# CII Conference Panelists Dish on Corporate Culture, Voting Structures

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Investors, board directors, index providers, academics and regulators convened at the Council of Institutional Investors' spring conference in Washington on March 12-13 to talk about everything from corporate culture to board diversity to multiple share class structures.

On a March 12 panel on how board members should oversee corporate culture, Ruth Ann Marshall, a director at Conagra Brands Inc., Global Payments Inc. and Regions Financial Corp., said it can be challenging to measure corporate culture because "it's attitudes and behaviors." However, there are red flags that can indicate a company's culture is unhealthy and warrant investigation by board members, Ms. Marshall said.

The red flags, outlined in a 2017 report from the National Association for Corporate Directors, are:

> a focus on performance and little on how it's achieved; high performers operating outside of the companies' policies; frequent requests for exceptions to codes of conduct; a "go along to get along" kind of attitude; relationships outweighing skills in determining promotions or other recognition; and discouraging the of sharing bad news.

"If you start to see any of these activities occurring, raise your hand. Do some investigation," Ms. Marshall said. Overall, the NACD report argues that corporate culture, good or bad, can impact a company's performance and reputation.

Multiple panelists suggested mystery shopping as a way for boards to evaluate a business-to-consumer company's culture and understand how customers are ultimately being treated. "Corporate culture is not headquarters culture. It permeates the entire employee base," Ms. Marshall said.

Elizabeth Duke, chairwoman at Wells Fargo & Co., said mystery shopping is one of the tools Wells Fargo is using to help assess the company's culture.

In September 2016, Wells Fargo made settlements totaling $190 million over allegations of retail banking sales practice abuses. The next month, John G. Stumpf stepped down as chairman and CEO. Stephen Sanger, who replaced Mr. Stumpf as chairman, retired at the end of 2017 and was replaced by Ms. Duke. In the director election vote at the company's annual shareholder meeting last April, Mr. Sanger received one of the lowest levels of support at the company, at 56% of shareholder votes cast.

To evaluate the corporate culture at business-to-business companies like Conagra, Ms. Marshall suggested board members attend industry shows and visit the company's booth along with competitors' booths to hear what representatives have to say about the companies' reputations.

**Evaluating corporate culture**

Panelists also discussed how shareholders should go about evaluating corporate and board culture.

According to Ms. Duke, investors should aim to understand how a board is "going about informing itself," by looking at things like board composition and organization, and when possible, agendas and meeting materials.

The "culture of the board has to be aligned to what you want the culture of the company to be," added Robert Herz, a director at Fannie Mae, Morgan Stanley (MS) and Workiva, speaking on the same panel as Ms. Duke and Ms. Marshall.

On the topic of sexual misconduct, Ms. Marshall said that every company should have clear written policies, zero tolerance for sexual harassment and no retaliation for victims reporting incidents. Companies should also have anonymous hotlines, required sexual harassment training and aim to prevent personal relationships between managers and subordinates, she said.

Regarding the role of boards in preventing and responding to incidents of sexual misconduct, Ms. Marshall said boards should be auditing open cases and settlements over the last five years, and investigating every incident involving a C-suite officer or direct report to the CEO. "And I think it goes a long way if you have a large presence of women in the C-suite offices and on the board," Ms. Marshall said.

While there has been improvement in getting more women on boards, the "pace of change remains glacial," said Michael Garland, assistant comptroller for corporate governance at the $193.5 billion New York City Retirement Systems, in a separate discussion on the pension fund's boardroom accountability project, which aims to improve board diversity.

While 2017 marked the first time that white males held a minority of new board seats at S&P 500 companies, the percentage of women on boards rose only 1 percentage point in the S&P 500 to 22% from 21%. Additionally, for the 200 largest companies in the S&P 500, the percentage of Latino and African-American directors has remained relatively unchanged over the past five to 10 years, Mr. Garland said.

**Voting structures**

Dual-class stock with unequal voting power came up in several discussions at the conference.

Former Securities and Exchange Commission Chairwoman Elisse Walter interviewed SEC Chairman Jay Clayton at the conference on March 12 and asked him whether dual-class structures were something he felt the SEC would address formally or informally.

Mr. Clayton said that he was not putting it at the "front of the agenda for something (the SEC) should weigh in on." He added that he's "not persuaded by absolutists on either end" of the dual-class share issue and that "governance by indexation," such as excluding certain companies from indexes because of their voting share structures, "doesn't sit really well with me at the moment."

On a March 13 panel weighing the pros and cons of sunset provisions on companies with unequal voting structures, Lucian Bebchuk, professor of law, economics and finance, and director of corporate governance at Harvard Law School, argued that the potential benefits of a dual-class structure tend to diminish over time and that the structure should not be maintained indefinitely.

Speaking on the same panel as Mr. Bebchuk, Andrew Winden, fellow at the Rock Center for Corporate Governance and a law lecturer at Stanford University, said that while he does not believe it's at the point where dual-class structures need to be regulated, a "pragmatic" solution to regulating them would be allowing public shareholders to elect a minority of directors. This "guarantees the controller that they will not lose control unless they are willing to give it up" and "it gives investors a very clear sort of avenue for influencing management and for getting information about what's really going on in the company," he said.

Multiple share class structures also came up in a session on the role of index providers.

In July, FTSE Russell announced that companies now coming to market will need more than 5% of their voting rights in the hands of "unrestricted (free-float) shareholders" to be included in FTSE Russell's benchmark indexes. The same month, S&P Dow Jones Indices announced that companies with multiple share class structures would no longer will be eligible for inclusion in certain S&P indexes. In November, MSCI said it would temporarily block new companies with unequal voting structures from two of its indexes and expand an earlier consultation on non-voting shares to explore the treatment of "all types of unequal voting structures." The companies' announcements followed Snap Inc.'s decision last March to issue non-voting shares in its initial public offering.

Speaking about FTSE Russell's decision, Mark Makepeace, CEO at FTSE Russell, and director of information services at the London Stock Exchange Group, said that the 5% threshold was actually lower than the 25% threshold many asset owners were asking for, and that some fund managers were against any sort of change.

"We had this debate in our advisory groups where the fund management community was pushing one approach" and the asset owner community was pushing another, Mr. Makepeace said. Ultimately, the index provider told asset owners "let's first deal with the immediate problem ... Let's try to put a marker in the sand so that companies themselves (that) are thinking of coming to the market know what they are going to have to do if they want to become a constituent" in the indexes, Mr. Makepeace said. "We also said we would go back and review this."

FTSE Russell will be reviewing the 5% threshold in the summer, Mr. Makepeace said.

Asked about MSCI's decision to get involved with the dual-class issue, Henry Fernandez, chairman and CEO at MSCI, said the index provider was "not looking to play this role," but with regulators and stock exchanges not wanting to pick up the issue, investors brought it to index providers.

**New CII chairman**

Also at the conference, on March 14, CII's public pension fund members elected Ashbel Williams, executive director and chief investment officer of the $209.7 billion Florida State Board of Administration, Tallahassee, chairman of CII. He succeeds Theresa Whitmarsh, executive director of the $128.8 billion Washington State Investment Board, Olympia.