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Diversity, Equity & Inclusion (DEI):
Current regulatory landscape &
boardroom agenda (UK versus US)

Sunny Mann | September 2021



Current UK position: Non-binding DEI targets

Parker Review (2017)

- Each FTSE 100 Board should have at least one "director of colour" by 2021 & each FTSE 250 Board by 2024
- FTSE 350 Nomination Committees to require HR & search firms to id & present qualified people of colour for consideration when Board vacancies arise
- FTSE 350 to develop candidates for the pipeline & plan for succession
- When launched, people of colour defn was:

"We use the broad term "people of colour" to describe individuals with evident heritage from African, Asian, Middle Eastern and South American regions. Thus, our focus is on non-white directors"
- **Results:**
 - Nov 2020 - 74 FTSE 100 had met target, & 7 more met target by March 2021
 - Significant progress made, but more to be done, esp. with key board positions e.g., CEO, CFO and Chair
- Hampton-Alexander (gender) has shown that Proxy Advisors' position on voluntary targets is influential

UK: FCA proposals (July 2021)

Listing Rules amendments to require listcos to disclose performance against gender & ethnic diversity targets

- Co's to include, in their Annual Report, a "comply or explain" statement on whether, at a specific reference date, they meet the following targets:
 - At least 1 board member is from a non-White ethnic minority background (ONS categorised)
 - At least 40% female (incl. self id) board representation
 - At least 1 of Chair, CEO, SID or CFO is female (incl. self id)
- Co's to disclose, in a table, numerical data on the gender and ethnic diversity of their board, Chair, CEO, SID and CFO and their most senior level of executive management.

Co's within scope

- Estimated 1,106 co's within scope - much broader than Parker Review (which is just FTSE 350)
- This will apply to all co's with shares listed on London Stock Exchange (though not AIM)

Next steps

- Consultation closes: 20 Oct 2021.
- Due to apply to FYs starting on or after 1 Jan 2022, with first compliance reports due 2023.

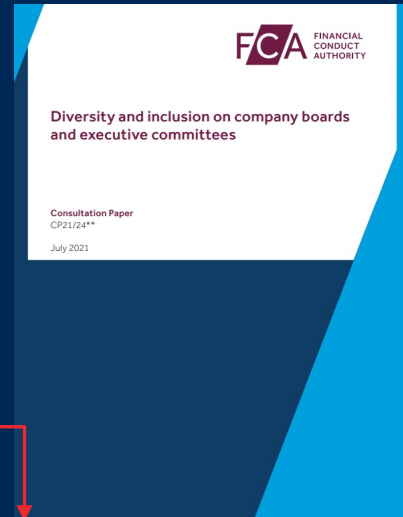


Table 2: Ethnicity categories

ONS ethnicity category	Number of Board Members	% of Board	Number of senior positions on the board (CEO/CFO Chair or SID)	Number in executive management	% of executive management
White British or White Other					
Mixed/Multiple Ethnic Groups					
Asian/Asian British					
Black/African/Caribbean/Black British					
Other Ethnic Group					
Not specified/prefer not to say					

US: Nasdaq rules approved by SEC (6 Aug 2021)

Board Diversity Objective

- New Nasdaq Rule 5605(f) will generally require Nasdaq-listed companies to **EITHER**:
 - have at least 2 diverse directors, including:
 - 1 director who self-id's as female; and
 - 1 director who self-id's as an "**underrepresented minority**" or "**LGBTQ+**"; OR
 - explain why it does not meet those targets.
 - "**Underrepresented minority**" means "*an individual who self-identifies as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or two or more races or ethnicities.*"
 - "**LGBTQ+**" means "*an individual who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community.*"
- Boards not meeting the requirements will have **complimentary access to a board recruiting service** aimed at helping them id & evaluate diverse board candidates

Reflections

Real change requires buy in from the Chair and CEO. Merely meeting Board quotas/targets is no substitute for taking action to embed diversity & inclusion into a company's business agenda.

Will these rules have sufficient impact on the C-Suite, or just increase representation in NED roles?

Do broad categories (like non-white ethnic minority & underrepresented minorities) do enough to support a wide range of ethnic diversity? And rationale for grouping ethnic minority & LGBT+ together for Nasdaq rules?

Will Proxy Advisors react to rule changes and provide voting recommendation to vote against Nomination Committee Chair if targets not met?

Will "comply or explain" be sufficient? Or are further sanctions for non-compliance desirable, (bearing in mind need to comply with relevant discrimination rules)?

Key role of the Chair of the Nominating Committee; Co Sec, General Counsel and HR director in driving change!

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