalyst provides a different, but no less discouraging, answer. As of September 30, 2004, the Fortune 100 firms had 1,196 board seats. Of those, 200, or 16.72 percent, were occupied by women. The figure for the Fortune 500 firms, as of the close of proxy season 2005, was 14.7 percent. This represents only a very modest increase over the previous decade.

Figure 2. Percent of Fortune 500 Board Seats Filled by Women

Source: Catalyst

In No Seat at the Table: How Corporate Governance and Law Keep Women Out of the Boardroom, Professor Douglas Branson takes a different, and more discerning, approach to this question. Looking at the proxy statements of the Fortune 500 companies in 2005, Professor Branson counted 5161 board positions in total and only 568 women filling any of those seats. Many of these women

17. Id.
20. Id. at 97.
filled more than one board seat, and some of them held as many as five or even more board positions.\footnote{Id. at 97-98.} Thus, even though the number of board seats held by women has increased over the past few years, Professor Branson concludes that "the actual number of women on [these boards] is slightly over 550, the size of a high school's graduating class."\footnote{Id. at 2.} Professor Steven Ramirez adds that "the bastions of corporate governance remain the nearly exclusive province of white males, with no realistic end in sight."\footnote{Steven A. Ramirez, Games CEOs Play and Interest Convergence Theory: Why Diversity Lags in America's Boardrooms and What To Do About It, 61 WASH. & LEE L. REV. 1583, 1583 (2004).}

In evaluating the slow progress that women have made, one must consider some hard facts. First, the primary source of board members traditionally has been CEOs and former CEOs,\footnote{In 2005, forty-one percent of male directors were active CEOs and twenty-two percent were retired CEOs. SPENCER STUART 2006 BOARD DIVERSITY REPORT 11 (2006), available at http://content.spencerstuart.com/sswebsite/pdf/lib/Board_Diversity_Report_2006.pdf (last visited Jan. 30, 2007) [hereinafter SPENCER STUART REPORT].} and the number of women in either of these categories is still painfully small. Even in 2006, there were only ten women CEOs in the Fortune 500 companies.\footnote{CNNMoney.com, Women CEOs for Fortune 500 Companies, http://money.cnn .com/magazines/fortune/fortune500/womenceos/ (last visited Jan. 30, 2007).}

There may, however, be some movement away from the CEO model.\footnote{Julie H. Daum & Thomas J. Neff, SSBI: Key Trends Drive Board Composition, DIRECTORS & BOARDS, Jan. 1, 2005, at 58, 58-59 (noting that boards are rethinking the ideal board candidate).} According to a recent Spencer Stuart study, the percentage of active CEOs among new independent directors has fallen from fifty-three percent to thirty-two percent in the past five years.\footnote{Thomas J. Neff & Robert L. Heidrick, Why Board Service is Still Attractive, THE CORP. BD., May-June 2006, at 1, 4.} Furthermore, a recent study by the National Association of Corporate Directors (NACD) found that boards are now looking for a more diverse class of directors.\footnote{Glassman, supra note 1 (citing a recent study by the NACD).} They typically begin by creating a "wish list" of talents,\footnote{SPENCER STUART REPORT, supra note 24, at 2.} and "[m]ore often than in the past, boards are inviting senior functional or staff executives, including chief operating officers, chief information officers, CFOs and business unit leaders, to join."\footnote{Neff & Heidrick, supra note 27, at 5.} Accountants, too, are increasingly serving as corporate directors.\footnote{Dennis R. Beresford, Take a Seat in the Boardroom: A New Role in Corporate Governance, J. ACCT., Oct. 2005, at 104.} All of these developments may be good for women.
Recent studies have shown, nevertheless, that at the current rate of increase of women directors, it will take seventy years for women to achieve parity with men on corporate boards. The question one must ask is, are there any ways to accelerate women's advancement? What is likely to work that has not already been tried?

II. DEVELOPMENTS THAT MIGHT FOSTER BOARD DIVERSIFICATION

Recent developments suggest there may be some new opportunities for women seeking a board position. For example, following the well-documented scandals of the previous year, in 2002 Congress passed the Sarbanes-Oxley Act, which requires that every public company board of directors have an audit committee made up of independent directors and that all audit committee members be financially literate. Public companies must also disclose whether the audit committee includes a "financial expert."

Shortly thereafter, the New York Stock Exchange and the NASDAQ each adopted listing requirements that reinforced the importance of director independence and financial expertise. According to SEC Commissioner Cynthia Glassman, these two developments alone paved the way for increasing numbers of women directors. She noted that board candidates who are "financial experts" are in special demand. An increasing number of women now serve as CFOs and otherwise fall into the "financial expert" category.

