Blogs
June 21, 2022
Forming a Standalone E&S Board Committee: 4 Things to Consider

Following up on my blog about "**Should You Create a Standalone E&S Board Committee?**," for those boards who decide to establish standalone board committees for ESG, here are four things to consider:

1. **New Board Committee's Name –** It should be broad enough to encompass its purview. How broad a reach will this new committee have? Is "Corporate Responsibility Committee," "Safety Committee," or "Sustainability Committee" truly reflective of the committee's reach?

   You might need a pretty broad term to be fully descriptive of what the committee does. But consider choosing a name that stands the test of time. Don't leap to the conclusion that it should be called the "ESG Committee."

   Of course, you can always change the committee's name, fine tune it, down the road – but it's good if you get it right from the start.

2. **New Committee's Charter –** A charter isn't required for committees beyond the three key board committees (audit, compensation, and governance committee) but as a good practice every board committee should have one – and they usually do. The charter should set forth the committee's responsibilities and authority delegated from the board. The charter should describe the committee's composition and structure.

   Don't include aspirational items that the committee is unlikely to tackle. That may well lead to a lawsuit as there are lawyers out there looking for this type of problem. Or even worse, a shareholder activist could leverage that mistake as part of its campaign for control.

   Of course, certain activities can't be delegated to this new board committee – the ones that stock exchange requirements and director independence rules require be housed within one of those three key standing committees. The audit stuff stays with the audit committee, the compensation stuff stays with the compensation committee, and the nomination of new directors stays with the governance committee.

   You can find a number of charters for committees established by other boards through a web search or reviewing company IR websites, but be careful as you want the content of your committee's charter to reflect exactly what your committee will be doing, and what limits it has. But it's always useful to look at samples to ensure that you're not missing anything.

3. **New Committee's Members –** Then you need to decide which directors should sit on this new committee. Obviously, it would be good if some of them have some experience, some expertise, with the issues they will need to oversee. Particularly the committee chair.

   Also consider whether a director has sufficient time to take on new responsibilities. Are they already overworked by their existing board duties or other responsibilities? You may be filling a seat or two on this new committee with directors that you recruit onto the board.

4. **Public Disclosure of the New Committee –** Your company likely will want to trumpet the formation of this new board committee. A voluntary Form 8-K may be in order after it's established, with a press release filed as an exhibit—though many companies might prefer not to set this kind of disclosure

precedent.

If your company has a separate web page on its corporate website about sustainability and social responsibility, you'll want to feature this new committee there too.

And then comes the proxy season, when you will be mixing in this new committee into your proxy disclosure, adding a description of this new committee into your Item 407 disclosure. Technically, Item 407 disclosure isn't required outside of the three key board committees – but it's a universal practice to describe all of a board's standing committees. Not to mention that Item 407(h) elicits disclosure of a board's risk oversight – and this committee clearly will be overseeing some risk that the company faces.

As for those directors that sit on this new committee, you'll be listing their committee membership as part of their director bios, providing Item 401(a) disclosure – as well as disclosure as part of the board & committee meeting attendance calculations and disclosure under Item 407(b).

Explore more in

Corporate Law