

Some Things Don't Change

Sarbanes-Oxley was expected to increase the number of minority directors. What happened?

By PHRED DVORAK

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Veteran director Dennis Hightower had high hopes for the Sarbanes-Oxley Act. That law and other corporate-governance revisions of recent years put boards under pressure to revamp their recruiting processes and look outside traditional networks for new, independent members. And that, Mr. Hightower figured, could mean more board seats for African-Americans like himself.

THE JOURNAL REPORT



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But 5½ years after Sarbanes-Oxley passed, the hoped-for surge hasn't happened, notes the former Walt Disney Co. executive, who currently sits on the boards of **Accenture** Ltd. and Domino's Pizza Inc. Ethnic and racial minorities remain underrepresented on U.S. corporate boards, comprising roughly a tenth of big-company directorships, versus a third of the population. The percentage of board seats minorities hold has barely budged since 2000.

"What could have been an opportunity for advancement of minorities turned out to be a chance for retirees," says Mr. Hightower, referring

to increased demand for retired executives, a largely white group, to sit on boards.

The lack of a significant increase in minority representation on boards defies easy explanation. But data trackers, directors and recruiters suggest several possible contributing factors, all rooted in the complexity of the corporate-governance changes that are reshaping boards. Yes, boards are looking further afield for independent candidates, but there's much more to the new landscape than that.

Parsing the Numbers

Exactly how have minorities fared in this reform era? By some measures, boards look even less diverse than they used to. The percentage of companies in the Standard & Poor's 500-stock index with no minority directors at all went up during the past several years -- to 41% in 2007 from 36% in 2000 -- according to ISS Governance Services, the arm of RiskMetrics Group Inc. that tracks corporate-governance issues. Of those companies with minority directors, 81% had only one in 2007, up from 58% in 2005.

Overall, black, Hispanic and Asian directors hold only 11% of board seats at S&P 500 companies, a hair above the 10% they held in 2000, according to RiskMetrics. For women of color, the trend is even bleaker: Surveys by New York-based research institute Catalyst show that black, Hispanic and Asian women held 3% of the board seats of Fortune 500 companies in 2007, down from 3.7% in 2003.

One aspect of recent governance changes that may be working against greater minority representation, at least in the short term, is that many companies are asking their directors to sit on fewer boards. Minority directors typically sat on more boards than their white peers did. So when directors started limiting their board seats, minorities often ended up giving up more places than whites did. That may have cut into the overall representation of minorities on boards, says Carol Bowie, director of RiskMetrics' Corporate Governance Institute, even as the number of minority individuals holding board seats increased.

Black, Hispanic and Asian directors at Fortune 100 companies held an average of 1.25 board seats in 2006, down from 1.39 in 2004, according to a survey by the Alliance for Board Diversity, a coalition formed to promote minority directorships. White male directors, by contrast, held 1.17 seats on average in 2006, versus 1.18 in 2004, the survey found.

The Experience Factor

Meanwhile, a sharper focus on director performance may have made many boards less willing to take a chance on relatively inexperienced candidates -- a particular problem for minority candidates, since the pool of minority board veterans is so small, some diversity trackers say. "Far from widening the net, companies really have reined in that whole [selection] process," says Ms. Bowie. "It was a reaction to more stringent scrutiny."

Many boards looking to play it safe started tapping retired chief executives -- an overwhelmingly white pool -- says Mr. Hightower, who has given talks to groups of minority executives on the changing environment for minority directors. Retired executives tend to have previous board experience and plenty of time to take on the added duties required of directors after Sarbanes-Oxley, he says. Recruiting firm Spencer Stuart found in an analysis of the proxy statements of S&P 500 companies that retired CEOs and other top executives accounted for 14% of new independent directors in 2007, up from 11% in 2002.

Yet many recruiters say boards haven't been as reluctant to tap new talent as some diversity proponents say. Spencer Stuart also found that boards are taking on plenty of new members with no previous director experience, particularly if they have the financial expertise that recent governance revisions require, says Julie Daum, head of Spencer Stuart's North American board-services practice. The same Spencer Stuart board survey found that about a third of new independent directors in 2007 had never served on another board, up from 31% the previous year.

Further complicating the picture are differences in the progress made by the three major ethnic and racial minority groups.

According to the Executive Leadership Council, a Washington-based group for African-American executives, the percentage of Fortune 500 board seats held by blacks was steady at around 8% in 2004 and 2006, the two years the group conducted surveys. In contrast, Hispanic directors' share of Fortune 500 board seats grew to 3.1% in 2006 from 1.9% in 2003, according to the Hispanic Association on Corporate Responsibility. And the Committee of 100 Inc., a New York-based group that tracks directors of Asian heritage, said the number of Fortune 500 board seats held by Asians or Asian-Americans rose to 1.5% in 2006 from 1% in 2003.

Making a Business Case

One factor in these disparities may be that the growth among Hispanics and Asians is from a very small base. But both groups see the growth as part of a trend, with boards choosing Hispanic or Asian directors for their expertise on hot, new markets.

In the case of Hispanic directors, boards are looking for members who understand the big, fast-growing U.S. Hispanic market, says Carlos Orta, CEO of the Hispanic Association on Corporate Responsibility, which is based in Washington. As for Asian directors, the growing importance of China and India to global corporations is leading boards to look for people with experience running businesses in those countries, says Wilson Chu, a Dallas-based lawyer who is director of the Committee of 100. Many of those appointments end up being people of Asian heritage, he says.

Companies have started taking a more hard-nosed approach to ethnic and racial balance on their boards in recent years, focusing on making a business case for directors with diverse backgrounds, rather than on diversity for diversity's sake, says Clarke Murphy, head of the board-services practice at New York-based executive-search firm Russell Reynolds Associates Inc. "It's not just ticking boxes any more; it's about revenues," says Mr. Murphy.

Even directors strongly in support of greater diversity have to make sure they're putting shareholder interests first, says Herman Bulls, CEO of a real-estate advisory group and a director of commercial heating and ventilation firm Comfort Systems USA Inc. As an African-American, Mr. Bulls says he'd like to see more minorities in U.S. boardrooms. And he says he's had discussions with fellow members of the corporate-governance committee at Comfort Systems about the issue.

But when it comes to choosing new directors, Mr. Bulls says he thinks about the Enron scandal, the importance of tough oversight and the need to get the best people for the board, no matter what their ethnic or racial background is. In a recent search for two directors, the Comfort Systems board looked for people with a good understanding of large-scale construction development processes, an area with a limited number of black experts, he says.

"When I'm sitting in that boardroom, my fiduciary responsibility is to the shareholders of that company - not to social engineering," says Mr. Bulls. "I can talk about diversity. But there ought to be a business case."

Minority leaders say the best way to get more people of color on boards is for advocacy groups to make sure directors and search firms can find plenty of qualified candidates, and to lobby for those candidates. The Hispanic Association on Corporate Responsibility and the Executive Leadership Council sponsor classes for Hispanic and African-American executives who want to become directors. And those two groups as well as the Committee of 100 recommend promising executives to recruiters.

Carl Brooks, head of the Executive Leadership Council, says, "We have to end the argument that people can't find qualified candidates."

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