Another factor that might result in more women directors is the increasing involvement of professional search firms, instead of the traditional old-boy network of friends, college classmates, and country club buddies. Today, and significantly, professional search firms conduct over half of all board searches. By bringing new contacts

33. See Glassman, supra note 1.
35. Id.
37. Glassman, supra note 1.
38. Id. "Financial experts" include chief financial officers, CPAs with financial accounting expertise, auditors, controllers, and senior accounting officers. See 17 C.F.R. §§ 228.401(e), 229.401(h).
and search methods into the process, the argument goes, search firms are more likely than traditional board committees to identify qualified women.\footnote{From 2000-2006, for example, a single search firm, Spencer Stuart, placed 277 women and 150 minority candidates on corporate boards. Roger O. Crockett, The Rising Stock of Black Directors, Bus. Wk., Feb. 27, 2006, at 34.}

Search firms, however, may be part of the problem rather than the cure. Professor Rakesh Khurana has noted that many business leaders hold strong reservations about professionally conducted searches. Many of them believe that most search firm employees are second-raters.\footnote{RAKESH KHURANA, SEARCHING FOR A CORPORATE SAVIOR: THE IRRATIONAL QUEST FOR A CHARISMATIC CEO 128 (2002) (describing directors' criticism of the search profession).} Khurana describes them as "former management consultants and investment bankers — including many who have failed to make partner in these occupations — as well as executives who have topped out at their current firms."\footnote{Id. at 130.}

He adds that the profession is largely "white, male, and prep-school Protestant . . . a sea of Ivy Leaguers in neatly pressed pinstripes and monogrammed shirts."\footnote{Id. at 131 (quoting JOHN BYRNE, THE HEADHUNTERS (1986)).}

These status-conscious individuals may be particularly unwilling to promote the advancement of women (or others) who do not look or dress like themselves. Still, some of the major search firms are now promoting their expertise, and success, in conducting "diversity" searches.\footnote{See, e.g., Diversity, Korn/Ferry International, http://www.kornferry.com/library/process.asp?P=Speciality_Div (last visited Jan. 30, 2007) (claiming a "solid record of recruiting outstanding professional minorities and women who meet the most demanding client requirements"); SPENCER STUART REPORT, supra note 24, at 14 (noting that "[w]omen and minority searches comprised a third of all the board searches [Spencer Stuart] undertook last year" and that they "have been responsible for recruiting many women and minorities to their first boards").}

Ironically, one trend that may open doors for women is the retreat from board service by traditional (male) directors. The increasing pressure on CEOs to tend to their own businesses, board-imposed limitations on the number of boards on which a CEO may sit,\footnote{Glassman, supra note 1 (noting that thirty-eight percent of CEOs surveyed by the National Association of Corporate Directors cited company policies that restrict the number of boards on which they may sit).} and the dramatic rise in the time required to serve on a corporate board today,\footnote{Andrew Countryman, Board Pay Trickles Up; Demands on Directors Grow, but Critics Say Their Compensation Has Risen Like CEOs, CHI. TRIB., Apr. 30, 2006, at C5.} have all led to directors declining to stand for re-election.\footnote{Neff & Heidrick, supra note 27, at 3 (reporting results of a survey showing that twenty-eight percent of directors had stepped off a board in the past two years).}
Expectations that directors will be fully informed and proactive (for example, by making independent site visits between board meetings and developing closer relationships with senior managers) have soared in the past four years. Thus, more and more CEOs are declining invitations to serve on others' boards.

Some boards are now themselves imposing limits on the number of other board seats their members may fill, and others have imposed age restrictions or term limits on their members.

All of this means, of course, that the supply of traditional directors is shrinking. It is no surprise, therefore, that the percentage of Fortune 500 seats filled by women has, in fact, increased in recent years. What is surprising is that the impact of women has been so small, rising from 9.6 percent of total board seats in 1995 to just 14.7 percent in 2005.

Furthermore, even this increase may be somewhat inflated, as many of these positions are filled over and over again by the same women.

In short, there is little sign that the seismic shifts in the law and listing requirements and the professionalization of the director search process since 2002 have made much of an impact on the composition of corporate boards. In the next section, we will examine why so little has changed.

III. REASONS WHY BOARDS ARE RELUCTANT TO DIVERSIFY

Even though many board members may now lament the burdens imposed by board service, there is still powerful pushback to efforts to diversify corporate boards.


50. Glassman, supra note 1 (quoting a survey conducted by the National Association of Corporate Directors in which seventy-nine percent of CEOs said they now decline board invitations based on time constraints).


