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Selecting Today's Independent Fund Director

In an era of industry disruption, active Securities and Exchange Commission (SEC) rulemaking, and heightened market and regulatory focus on environmental, social and governance (ESG) matters, mutual fund, exchange-traded fund (ETF) and other registered fund directors face tough questions as they work to fill vacancies arising on a board. Identifying an independent director candidate that meets the needs of a board at a given time always has been a delicate balance of art and science. Today, some boards are rethinking the formula as they grapple with the proper criteria to consider in developing a candidate pool and selecting from it. This article lays out the regulatory landscape against which long-standing independent director selection best practices were established, identifies key step in the process, and suggests considerations around diversity and specialized skills that fund boards should consider.

The role of a fund's independent directors under the Investment Company Act of 1940, as amended (the 1940 Act), is a heavy one. Independent directors are fiduciaries generally responsible for protecting the interests of fund shareholders, and their oversight is intended to be objective. Under Section 10 of the 1940 Act, at least 40 percent of a fund's financial expert, the board is afforded wide latitude in its composition. In 1999, the Investment Company Institute (ICI) described typical independent fund directors as "often prominent individuals with diverse backgrounds in business, government or academia, often with distinguished careers and experience. Such individuals are well-suited for the position because they can be expected to exercise independent business judgment on behalf of the fund and its shareholders with integrity and diligence."

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