52. According to Stuart Spencer, seventy-nine percent of boards now have a mandatory retirement age. Daum & Neff, supra note 26, at 60.

53. Lois Gilman, Term Limits for Directors?, CORP. BD. MEMBER, Sept.-Oct. 2006, available at http://www.boardmember.com/issues/archive.pl?article_id+12570 (reporting that the Center for Effective Organizations at the University of Southern California "found that 20% of some 200 big companies impose term limits, up from around 8% less than 10 years ago").


55. See supra text accompanying notes 21-22.
A. The Desire for "Cohesiveness"

One of the strongest counter-forces to board diversification is the notion of board "cohesiveness" and the perceived need for a board to work together as a team. Cohesiveness is more than just "clubbiness" or insistence on working within one's social comfort zone. Board cohesiveness may streamline the process of reaching decisions, lubricate discussion, and eliminate unnecessary groundwork-laying. According to Professor Stephen Bainbridge, "[t]he work of the board prizes consensus, not conflict."\textsuperscript{56} Professor Donald Langevoort adds that "[t]he most productive boards are ones that have enough diversity to encourage the sharing of information and active consideration of alternatives, but enough collegiality to sustain mutual commitment and make consensus-reaching practicable within the tight time frames in which boards must operate."\textsuperscript{57}

On the other hand, board cohesiveness may lead to more pernicious outcomes, such as the development of "groupthink" and a failure to consider innovative ideas.\textsuperscript{58} It is, nevertheless, understandable that busy directors, who place a premium on their time and personal relationships, would favor searching for directors with whom they are socially comfortable and who are unlikely to disrupt established decision-making practices, over the challenges of working with a more diverse board.

A second counter-force to the advancement of women is the continuing trend toward smaller boards.\textsuperscript{59} Once larded with insiders and cronies passing as outsiders, boards now average just one insider (the CEO) and rarely more than nine or ten outsiders.\textsuperscript{60} A Spencer Stuart study found that "[i]n 1998, average board size was 12 directors; that fell to an average of 10.7 in 2005. Two-thirds of S&P 500 boards now have between nine and 12 members."\textsuperscript{61} Thus, even when vacancies


\textsuperscript{58.} See Bainbridge, Why a Board?, supra note 56, at 32 (discussing the problems of groupthink); see also Marleen A. O'Connor, The Enron Board: The Perils of Groupthink, 71 U. CIN. L. REV. 1233, 1257-93 (2003) (detailing the specific problems of groupthink at a failed company).


\textsuperscript{60.} Id.

\textsuperscript{61.} Id.
develop, instead of searching for a replacement, companies may follow the prevailing trend and decrease the size of their boards.

A third counter-force to women's advancement is technology. High technology firms have a much poorer record of board diversity than "old economy" companies. Even when high-tech companies do diversify their boards, to add an independent director, for example, they are far more likely to add a man than a woman.

B. Failure of the "Business Case" for Diversity

Some scholars have suggested that gender and racial diversity at the board level may deter corruption and increase shareholder value. Diverse boards are also more likely than homogeneous boards to control excessive executive compensation. Diversity itself may lead to better decision-making by widening the scope of the conversation and generating alternative strategies. These assertions would seem to encourage responsible boards to insist on diversification.

Professor Lisa Fairfax has suggested, however, that this type of "business case" for diversity on boards may have been overstated. She notes, for example, that the presence of women directors is unlikely to create a more positive working environment for women employees, or stimulate a more positive buying experience for women consumers. Indeed, a diverse board may do no better than a homogeneous board in dealing with sensitive gender issues.

62. Ryan Kim, Women Rare on Boards in Region; Silicon Valley 2005 Numbers Up But Lower Than Nation’s, S. F. CHRON., Dec. 15, 2005, at C1 (noting that only forty-four percent of Silicon Valley boards now include one woman. "Of the 12 percent of the S&P 500 boards with no female directors, 43 percent are tech companies . . .").

63. Id. ("Of the 81 new independent directors added this past year, six were women.").

64. Ramirez, Why Diversity Lags in America's Boardrooms, supra note 23, at n. 15 and accompanying text; see also Steven A. Ramirez, A Flaw in the Sarbanes-Oxley Reform: Can Diversity in the Boardroom Quell Corporate Corruption?, 77 ST. JOHN'S L. REV. 837, 855 (2003).


69. Id. at 834-35.
Other commentators have suggested alternate forms of the "business case" for greater board diversity. For example, one business school dean has argued that boards that include women "surpass all-male boards in their attention to audit and risk oversight and control." They are more likely than all-male boards to monitor performance against established objectives, to insist upon corporate codes of conduct, and to consider the use of non-financial performance measures, "such as innovation and social and community responsibility." There is little evidence, however, to support these ambitious claims. Moreover, there is reason to believe that women who reach the uppermost levels of corporate influence may be disinclined to focus on "soft" or gender-related issues. One might argue (and many have) that there is little reason to welcome a woman director other than for cosmetic or "feel good" purposes.

C. Other Exclusionary Factors

An additional reason why women may not have progressed more effectively onto corporate boards is the lack of a springboard. A significant part of the diversity problem today is that there are few women in the pipeline where it matters: serving on boards of public companies that are not yet in the Fortune 1000. Recent studies make clear that, when it comes to board diversity, "size matters." That is, there are very few women directors at the types of lower-profile (read: lower-revenue) public companies from which they might later move upward, having polished their board skills and built a reputation. Instead, it is the Fortune 100 companies that now have the best track record of appointing women directors.

71. Id.
74. Id.
75. See WHAT DIRECTORS THINK, THE CORPORATE BOARD MEMBER/PRICEWATERHOUSE COOPERS SURVEY, 2005, at 16 (noting that the percentage of directors who are women is highest at companies with the highest revenue and that the percentage declines as revenue declines).
To the extent that these companies have cherry-picked women to serve on their boards, they should, of course, be congratulated. The same praise should go to the Fortune 500 companies whose acceptance of women directors is demonstrably better than the Fortune 501-1000 companies. Yet, many of the programs aimed at placing women directors on boards\textsuperscript{76} seem fixated on the Fortune 500, rather than the 15,000 other public companies that could serve as a springboard for women’s advancement. Until women focus on getting their foot in the door of lower-profile public companies, rather than aiming straight for the top, they are unlikely to make much further headway.

One final reason for women’s failure to achieve more board seats is simple: old-fashioned gender bias. According to one observer, “[c]orporate decisionmakers inadvertently succumb to stereotypes about what women want and what they can do.”\textsuperscript{77} Another adds that, in considering women for board positions, men often subject them to “competency testing.”\textsuperscript{78} “Competency testing means women have to prove themselves over and over again by meeting a set of criteria which their male competitors need not meet. As important, women have to make sure those making board selections are comfortable with their style as well as convinced of their competence.”\textsuperscript{79}

The involvement of professional search firms may not alter this exclusionary approach to women candidates. Irene Natividad, Chair of Corporate Director International, notes:

The director recruitment process is often not a process, nominations committees and recruitment firms notwithstanding. Instead there is still very much in place an informal referral system among male directors. The majority of women directors are, in fact, recruited in the same way; and they tend to be, as one woman director labeled them, the “safe” names — those who are familiar to male directors because they are already on other boards, or they are highly visible women in government or the professions.\textsuperscript{80}

All these factors — a preference for board cohesiveness, the trend toward smaller boards, the failure of the “business case” for

\textsuperscript{76} See infra Part VI.B.
\textsuperscript{77} Women in Business: Why There are So Few Women in Corporate Leadership, special insert in FORTUNE, May 29, 2006 (quoting Ilene H. Lang, president of Catalyst).
\textsuperscript{79} Id.
diversity, the failure to build a pipeline for women, and traditions of exclusion based on stereotypes and bias — may explain why more women have not been appointed to corporate boards. In the next section, we will examine the irony that some of the best women candidates might reject a board invitation.

IV. REASONS WHY A WOMAN MIGHT DECLINE A BOARD APPOINTMENT

Assume that a board of directors is inclined to diversify its board and that the search firm it hires is supportive of that goal. It is not at all certain that a qualified woman who is recruited for a board position will accept the nomination. Like many men who are approached about a board position today, she may turn the offer down.

One reason for declining an invitation, for the most elite corporate woman, may be that she is already fully committed elsewhere. For example, of the ten women who are currently CEOs of Fortune 500 companies, seven already serve on one or more boards. Meg Whitman of E-bay, Brenda Barnes of Sara Lee, and Anne Mulcahy of Xerox, each serve on more than one board.81

Women CEOs also often serve on the boards of national or international non-profit organizations.82 They are much in demand to serve on university boards.83 These CEOs, though surely desirable as experienced corporate leaders, are unlikely to take on a new board position or at least to do so without resigning from another time-consuming commitment. These women are busy, especially those engaged in international business or those with family obligations. Furthermore, many of them are new CEOs, clambering up a very steep learning curve.84

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84. Barnard, supra note 72, at 324.
Another reason a woman might reject an invitation to serve on a board is reluctance to be the first woman on that board. Successful women are understandably wary of being seen as tokens, as representing the voice of all women in a male-dominated institution, or of having their views marginalized or dismissed. It is therefore easier to accept an invitation to be the second or third woman on a corporate board than to accept an invitation to be the first.

There are other reasons for qualified women to reject an invitation to join a corporate board: risk of reputational harm, risk of financial loss, and, above all, the risk of a huge time expenditure. The first risk is real but operates like lightning, often striking regardless of one’s precautions; the second risk is remote, and the third is unavoidable. Outside directors report that they now spend an average of 191 hours per year attending to board matters. For companies in trouble, or contemplating replacement of senior management, the time commitment is even greater.

Currently, any person considering board service typically conducts extensive due diligence in order to avoid the kinds of companies that are likely to require dozens of meetings to address significant developments. Changing markets and changing management, however, can upend a director’s best efforts to minimize her time commitment to the board.

V. REASONS WHY A WOMAN MIGHT SAY “YES”

There are, of course, several reasons why a woman — even a busy, time-constrained woman — would work hard to accept a board appointment. The primary motivators are prestige, network-building, education, and compensation.

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85. Thanks to Julie Cohen Norris for this insight.
86. By contrast, it may be more difficult for companies to extend an invitation to a second or third woman director than it is to fill the first “woman’s slot.”
87. See Bernard Black, Brian Cheffins & Michael Klausner, *Outside Director Liability*, 58 STAN. L. REV. 1055, 1055 (2006) (noting that in the past twenty-five years, outside directors of public companies have made out-of-pocket payments in only thirteen cases. Most of those cases involved fact patterns that would not occur today for a company with a state-of-the-art D&O insurance policy).
88. Countryman, supra note 47 (citing a report by the National Association of Corporate Directors). According to the 2005 PricewaterhouseCoopers survey, directors estimate that they spend twenty-two hours a month on board matters. WHAT DIRECTORS THINK, supra note 75, at 14.
89. See WHAT DIRECTORS THINK, supra note 75, at 3 (noting that sixty-six percent of directors surveyed said they will conduct expanded due diligence before accepting any additional board appointments).
First, of course, a position on a corporate board confers immediate distinction and prestige on the holder. It also generates some powerful intangible rewards, including: "affiliation with highly respected companies and other directors, exposure to other governance processes and the opportunity to gain new ideas valuable to [one's] own company." For many directors, board service is a source of both stimulation and a sense of public service. Vice Chancellor Leo Strine of Delaware notes that "many people serve on boards because it is an interesting sideline to what they do. They find it challenging and rewarding work and they have a feeling of trusteeship about an institution that employs people, and that's important to a community. . . ."

Another advantage of board service is that it affords a director excellent contacts. The networking opportunities on most boards are invaluable. There is also a significant educational component.

Finally, board positions are also paying positions, and the amount involved these days is not trivial. A recent study by the National Association of Corporate Directors found total compensation for directors now ranges from $64,613 for smaller public companies to $195,442 for the largest two hundred companies. According to Institutional Shareholder Services, the average total compensation for directors at the largest firms in the United States is now just under $144,000. Directors, nevertheless, claim that compensation rarely drives their decisions to join or remain on a board.

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90. Neff & Heidrick, Why Board Service is Still Attractive, supra note 27, at 1.
91. Id. at 3.
92. RESTORING TRUST IN AMERICA'S BUSINESS INSTITUTIONS: CONFERENCE PROCEEDINGS 61 (Margaret M. Blair & William W. Bratton eds., 2005) (quoting the Vice-Chancellor using the transcript of a panel discussion titled "The Changing Role of Corporate Directors").
93. Neff & Heidrick, Why Board Service is Still Attractive, supra note 27.
94. Aliza Pilar Sherman, Woman on Board: In the Boardroom, There's Still Plenty of Room for Women, ENTREPRENEUR, July 1, 2005, at 37 (quoting Vicki Kramer, an executive committee member for InterOrganization Network, stating: "You learn about your own business by trying to think strategically about another business. You also get access to [potential] customers and suppliers. It's an opportunity to learn and network").
95. Countryman, supra note 47.
96. Director Pay Continues to Grow, Survey Finds, CORP. CSL. WEEKLY, May 10, 2006, at 151.
97. Countryman, supra note 47.
98. Neff & Heidrick, Why Board Service is Still Attractive, supra note 27, at 3 (reporting on the results of a Spencer Stuart survey).
VI. How Can We Do Better?

So far, this article has examined the current corporate governance landscape and the incentives that may be driving the decisions both of nominating committees and women interested in board service. This section asks a critical question: what should people, both women and men, who are committed to board diversity be doing now?

A. The Norwegian Model

A fascinating possibility has recently surfaced in Norway, where the legislature recently passed a bill requiring that by the end of 2007, forty percent of the directors of the nation’s publicly traded companies be women. The petri dish in which this experiment will be conducted is a small one, with only 519 public companies in all of Norway. Nevertheless, thousands of women have already added their names to the government’s database of interested candidates. Since the legislation was passed in 2003, the representation of women on corporate boards has already doubled from eight to sixteen percent.

The legislation, initiated by a conservative government, has predictably provoked controversy. When it was first announced, Norwegian businessmen protested that they would never find enough qualified women to fill these positions. Women were also critical of the plan, noting that “the quotas would cause tokenism,” and that “they were ‘smart enough to get ahead without the help’ of quotas.” Some companies quickly and voluntarily complied with the government’s goals, while others dragged their feet. The responses varied as

[s]ome companies couldn’t easily increase the size of their boards to meet the quotas. Before long, disputes began to break out over which men would have to step down to make way for women.

100. Id.
101. Id.
102. Id.
103. Pilita Clark, The Accidental Feminist, FIN. TIMES MAG., Oct. 15, 2005, at 28 (bearing the subtitle: “Three years ago, a Conservative Norwegian minister shocked the business world when he imposed a 40 per cent quota for women on company boards. This is what happened next.”).
104. Id.
105. Id.
106. Id.
Inside the consumer goods conglomerate Orkla, for example, a prolonged tussle ended last May, when Peter Ruzicka, a 40-year-old retail executive with a strong background in brand building and international trade, was replaced by a new director with a Harvard MBA, a background in McKinsey — and high heels.107

In at least one case, a male shareholder who had acquired one-third of the company's shares was unable to get a seat on its board.108 Today, several powerful Norwegian men no longer occupy the ten to twenty board positions they had previously held.109

B. Promising Initiatives in the United States

Certainly any mandate for board diversity in the United States, and especially any legislative mandate, is unlikely to develop in the near term, if ever. Rather, any change that comes will be the result of a norm change. Fortunately, there are a number of norm entrepreneurs who are working precisely in that direction.

The most visible stimulus for change in the United States is the Alliance for Board Diversity,110 made up of constituent organizations Catalyst (focusing on opportunities for women),111 the Executive Leadership Council (focusing on opportunities for people of color),112 and the Hispanic Association for Corporate Responsibility (focusing on opportunities for Hispanic and Latino business leaders).113 The Alliance has as its mission "[making] the business case for inclusion on corporate boards through our belief that shareholder interests are best served by promoting the diversification of boardrooms within publicly traded U.S. companies."114 A smaller group, the Directors' Council,115 has essentially the same objectives.116

107. Id.
108. Id.
109. Clark, supra note 103.
114. THE ALLIANCE FOR BOARD DIVERSITY, supra note 113.
Regional organizations, including the Chicago Network, the Forum of Executive Women (Philadelphia), the Board of Directors Network (Atlanta), and the Boston Club, are also making the case for more boardroom diversity. These groups are compiling local statistics, grooming members, and networking on their behalf when local board vacancies arise. Six such groups recently formed a coalition, the InterOrganization Network, to build up a database, advance their members' interests, and prepare more women for board membership.

Another source of diverse board candidates exists at for-profit firms like Boardroom Bound. This firm provides educational programs and coaching services to individuals on non-profit boards who seek to transfer their skills to the for-profit world. Additionally, business schools are now working with their alumna toward the goal of achieving seats on corporate boards. Recently, the Section on Business Law of the American Bar Association announced a scheme designed to groom women lawyers on the brink of retirement for board positions.

122. Nance-Nash, Boardroom Pressures Open Doors for Women, supra note 40.
124. Id.
125. See, e.g., Positioning Women for Corporate Boards, Conference November 6-8, 2006, http://som.utdallas.edu/pwcb/ (last visited Jan. 30, 2007) (promoting a three-day residential program “designed to help women leaders learn how to get noticed by corporate board selection committees and confidently secure board positions”). Some have suggested that business schools could do much more than they currently do to advance women into board positions. See Patricia M. Flynn and Susan M. Adams, Women on Board, BizED, Sept/Oct. 2004, at 39 (proposing that business schools do more to introduce women executives to men involved in the board selection process and also do more to coach their alumna).
Some of the most influential advocates of board diversification may be institutional investors. Several of these investors, and not only those within the social investment movement, have identified board diversity as one of their investment objectives. The Council of Institutional Investors advocates a regular assessment to ensure that a company’s board has “the necessary diversity of skills, backgrounds, experiences, ages, races and genders appropriate to the company’s ongoing needs.” The California Public Employees Retirement System (CalPERS), similarly, endorses a periodic board self-evaluation that includes a consideration of “the mix of director characteristics, experiences, diverse perspectives and skills that is most appropriate for the company. Additionally, the board should address historically under-represented groups on the board, including women and minorities.”

Finally, some boards themselves have adopted diversity initiatives. Even the Business Roundtable now endorses consideration of diversity when putting together a board slate.

Perhaps the most significant stimulus to advancement for women will be Catalyst itself. Founded in 1962, Catalyst has harnessed a strong board of corporate leaders who have lent their names to the cause of advancement of women in business. Following the publication in March, 2006, of the 2005 Catalyst Census of Women Board

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131. 2005 NACD Public Company Governance Survey 20 (2005) (noting that “only one-fourth (25.6%) of boards have [diversity initiative] guidelines in place”). Boards that have adopted diversity initiatives have more diverse boards, both in terms of minorities and women, than boards without them. Id.
133. Business Roundtable, The Nominating Process and Corporate Governance Committees, Principles and Commentary 9 (2004) http://www.businessroundtable.org/pdf/200404210002corpgov.comm.pdf (“The committee should consider candidates from a range of backgrounds. Diversity in gender, age, race and perspective all are appropriate considerations. In recent years, corporations have drawn directors from a variety of sources, including the public sector, educational and charitable institutions, and senior management in addition to current and former CEOs.”).
Directors of the Fortune 500, \textsuperscript{136} Catalyst sponsored a “special issue” segment in \textit{Fortune} magazine. \textsuperscript{137} It featured an interview with Charles O. Holliday, Jr., Chairman and CEO of DuPont and also the Chair of Catalyst’s board. \textsuperscript{138} His message was straightforward:

Catalyst research found a strong positive correlation between gender diversity in leadership and financial performance. That doesn’t surprise me at all. It’s the creative, challenging teamwork, and variety of thought that comes from diversity, that gives companies a competitive edge. If you are sitting in a room with people who look, act, and sound just like you, then your output will be limited. Moreover, businesses that include women and maximize their advancement are advantaged over those that don’t, simply because they are dealing with larger, more diverse human resources with greater potential. If you’re shooting for excellence, inclusion and advancing women is key. \textsuperscript{139}

Whether other business leaders will view Holliday as a norm-shaper or an outlier remains to be seen. \textsuperscript{140} Regardless, the involvement of successful male business leaders like him in a movement to encourage the appointment of women as corporate directors moves the discussion away from the special pleading status that might be ascribed to the women-only groups. At the end of the day, it will be the commitment of men like Holliday, in their roles as CEOs and on board-nominating committees, that will make the difference in the pace of women’s advancement. \textsuperscript{141}

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138. Id.
139. Charles O. Holliday Jr., \textit{This CEO’s Point of View}, \textit{FORTUNE}, May 29, 2006 at 194-95.
140. In addition to his role as chair of the Catalyst board, Holliday is also an outspoken advocate of environmental causes. He recently co-authored the book \textit{WALKING THE TALK: THE BUSINESS CASE FOR SUSTAINABLE DEVELOPMENT} (2002).
141. See Judy B. Rosner, \textit{Women on Corporate Boards Make Good Business Sense}, \textit{DIRECTORSHIP}, May, 2003, at 7-8, reprinted in WomensMedia.com, http://www.womensmedia.com/new/Rosener-corporate-board-women.shtml. Rosner notes: I asked a number of male CEOs of large firms why they have no women on their boards. Their response most often was “I’d like a woman on my board, but I can’t find one.” When I asked the follow-up question, “What kind of women are you looking for?” I was given a list of qualities that many of their male board members didn’t possess. There is no shortage of women ready, willing and able to fill board seats, however, if a company wants to find a woman board member, it has to look for one. . . .
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\textit{Id.}
Two more groups have a role to play in this story. Executive search firms will have to continue to cultivate relationships with outstanding women and promote them as candidates for board vacancies. Additionally the SEC should continue to foster transparency in the process of identifying new directors.  

CONCLUSION

Should one be optimistic that, as Commissioner Glassman and Andrea Jung suggest, women are about to make a quantum leap onto corporate boards? Or should one be pessimistic and anticipate just more of the same — inclusive rhetoric accompanied by a snail’s pace of actual advancement? The progress of women in academic leadership, the legal profession, and in elected office do little to encourage optimism. The business world is unlikely to be more hospitable.

That being said, three items will be essential if women’s rate of progress is to increase: (1) the commitment of CEOs and board nominating committees of all public companies to aggressively seek out diverse board candidates; (2) increased pressure from institutional investors; and (3) greater assertiveness by executive search firms, including interaction with the non-profit groups that are grooming women for directorships.

In terms of tactics, the following suggestions are worth considering:

(1) Diversity advocates should forget about trying to achieve change at the Fortune 500 companies that still lack even one woman director. At companies like these


143. See supra notes 1-2 and accompanying text.

144. See Joan Ryan, Hitting That Academic Glass Ceiling, S.F. CHRON., Sept. 12, 2004, at B1 (citing a report of the American Council on Education finding that women now represent twenty-one percent of college and university presidents).

145. See Timothy L. O’Brien, Up the Down Staircase, N.Y. TIMES, Mar. 19, 2006, at §3, p. 1 (citing a report of the National Association for Law Placement finding that only about seventeen percent of the partners at major law firms nationwide in 2005 were women).

146. Charisse Jones, Groups Seek Female Candidates, USA TODAY, Aug. 11, 2006, at 3A ("The percentage of female state legislators has hovered near 22% for the past decade.").
the likelihood of enlightened change is remote.

(2) Diversity advocates should identify those high-profile companies whose products are aimed largely at women and that still have only one woman director. (These include American Standard Companies, Big Lots, Inc., Carmax, Corning, Dean Foods, Dole Foods, K-Mart Holding, Land O'Lakes, MCI, Pilgrim's Pride, Ross Stores, Sears Roebuck, Smithfield Foods, and Verizon.) \(^{148}\) Advocates should then create a media strategy that emphasizes these companies' tokenization of women on their boards. Companies whose customer base is predominantly women should be at the forefront of media/shaming efforts.

(3) Diversity advocates should spotlight those high-profile companies with a significant complement of women directors: these include Albertsons (54.6% women), Avon Products, Inc. (50%), Estée Lauder, Inc., (41.7%), SBC Communications Inc. (40%), and Colgate-Palmolive Co. (37.5%). \(^{149}\) Importantly, it is not enough to identify these companies but to clearly tell the story of how these boards work. Fieldwork, interviews, and narratives of the decision-making process could go a long way to demystifying diverse boards.

(4) Women “trophy” directors — those who now sit on multiple boards — should press for even more women directors on those boards. (What’s the point of having clout if one does not exercise it?)

(5) Diversity advocates should shift their focus and networking efforts from the Fortune 500 companies to smaller public companies. They should also shift their


\(^{148}\) Id.

\(^{149}\) Id.
focus from compiling regional statistics (perhaps a good organizing tool but essentially irrelevant in today's global business environment) to establishing functional coalitions (e.g., women financial experts, women marketing experts, women HR experts, etc.).

(6) Diversity advocates should promote the credentials of the 81 business school deans who are women. These leaders have both organizational and bottom-line experience; they also presumably have the polish and social skills to move comfortably into a board environment. No matter how busy these women are, they should not decline a board invitation.

(7) Diversity advocates should form alliances with groups—like the Young Presidents Organization (YPO)—whose first priority is not the advancement of women. These organizations may be an untapped source of diverse, experienced, board-ready candidates. Entrepreneurs and CEOs at family-owned businesses may have the specific “enterprise” skills that a board requires.

(8) Diversity advocates should focus on placing on boards senior-level executives at Fortune 100 companies. “Not everybody on a board can be a current CEO. But if you run one of Dupont’s business divisions, you are running a pretty damn big entity. You could probably serve on a public company board.” Indeed, people like this for generations served on corporate boards—their own company’s board. Now, they should be even more valuable as independent directors on other company’s boards.

154. RESTORING TRUST IN AMERICA’S BUSINESS INSTITUTIONS, supra note 92, at 79.
(9) Diversity advocates should cultivate relationships with search professionals whose job description is "identifying next-generation board members."\textsuperscript{155} These professionals make their living thinking about how to make boards more effective.\textsuperscript{156} They are open — indeed, they are eager — to find saleable board candidates.\textsuperscript{157} They will increasingly wield influence over board searches in the future.

Ideally, some combination of these efforts would, in fact, change the composition of corporate boards within the near term. I, for one, remain doubtful.

\textsuperscript{155} This is the job description of Julie Cohen Norris, a Board Services Practice specialist at Spencer Stuart.
\textsuperscript{156} SPENCER STUART REPORT, supra note 24, at 20.
\textsuperscript{157} Id.